



Television Access Services Review

Statement

Statement

Publication date:

11 June 2010

Contents

Section		Page
1	Summary	1
2	Background	5
3	Comments from consultees, and Ofcom's response	9
4	Review of signing arrangements for low audience channels	24
Annex		Page
1	Revised estimates of costs of the audio description options	28

Section 1

Summary

Introduction

- 1.1 This document summarises the outcome of a review of television access services (subtitling, signing and audio description) that Ofcom consulted on in September 2009¹.

Background

- 1.2 The Communications Act 2003 ('the Act') requires Ofcom to publish and from time to time review and revise a Code setting out how television services should promote the understanding and enjoyment of television by people who have hearing or visual impairments, or who have a dual sensory impairment ('deafblind').
- 1.3 The Act prescribes targets for television services to subtitle 80% (or 90% in the cases of Channels 3 and 4), sign 5% and audio describe 10% of all programmes (except those excluded by Ofcom) by the tenth anniversary of the relevant date² for each channel, as well as a subtitling target to be reached by the fifth anniversary (60%).
- 1.4 It also requires Ofcom to draw up and from time to time review a code giving guidance on the application of and exclusions from these targets. More detail on relevant statutory duties applying to Ofcom under the Act is given in section 2.
- 1.5 To reflect these requirements, Ofcom published the Code on Television Access Services³ ('the Code') in July 2004, and conducted the first review of the Code in 2006. We considered that changes to the access service landscape and to the economic climate since 2006 made 2009 an appropriate time to conduct a further review of the Code.

The review

The key issues

- 1.6 In response to developments in legislation, technology and the economic landscape during the last three years, Ofcom's review addressed three main issues:
- a) whether there was a case for looking again at the selection criteria used by Ofcom to determine which channels should be excluded from the requirement to provide access services, given the potential impact of both the economic downturn and the rising access service targets on the range of accessible television channels;

¹ 2009 Review Of Television Access Services. Ofcom, Sept 2009

(http://www.ofcom.org.uk/consult/condocs/access_services/consultation.pdf)

² The 'relevant date' is 1 January 1997 for BBC 1 and 2, 1 January 1998 for Channel 5, and 1 January 2000 for Channels 3 and 4 and for S4C Digital. For digital television programme services that began before 29 December 2003, the date is the entry into force of the legislation, (29 December 2003). For services starting after 29 December 2003, the relevant date is the date on which provision of that service commenced.

³ The Code on Television Access Services. Ofcom, April 2008 (<http://www.ofcom.org.uk/tv/ifi/codes/ctas/ctas.pdf>)

- b) whether there was a case for increasing audio description targets given the increased availability of audio description enabled equipment, and the steps that had been taken to promote awareness and usage of audio description; and
- c) whether Ofcom licensed channels targeting areas outside the UK should be required to provide access services.

Selection criteria

- 1.7 In the 2009 consultation document, Ofcom considered the possible impact of the economic downturn on broadcasters' ability to afford to provide subtitling, audio description and signing. We suggested that the likely impact of possible falls in revenue on broadcasters' ability to afford to provide access services would be limited, and that the existing selection criteria for determining which channels are liable for access service provision remained appropriate. We invited comments on this assessment.
- 1.8 Most respondents agreed that the current criteria remain fit for purpose, including a mix of groups advocating the interests of viewers with hearing and / or visual impairments ('advocacy groups'), and broadcasters. Some suggested that the criteria be kept under review, while some suggested adjustments. One advocacy group felt that the existing affordability criterion was arbitrary, but did not suggest an alternative.
- 1.9 Having carefully considered the consultation responses, and for the reasons set out in section 3, Ofcom has concluded that the current criteria remain appropriate. We shall review them as and when the circumstances warrant this.

Audio description targets

- 1.10 The Secretary of State is empowered to increase targets for subtitling, signing and audio description by order and following consultation with Ofcom. In 2005, Ofcom suggested to the Department of Culture, Media and Sports that, as it had become possible to receive audio described programmes on cable and satellite services, as well as digital terrestrial television, there was a case for re-examining the statutory targets once the current targets had been reached. The Department asked for advice on this in due course. In the 2006 review,⁴ Ofcom concluded that more work needed to be done to establish the extent of awareness and usage of audio description amongst people with visual impairments before considering whether or not to recommend changes in the audio description target. In early 2008, Ofcom worked with the RNIB and broadcasters on a major campaign to promote awareness of audio description. In preparation for the current review, we commissioned research exploring access to, and awareness and usage of audio description. The findings revealed that awareness of audio description initially grew substantially as a result of the campaign, but fell back later.⁵
- 1.11 In the current review we looked at three possible options for the future of audio description provision – the status quo, under which relevant channels would continue to be required to audio describe 10% of programming (Option 1); an increase in the

