

Ofcom Consultation on Relay services (May 2012)

Response from PhoneAbility

PhoneAbility is grateful for the opportunity to respond to this further consultation but we find that, as Ofcom provides more information and analysis, the issues become more complex and divergent. Where we would have hoped to see a progress towards a logical and coherent conclusion, we now foresee an increasingly uncertain future in which any proposals might be subject to challenge and consequent delay.

We welcome the proposals to move to the enhanced version of text relay through implementing NGTR, as we stated in the previous consultation. This move is long overdue and it is our opinion that deaf and speech-impaired people have had to put up with an out-dated text relay service for far too long – thus making these proposed improvements urgently necessary. Although criticism has often been directed at BT for not introducing improvements at their own instigation, we recognise that the regulatory and economic context provides a full explanation for why this has not come about. When a service is fundamentally loss-making, and improving that service can only accentuate those losses, no commercially-driven organisation can be expected to commit to an on-going drain upon its revenues without some prospect of sharing and/or limiting that burden. We have doubts as to whether the new proposals adequately address this issue, although they may re-shape it. In our view, Ofcom will have no option but to accept the role of constant monitoring and up-dating of the text relay service for an indefinite period under these proposals. This is because commercial pressures will induce network operators to minimise the level of service offered to relay users, in order to contain on-going costs, and perhaps persuade them to take their custom elsewhere.

These factors are not new, of course, having been present in the debate from its inception. However, the extra data and analysis which Ofcom now puts forward illustrate the problem most vividly, and we are led to wonder how proposals which seem to rely upon a mixture of market forces with close regulatory pressure can possibly work. Our responses to the consultation questions reflect this view of the situation.

We would make one other general point, which concerns terminology. The word 'access' occurs frequently in the consultation documents and in the proposed new regulatory conditions. It has ambiguities in its meaning and we see this as a cause for much argument if the precise intent is not clarified in each instance. Access could simply mean the ability to connect to a desired telephone number, or it could mean the ability to use a service which is reached through that number – the two cases are by no means the same. There is a third possibility, which is that the required service is not merely connected by the network operators, but is also funded by them. We can compare the DQ services, which all PATS networks will connect to but will not necessarily take any management responsibility for. Also, only in very special circumstances will the networks pay for a caller's access to the DQ service. These are all valid interpretations of the term 'access' and we

trust that Ofcom will eliminate much scope for disputation by always making the intended meaning fully clear.

We note in the context of the interpretation of ‘access’ that it has a very limited meaning in the Framework Directives. During the course of discussions over several years, we have been appraised of the thinking that ‘access’ means simply the function of connection to the Network Termination Point of the called party. For example, ‘access to emergency services’ refers only to the transit of an emergency call to the point where it leaves the jurisdiction of a relevant network operator. The progress of the call beyond that point, and the manner of any response, both lie outwith the scope of these Single Market Directives and (as in the case of the emergency services) may be matters for national subsidiarity. This reasoning, which may seem counter-intuitive to a casual reader of the Directives, puts severe restrictions on the meaning of ‘functional access’ and we therefore consider it crucially important that Ofcom leaves no room for doubt in its own proposals.

Our responses on the specific Consultation Questions follow.

Question 1. Do you agree that in the light of the additional cost data and further clarification, in light of Ofcom’s assessment of relevant benefits and other relevant considerations, all CPs (BT, fixed and mobile providers) should be required to provide access to an NGTR service?

We agree that all CPs should be required to provide access to an NGTR service, using ‘access’ in the meaning of the Framework Directives. We believe that the matter of how the service is managed and funded needs further clarification and we set out our reasons below.

Ofcom has powers and precedents under the universal service legislation to designate one or more CPs to provide a text relay service and, if necessary, to share the costs with other CPs. BT does not have to be the designated provider, although that seems to be the most likely probability, and it does not have to be the sole funder. The conditions which led OFTEL to conclude that there would be no net loss in being the designated universal service provider no longer apply, so BT (and KC) could request a review with the expectation that a charge would be levied on other CPs to reimburse the net losses. (These would be the net losses of universal service, of which NGTR would form just one part). As we see it, this is a process for which there is ample legal justification and the only major question would be whether the mobile networks should contribute – since we now know that mobile is excluded from universal service, along with broadband.

If Ofcom intends to depart from the universal service approach and use instead the powers under Article 23a, it will face the problem that these powers are untested. We would wish to be assured that Ofcom is certain that the universal service powers to mandate relay services can be exported to the Article 23a context without legislative challenge. We note the EU Commission’s repeated statement that Member States may not impose financial burdens on their telecoms sectors beyond the legitimate costs of regulation. Universal service cost-sharing may be

such a legitimate cost, but we ask how far would Article 23a impositions be so considered? Until unequivocal answers can be given to these questions, we still maintain that Ofcom would be unwise to revoke USC4 (although the cost burden need not continue to reside solely with BT).

