

RNID (The Royal National Institute for Deaf People) response to Ofcom's Consultation Questions on the "Strategic Review of Telecommunications, phase 2" dated 18 November 2004.

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Summary Statement

- *Deaf and hard of hearing people face significant, and increasing barriers in using telecommunication services;*
- *The current legal framework would allow changes to the current Universal Service arrangements;*
- *Free market mechanisms are essential, but also require regulatory action to protect minority groups;*
- *Making services accessible from the start is much more cost effective and manageable than addressing accessibility issues retrospectively;*
- *Evidence data collection must not ignore minority groups or qualitative impact aspects;*
- *Development of improved and new access services for people with disabilities is stifled by the current Universal Service funding and management arrangements.*
- *Future funding arrangements should hand over the setting of requirements and service levels to an independent body.*

Introduction

1. RNID welcomes the opportunity to respond to Ofcom's questions. We are the largest charity representing the 9 million deaf and hard of hearing people in the UK. This response focuses on those questions of particular relevance to deaf, hard of hearing, deafblind and speech-impaired people. The phrase "deaf and hard of hearing people" in this response is used to cover all people affected by hearing loss or permanent tinnitus.
2. Our vision is of a fully inclusive society where access to telecommunications as a vital tool for participation in employment, education, health, interaction with government and social life and entertainment is available to everyone, regardless of each individual's abilities and preferences.
3. Nothing in our vision would disenfranchise other citizens. In addition, our arguments and our vision are not in contradiction to the wider social, economic and regulatory realities in the UK.

General Comments

4. While RNID welcomes the fact that the consultation includes some relevant questions about the strategic aspects of Universal Service provision, we remain concerned that the consultations have been split. With a separate consultation on the Universal Service Obligation in progress, there is a danger that some topics may be bounced back and forth between the two consultations, ultimately simply disappearing in the gap between them. We urge Ofcom to ensure that the existence of two separate consultations will not ignore those issues that lie at the interface between the current Consultation and the Universal Service Review. Deaf and hard of hearing people still face significant barriers to opportunity and fulfilment as a result of inadequate Universal Service requirements.
5. We do not agree that no changes can be made to the current Universal Service implementation in the UK without a revision of the Universal Service Directive and ensuing action by the government to modify the Universal Service Order. RNID strongly believes that within the

current legal framework, which sets out high level principles rather than very specific implementation rules, there is scope to change aspects of Universal Service provision in the UK. Moreover, Ofcom is well placed to catalyse voluntary change through strong leadership and guidance to the sector. This non-statutory influence should not be underestimated.

Do you agree with Ofcom's proposed principles for regulation of telecoms markets?

6. RNID believes Ofcom could do more to further the access requirements of people with disabilities. We support the broad strategic direction laid out by the consultation document but remain concerned over the lack of detail in specific areas.
7. The Communications Act 2003 makes clear that it is the responsibility of the Regulator to “further the interests of citizen-consumers through a regulatory regime which, where appropriate encourages competition”. RNID strongly supports this description but is concerned that Ofcom’s attention is primarily directed towards the bulk consumer market. Whilst competition can often deliver the best results in mainstream markets, such market mechanisms do not produce equality of access for significant numbers of citizen-consumers in minority groups. A broadly de-regulated market must be backed by strong specific regulation addressing these needs.
8. The primacy of the principle of consumer protection over that of free, unregulated markets is not a rhetorical point, but lies at the heart of Ofcom’s *raison d’être*.
9. RNID strongly believes that the cost of ensuring equality of access for disabled people can be trivial if built in from the design stage and that Ofcom should more rigorously lay down requirements for equivalency of access. The technological solutions need not be defined, but such requirements would focus on aspects of functionality, availability and choice. This would ensure relevance and allow competition. Although this philosophy may already be embedded in Ofcom’s thinking, the strategy review provides an opportunity to reinforce the message and ensure that rhetoric is equalled by practice. The lack of a specific regulatory requirement for access to textphone services over the mobile network at the design stage was a missed opportunity. It has resulted in a significant lack of access for people with hearing loss and could easily have been avoided. The costs of retrofitting such functionality significantly exceed what they would have been if they had been built in at the outset.
10. Non-mainstream consumers are often not catered for by free market regimes because the economic principles that govern such markets, not least the principle of scale, do not apply to them. The current regulatory structure provides a safety net. But, it is important to realise this is not the same as ensuring equivalence of access. The latter, which should be at the centre of Universal Service, requires a pro-active policy of equal access wherever practical rather than a minimum set of requirements which are arbitrarily deemed as “acceptable” at a given point in time and with regard to a specific technology implementation.
11. Ofcom does qualify its principle of free markets to these cases where it is “effective and sustainable”. In light of the absolute primacy of protection of consumers, it seems logical to require it to be *demonstrably* in consumers’ best interests.
12. On numerous occasions the argument is put forward that imposing certain types of restrictions or obligations would stifle innovation (for instance when contemplating restrictions on the number and complexity of tariffs). RNID challenges such sweeping statements. DTI’s work on innovation over recent years suggests that regulation can often be a driver for innovation. It is the type and application of the regulation that is important.
13. A fundamental problem with the evidence base currently used is that it is often based on general public statistics, averaging out the specific needs of specific user groups. Ofcom’s duties are not