⁴2006 *Television Access Services Review*. Ofcom Sept 2006
(<http://www.ofcom.org.uk/tv/ifi/codes/statement/ars.pdf>)

⁵2009 *Research into the awareness and usage of Audio Description* Ipsos Mori for Ofcom Sept 2009
(http://www.ofcom.org.uk/research/tv/reports/research_audio_description/Access_Services_Report.pdf)

target for all relevant channels to 20% (Option 2); and an increase in the target to 20% for public service channels only (Option 3).

- 1.12 Most public service broadcasters ('PSBs') and some other broadcasters ('non-PSBs') supported Option 1 on the grounds that there was insufficient evidence that any target increases would generate benefits which justified additional costs. That said, the BBC Channel 4 and Sky have committed voluntarily to audio describe 20% of their programming.
- 1.13 Many visually impaired respondents and advocacy groups supported Option 2. They argued (amongst other things) that visually impaired people value television as an important source of information and entertainment, and that audio description gives them a sense of social inclusion, equality and independence.
- 1.14 Most non-PSBs supported Option 3, as did Ofcom's Advisory Committee on Older and Disabled People ('ACOD'). Advocacy groups for the hearing impaired also preferred Option 3, on the grounds that it would increase audio description on the most popular channels, without increasing overall costs for broadcasters to the point where subtitling might have to be cut.
- 1.15 Having carefully considered the consultation responses, and for the reasons set out in section 3, Ofcom has concluded that the arguments for each of the options are very finely balanced, and that further research would not eliminate the need for subjective assessments about the benefits of additional audio description to visually impaired viewers versus the costs to broadcasters. As the ultimate decision on whether to propose changes to the statutory targets rests with the Secretary of State, Ofcom has decided that it would be appropriate to report on the outcome of the consultation, but not to make a specific recommendation to Government.
- 1.16 In the light of the research conducted on awareness, Ofcom does consider that further work is required to publicise audio description, in order to achieve Parliament's objective of promoting the understanding and enjoyment of television by people with visual impairments. Ofcom will be discussing with broadcasters how best to secure this.

Television services targeting areas outside the UK

- 1.17 A significant number of broadcasters targeting Europe and other regions have chosen to be licensed in the UK. Ofcom currently exempts these channels from the access service requirements.
- 1.18 In the review, we said that we would gather information on the extent of voluntary access service provision on the 200 or so channels broadcast to other EU Member States. We said that, if by the end of 2010, the indications were that voluntary provision of access services on such channels was inadequate, we would consider whether or not it would be proportionate to remove the exemption on some or all of the broadcasters licensed by Ofcom to provide channels outside the UK.
- 1.19 Some advocacy groups supported this initiative, but broadcasters in general were concerned that changes to the status quo would be technically difficult and potentially very expensive. They considered that it could put them at a competitive disadvantage to other EU broadcasters licensed outside the UK who may face fewer restrictions. They called for any decision on statutory regulation to be postponed until more evidence on the costs and technical implications could be collected and the state of access service provision in Europe becomes clearer.

- 1.20 Ofcom is continuing to gather information on the extent of access service provision, and about the practical effect of changes to the current arrangements.

Other matters

Signing on television

- 1.21 Ofcom's Code requires many channels to provide 30 minutes of sign-presented programming a month. However, Ofcom may approve alternative arrangements proposed by low audience channels, having regard to Ofcom's published guidance,⁶ if it is satisfied that these alternative arrangements would contribute to the diversity of sign-presented programming provision. Many channels currently participate in alternative arrangements by funding the British Sign Language Broadcasting Trust ('BSLBT') to produce sign-presented programmes that are shown on the Community Channel.
- 1.22 Alongside the access services review, Ofcom sought views from deaf people and broadcasters on whether the BSLBT arrangements continued to be fit for purpose. Having sought input from deaf people and broadcasters, Ofcom considers that these arrangements remain consistent with the guidance, are popular with sign-language users, and enjoy the continuing support of participating broadcasters. For the reasons set out in section 5, Ofcom has no objection to the arrangements continuing in 2011 and beyond, provided eligible channels agree to participate for a minimum of two years,⁷ with the option to give 12 months' notice of withdrawal at the end of the first 12 months.