We have also noted that the Commission is ready to take active infringement action against States that apply universal service levies for more general socially valuable purposes. With Ofcom's further analysis showing very clearly indeed that benefits and externalities favour the community at large rather than just the telecoms sector, we wonder whether Ofcom is on safe ground. One effect of the further analysis is to emphasise the case for obtaining a funding base for relay services that is wider than the telecoms sector alone. We would be most dismayed to find that implementation of NGTR (which we fully support) was delayed by legal obstacles brought about by issues of this kind.

We see that Ofcom expects that many CPs would purchase an NGTR service from BT rather than set up their own or contract with another provider. BT is reported as having the intention to offer its NGTR at wholesale rates and market pressures could act as a control over those rates. An alternative conclusion would be that BT sets the rates as high as it can, so that other CPs set up rival services that would draw loss-making subscribers away from BT. Such competition would be welcomed in many respects, as it would offer choice for users which is absent when all CPs contract with BT, but there is still the drawback that the providers would be competing to offer the least attractive service. As Table 1 of the consultation document shows so eloquently, the provider's losses increase significantly as the number of users (and user minutes) also grow. We remain of the opinion that development and improvement of relay services can only be truly effective when providers are rewarded for good performance, and not for bad.

Question 2. Do you agree that the need to dial a prefix to access a relay service for incoming calls to the hearing and/or speech impaired end user should be removed?

We agree that the need for a dialling prefix should be avoided when calls are made to a hearing or speech-impaired person when the use of a relay service is expected to be made. This will facilitate the connection of calls originating from people with no experience of relay services, or without the facility to dial the additional digits.

We believe that it is important to enable textphone users to dial one another, in order to make back-to-back calls, without bringing in a relay service. If this is done simply by dialling the called person's number, without any prefix, there will be problems. As the called number will figure in the look-up tables, it is probable that an unwanted relay connection will be made, but there is a more important drawback. When BT introduced its Text Direct platform, it not only provided a connection to the text relay but it also ensured that network announcements were delivered in text rather than voice. We regard this as an essential component of equivalent access to the networks for text users and we do not accept that it could be left to a commercial decision by BT, as is proposed. We take the view that the

delivery of network announcements in text to users of textphones should be made a mandatory requirement for all CPs, as a fundamental equality measure.

There was a further objective in the Text Direct virtual network, which was to provide a 'standards converter' to enable text telephones using different protocols to inter-communicate. It may be the case that this is a legacy requirement that is now redundant but, if so, this needs to be demonstrated. The technical means of dealing with these issues is not obvious and may need discussion at the proposed workshops.

We also find that no account has been taken of captioned telephony (CT) in this analysis. If Ofcom assumes that CT users are just a sub-set of those who use NGTR, this may prove to be substantially false. There has been very little use of CT by hard-of-hearing people, either in the UK or (reportedly) in the USA. Deaf people and hard-of-hearing people form two very different user groups, with little overlap, so reading across from one set of user data to the other is likely to be misleading. Our view, from comments made to us, is that hard-of-hearing people who see merit in CT would never attempt to use a text relay, as it is seen as a medium for deaf people, whereas captions – like TV sub-titles – are valuable for those who are not deaf (as self-assessed) but simply need occasional help. These are the people who withdraw from using voice telephony, other than with close friends and relatives, and prefer to use other modalities, including SMS but not relayed text. If this group is to obtain maximum benefit from CT, we believe that several factors must be present:

- The CT system must be unobtrusive and intuitive to use
- It must be used on demand, and not on all calls to/from a number
- The presence of the relay assistant must be clear to both parties
- The latency of the captioning must be consistent with normal speech patterns. (Until this is possible, use of the facility will be restricted)

We believe that, if these factors are observed and the service is free of charge, and marketed to hard-of-hearing people, the number of users could ultimately run into several millions. We base this estimate on the demography of moderate to severe hearing loss, and on the age profile that is associated with it. The potential user group has had a habit of using voice telephony but has been forced to give it up because of acquired hearing loss. In these respects they are very different from those who have a long-standing hearing loss and have been forced from an early age to adopt other modalities. We surmise (but have no positive evidence for that) that this group would return to telephone use in great numbers if a convenient aid to hearing became available. The effects on service costs, and on the technology of setting up and directing calls, could be very dramatic and we suggest that these possibilities need to be explored much more carefully. We also would make the point that there would be absolutely no incentive for CPs to market the service, so this would have to be done by the disability organisations themselves.

Question 3. Do you agree with the proposed approval criteria and KPIs? If not, please specify your reasons.

We do not wish to comment upon the proposed approval criteria and KPIs because we believe that users of text relay services are the most appropriate people to do so, through their own organisations. We do believe that such requirements must be reviewed at regular intervals – annual review might be appropriate. Indicators such as speed and accuracy are highly dependent upon the technology used and this will most certainly evolve. Evolution may not come about as a result of pressure from relay services – because the driving forces point in the reverse direction, unless cost reduction is a potential outcome – but it will be manifested in other areas using similar technologies. Consequently, there will be a ‘read across’. Without regular review conducted by Ofcom, we do not see how technological advances will benefit this sector, unless of course they result in large cost savings. The inverted nature of the proposed funding model will otherwise act against the adoption of technological change, and user pull will be ineffective because users will have little opportunity to observe whether there are real benefits in store for them.

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