restricted to certain groups, but reach out to all citizen-consumers. Absolute quantities do not always reflect impact. For instance, users that have to use the RNID Tynetalk relay service to communicate in real time with hearing people over the phone will always be a minority in terms of numbers. Use of general public statistics on barriers encountered, user satisfaction with operators, levels of switching, etc will therefore never reflect the real problems these users face in using telecommunication services.

What should Ofcom's regulatory approach be to next generation access networks?

14. At the moment, Ofcom's thinking appears focused on the potential negative impact of regulation on the development of next generation access networks. This should be balanced with the need to better *protect vulnerable* consumers that need specialised services and products, including but not limited to such groups like text telephony users or sign language users.
15. The clear evidence from past experiences with emerging technologies is that unless the needs and requirements of all users, including what are perceived to be niche groups of consumers, are taken into account from the earliest stages of design and deployment, the result will be that these users eventually find themselves more disenfranchised and facing new barriers than they did before.
16. As already indicated, the best evidence to support this view can be found in what happened to textphone users as mobile communications developed and gradually revolutionised the way we live. No one will deny that mobile communications today are vital for all those who want full access to employment, education, health, social life and entertainment. Yet, when current 2G and 3G technologies were being developed and rolled out, the requirement for a mobile terminal for interactive, character-by-character based text communication, allowing deaf and hard of hearing people to use text based communication was not included in the specification. Such a system can provide a usable alternative for deaf people to the voice communication available to hearing people. This serious failure arose not least because such emerging technologies were not subject to existing regulatory obligations in this respect.
17. As a result, textphone users have been seriously disadvantaged over the last decade and have seen themselves often sidelined in a society where most people went mobile. In turn, this has caused new barriers to participation and fulfilment for many deaf and hard of hearing people. Now that this problem has been recognised through Condition 15 of the current General Conditions of Entitlement, the mobile operators have finally started to provide solutions for interactive text on mobile networks. It could have happened at the outset with a more focused strategic approach, at less effort and cost for all involved.

What should be the arrangements for funding the USO in future?

18. RNID believes that Universal Service arrangements should first and foremost be aimed at meeting the needs of the citizens affected and that any implementation, including funding and management arrangements, should be chosen with the prime objective of addressing the problems ensuing from the present situation.
19. In that respect, the prime observation that has been made for several years now is that deaf and hard of hearing users in the UK are no longer at par with their peers in countries like the US or Australia. That by itself is an important piece of evidence, since the principal difference between Universal Service delivery in those countries and the UK lies in the funding and management rules. There is no evidence that the difference in service provision and availability would result from demographics or any factor other than the arrangement for funding and management.