Other issues

- 1.23 Respondents also raised a number of issues that were outside the ambit of the current review. These are discussed towards the end of section 3.

⁶ *The Code on Television Access Services Annex 3* (See web link on page 1)

⁷ Participating channels may also withdraw in the event that they are no longer required to provide access services.

Section 2

Background

Introduction

2.1 This section explains both the background to the television access services regulatory regime in the UK and the backdrop to the 2009 review.

Television access services

2.2 Television access services (subtitling, signing and audio description) help people with hearing and/or visual impairments to understand and enjoy television:

- a) subtitling for hearing impaired viewers consists of the display of dialogue and sound effects in text form at the bottom of the television screen; users have the option to turn the service on or off;
- b) audio description ('AD') comprises a separate audio track in which a narrator uses gaps in the original sound track to describe what is happening for the benefit of people with visual impairments; like subtitling, the service can be turned on or off; and
- c) signed television programmes are either sign *interpreted* and incorporate the image of a signer translating dialogue and sound effects into sign language for the benefit of those who use it to communicate, or sign *presented*, where the main content of the programme is delivered in sign language.

Statutory and regulatory provisions

Communications Act

- 2.3 On 29 December 2003, the Communications Act 2003 ('the Act') came into force. Sections 303 to 308 of the Act cover the provision of television access services. The Act:
- a) provides that Ofcom must draw up and from time to time review and revise a Code giving guidance as to how relevant television services should promote the understanding and enjoyment of television by people who are deaf or hard of hearing, or blind or partially-sighted, or who have a dual sensory impairment ('deafblind'); and
 - b) prescribes targets for the subtitling (80%), signing (5%) and audio description (10%) of programmes to be reached by the tenth anniversary of the relevant date for each channel⁸, as well as a subtitling target to be reached by the fifth anniversary (60%); and

⁸ The Act stipulates that full access service target obligations (80% subtitling, 10% audio description and 5% signing (or alternative signing arrangements)) must be in place within 10 years of the relevant date, for ITV and Channel 4 the subtitling target is 90%. Most broadcasters will reach the maximum subtitling and signing targets in 2014.

- c) provides that the Code must include descriptions of programmes which should be excluded from the access service requirements (which may include either all the programmes of a particular type or, in the case of channels which Ofcom is satisfied represent a special case, can include all programmes included in the channel).
- 2.4 In addition, the Act enables the Secretary of State to lay before Parliament a statutory instrument to increase the targets referred to above or to introduce a different anniversary by which time they must be implemented. This requires approval by both Houses of Parliament.
- 2.5 As well as its specific duties in relation to access services, Ofcom must also act in accordance with its general duties and Community obligations under Sections 3 and 4 of the Act. Of particular relevance to access services are the requirements on Ofcom to secure the availability throughout the UK of high quality television services appealing to a variety of tastes and interests, and the maintenance of sufficient plurality of television service providers (which includes proper consideration of costs). In performing its duties, Ofcom must have regard to ensuring regulatory activities are transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. Additionally, Ofcom must have regard to the needs of persons with disabilities, the opinions of consumers and the desirability of promoting competition and innovation.

Other relevant statutory and regulatory provisions

- 2.6 The Audiovisual Media Services Directive ('AVMS')⁹ was adopted by the European Union in December 2007 and fully implemented in the UK by December 2009. In relation to access services, the AVMS introduces a new requirement under Article 7 for Member States to "encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability."
- 2.7 Since the AVMS had not been adopted at the time of Ofcom's last review of access services in 2006, this is the first time this specific requirement has been considered as part of a review.
- 2.8 Additionally, Ofcom has general and specific disability equality duties under the Disability Discrimination Act 2005 which came into force in December 2006. These duties include promoting equality of opportunity, taking into account disabilities (even if it means treating disabled people more favourably than others) and promoting positive attitudes towards disabled people. These duties, which also apply to relevant groups beyond UK boundaries, apply to all elements of Ofcom's work, but have particular relevance to this review.

Publication and review of the Code on Television Access Services

- 2.9 As a result of the requirements under the Act, in accordance with our statutory duties and following consultation, Ofcom published the Code on Television Access Services ('the Code') in 2004.¹⁰ Ofcom was obliged to determine which broadcasters would be obliged to provide access services. Ofcom therefore took into account the

⁹ *Audio Visual Media Services Directive (AVMS) Dec 2007.* (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:332:0027:0045:EN:PDF>)

¹⁰ *The Code on Television Access Services* (see web link on page 1)

matters referred to above, including audience benefit and the affordability to broadcasters of providing access services.

2.10 The published Code provides that:

- a) any channel with an audience share of lower than 0.05% of UK viewers is excluded from the requirement to provide access services on the basis that it is not sufficiently popular for the provision of access services to significantly benefit access service users; and
- b) channels are excluded from the requirement to provide access if the assessed cost¹¹ of provision exceeds 1% of their relevant turnover¹² on the grounds that this would be disproportionately expensive.

2.11 When publishing the Code in 2004, Ofcom explained that it would review the Code within two years in order to take account of research into how many people were benefiting from access services, how many more could do so, and why they were not using them.

2.12 Between the drafting of the legislation and the publication of Ofcom's Code in July 2004, it became clear that there was scope for significant improvements in the availability of audio description. To this end, Ofcom worked with broadcasters and providers of satellite and cable services to ensure that subscribers could use their existing equipment to receive audio description. We also encouraged manufacturers of digital terrestrial receivers to incorporate audio description in future receivers. As a result, Ofcom concluded that there was the potential for many more people to benefit from audio description than was apparent the legislation was enacted.

2.13 With this in mind, Ofcom exercised the discretion available to it under the Act to accelerate the attainment of the 10% audio description target from the tenth to the fifth anniversary. We also suggested to the then Secretary of State that there might be a case for reconsidering the statutory audio description targets at the five year point. She asked Ofcom for advice in due course.

2006 Review

2.14 The 2006 review of the Code explored how many people were benefiting from and using access services. Ofcom also looked to see whether changes to the Code were necessary in the light of experience and took the opportunity to reassess the guidance to providers of access services on how to subtitle, sign and audio describe television programmes.

Audio description

2.15 Amongst other things, the 2006 review concluded that there was a significant lack of awareness of audio description, within both the general UK population and the visually impaired community. In response to calls for increases in the audio description target from advocacy groups, Ofcom determined that awareness of audio

¹¹ In this context, the assessed costs are an approximation of the costs that broadcasters would bear in providing access services, based on information provided by broadcasters on the direct and indirect costs they incur, and other factors, such as the extent to which they repeat programmes. A fuller explanation can be found in paragraphs A6.17- A6.34 of the *2006 Review of Television Access Services* Sept 2006 Ofcom. (<http://www.ofcom.org.uk/consult/condocs/accessservs/access.pdf>)

¹² 'Relevant turnover' has the same meaning as that set out in Ofcom's Statement of Charging Principles, Feb 2005. (www.ofcom.org.uk/consult/condocs/socp/main/?a=87101)

description needed to grow in order to confer the maximum benefit of this service, before Ofcom could consider whether to recommend any increase in the target to the Government.

- 2.16 As a result of the review's findings, Ofcom facilitated a broadcast campaign to help raise awareness of audio description which was aired in early 2008. This, along with the greater availability of audio description enabled equipment, made 2009 an appropriate time to reassess this issue, in line with our previous commitments.

Review of signing arrangements

- 2.17 The Act requires relevant channels to provide signing on a proportion of their programming, rising from 1% to 5% over a ten-year period. In the past, broadcasters chose to meet this requirement by showing sign-interpreted programming, predominantly late at night.
- 2.18 Following the review of the signing arrangements completed in 2007,¹³ Ofcom concluded that, for channels with an audience share between 0.05% and 1%, these arrangements were not beneficial to sign language users, many of whom preferred sign-presented programming. Accordingly, the obligations were lifted, and replaced with a requirement to provide 30 minutes of sign-presented programming each month from 2009 onwards.
- 2.19 Ofcom may also approve alternative arrangements proposed by affected channels if it is satisfied that these would contribute to the diversity of sign-presented programming provision. Ofcom approved proposals from most of the low audience channels to meet their signing obligations by funding the British Sign Language Broadcasting Trust ('BSLBT') to produce sign-presented programmes that are shown on the Community Channel.
- 2.20 Ofcom also said that it would reassess the suitability of the agreed BSLBT alternative arrangement in mid-2010. Accordingly, and alongside the current review, we have consulted deaf people and broadcasters about how the alternative arrangements were working. Section 4 explains the outcome of that process.