20. A number of services that are technologically possible, such as IP based access to the relay, or voice-to-voice relay for speech impaired individuals are not available to the UK public, even though the technology to implement them is readily available, and similar services are already being successfully offered elsewhere in the world. In addition, many of the recommendations of the MORI qualitative research commissioned as part of this consultation, require a type and level of development (and thus the availability of funding) that is not covered by the present regime.
21. RNID urges Ofcom to use its regulatory powers to dislodge the control over funding and management of Universal Service provision from the telecommunication industry itself and support the introduction of an independent review panel.
22. Precisely because telecommunication is changing rapidly, the needs of consumers are changing as well. It is no longer feasible to be a fully participating citizen unless full access to communication services and products is obtainable. The research commissioned by Ofcom states unequivocally that RNID Typetalk “remains the quickest way to contact the hearing community and resolve a call in realtime [sic]”. Hence, when access to the relay is diminishing because it is not offering deaf and hard of hearing users access via new networks, this effectively means that the users are being gradually disenfranchised and see their barriers to opportunity and fulfilment increase, rather than diminish. Indeed, the research also pointed out that these evolving requirements in terms of access methods and networks for interactive text by deaf and hard of hearing people was “in line with trends beyond the deaf community, trends relevant for society at large.”
23. The provisions of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 and of its UK implementation, the Communication Act 2003, do not restrict Universal Service to its current form or indeed to any specific implementation. Hence, within the existing legal framework, it is perfectly possible to restructure the Universal Service policies in terms of funding and management structures. This has been confirmed by DTI.
24. In response to an amendment tabled on 23 June 2003, by the Right Honourable Lord Ashley of Stoke, the Minister said: “In addition to ensuring that there is access to the service, we are aware of concerns about its future development and funding. That was referred to in relation to BT. These questions require careful consideration and could have fundamental implications for the way in which universal services are provided in the UK. I can assure my noble friend Lord Ashley that the Bill allows for mechanisms to be provided to share the costs of universal service provision, which is what he was suggesting, where necessary. So there is scope within the framework of the Bill to address these issues in the way that seems most equitable.” (House of Lords Hansard, 24 June 2002, Column 104)
25. The Minister was clearly saying that Ofcom would address these issues under current legislation and had the necessary powers and means to do so.
26. More important than the actual implementation mechanism is, however, the recognition by Ofcom that the current system is no longer adequate and is resulting in serious disenfranchisement of an already vulnerable user group, preventing innovation and further development of services. The current approach no longer reflects the economic realities of the telecommunications market.
27. RNID believes that Ofcom should grasp the opportunity to fundamentally change the allocation of Universal Service funding. Specifically, RNID would support the use of an independent panel to assess user requirements and service level provision. This will be further detailed in our response to the consultation on the review of Universal Service. At the very least, given the vital importance of mobile telephony, it seems reasonable in the interests of equity and fairness that all mobile operators should be asked to contribute to Universal Service provisions, specifically the accessibility requirements.

28. The continuance of a single-provider regime would not resolve the biggest problems of providing improved and alternative access to existing services or the development of new services. Instead, it would continue to operate according to current principles of minimal service at the least cost.

How could competition for the delivery of the USO be organised in future?

29. RNID believes the service provision requirements and delivery should be separated. The accessibility, service provisions levels and other requirements should be set by an independent panel based on discussions with end users, the industry and relevant stakeholder bodies. For some elements of the Universal Service, it would then be possible for Ofcom to invite bids from the industry to deliver the service at best value. This would help ensure quality of service whilst placing downward pressure on costs.

Should mobile technologies be used to help address the existing USO?

30. The consultation document already states that while regulation in the past was concentrated on fixed line telecommunications, today's realities are entirely different. As we have argued, mobile networks and products are not marginal, they are a critical asset to modern citizens.

31. Since the needs and problems surrounding Universal Service provision do not limit themselves to the fixed line networks, it seems logical to us that mobile operators and service providers shall become fully participating constituents in the provision of Universal Service.

32. Indeed, since the Communications Act 2003, the law has no longer distinguished between specific technologies or implementations, but applies to electronic communication networks in general. This reflects an understanding that issues of accessibility, functionality and societal impact of telecommunications have to be dislodged from the technological implementation.

33. While the current General Conditions of Entitlement already impose access obligations on mobile operators, there is no current requirement for them to contribute to provision or funding, which we believe to be in contrast with the economic and technological realities.

*RNID - The Royal National Institute for Deaf People
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RNID is the largest charity representing the 9 million deaf and hard of hearing people in the UK. As a membership charity, we aim to achieve a radically better quality of life for deaf and hard of hearing people. We do this in the following ways:

- ✓ Campaigning and lobbying to change laws and government policies.
- ✓ Providing information and raising awareness of deafness, hearing loss and tinnitus.
- ✓ Training courses and consultancy on deafness and disability.
- ✓ Communication services including sign language interpreters.
- ✓ Training of interpreters, lipspeakers and speech-to-text operators.
- ✓ Seeking lasting change in education for deaf children and young people.
- ✓ Employment programmes to help deaf people into work.
- ✓ Care services for deaf and hard of hearing people with additional needs.
- ✓ Typetalk, the national telephone relay service for deaf and hard of hearing people.
- ✓ Equipment and products for deaf and hard of hearing people.
- ✓ Social, medical and technical research.