¹³ *Signing On Television*. Ofcom, Dec 2007
(<http://www.ofcom.org.uk/consult/condocs/signing/statement/statement.pdf>)

Section 3

Comments from consultees and Ofcom's response

Introduction

- 3.1 This section summarises responses to our consultation on access services. It also sets out Ofcom's views.

Respondents

- 3.2 The consultation attracted over 650 responses. More than 550 of these were from individuals, many of them visually impaired people, or their relatives and friends. Most individual responses did not comment on the detailed proposals but strongly supported an increase in audio description targets. Amongst responses from organisations, over fifty were from groups advocating the interests of visually or hearing impaired people ('advocacy groups').
- 3.3 Respondents from groups supporting the interests of sensory impaired people included Berkshire County Blind Society, Blatchington Court Trust, the BBC Disabled Staff Forum, Bradnet, British Computer Association of the Blind ('BCAB'), Bucks Vision, Carlisle Society for the Blind, Challenge Club Frinton-on-Sea, Cheltenham Macular Disease Society, Community Action Derby, Cornwall Blind Association, deafPLUS visionPLUS, Disability Awareness & Advice Ltd, Fakenham Social Centre for the Blind, Fife Society for the Blind (Leven Branch), Great Yarmouth VIP User Group (GYVUG), Guide Dogs - Worcester District Team, IRIS Vision Resource Centre, Kent Association for the Blind, Levenmouth Visually Impaired Group, Henshaws Society for Blind People, National Association of Deafened People ('NADP'), Royal National Institute of Blind People ('RNIB'), Royal National Institute for Deaf People ('RNID'), St Dunstan's, Sense Scotland, Sheffield Macular Disease Support Group, Southend Blind Welfare Organisation, South Lincolnshire Blind Society, South Tyneside Visually Impaired Council, Tameside Blind Association ('TBA'), TAG, Thanet Group Macular Disease Society, The Everton Foundation, Visually Impaired Surrey Heath, West Lancashire Carers Centre, West Somerset Social organised by Somerset Sight, Wantage Blind Club, York Blind & Partially Sighted Society and five other organisations that wished to remain anonymous.
- 3.4 Other interested parties responding included the Broadcasting Entertainment Cinematograph & Theatre Union ('BECTU'), Chester & West Cheshire social services, the Lancaster & Morecambe College, Manchester College, Media Access Australia ('MAA') and W4B TV & Radio Charity. A collective response was received from the General Optical Council, Association of British Dispensing Optometrists, Association of Optometrists, College of Optometrists, Federation of Ophthalmic and Dispensing Opticians, referred to throughout as 'GOC+'. In addition, there were responses from two Ofcom advisory groups – the Advisory Committee on Older and Disabled People ('ACOD'), and the Communications Consumer Panel ('CCP').
- 3.5 Several broadcasters commented, including the BBC, Channel 4, Discovery Networks Europe Ltd, Five, S4C, Sky, The Satellite and Cable Broadcasters' Group ('SCBG'), Viacom, Viasat Broadcasting Ltd, Virgin Media Television and three others. In addition, a number of access service providers including ITFC Ltd,

internetsubtitling.com and Mind's Eye Professional Description Service ('MEPDS') also submitted responses.

- 3.6 These submissions have been posted on our website. A few respondents requested anonymity or provided confidential versions of their submissions. We have taken all the responses into account in formulating our conclusions. Key points from the submissions, as well as Ofcom's conclusions, are summarised below.

Selection criteria

- 3.7 Ofcom invited comments on its assessment that the existing criteria for determining which channels should be excluded from having to provide access services remain appropriate.

Consultees' comments

- 3.8 Most respondents who commented agreed that the current criteria remain fit for purpose (ACOD, NADP, Channel 4, Discovery, MTV, SCBG, Sky, and another broadcaster), though some (Sense, TAG, Channel 4) wanted them kept under review. CCP and RNIB considered that the criteria remain broadly fit for purpose, but proposed adjustments.
- 3.9 Among those suggesting changes:
- a) SCBG proposed that Ofcom should also take broadcasters' profit and loss into account during economic downturns;
 - b) CCP and RNIB proposed that once channels started providing access services they should continue to provide whatever level of subtitling and audio description they could afford within the 1% expenditure cap, even if unable to meet the existing targets. CCP suggested that this would avoid wasted investment in infrastructure by broadcasters and avoid discontinuity of service for users; and
 - c) RNIB noted that while channels with an audience share of 0.05% or more were obliged to meet the access service targets, those just below this threshold were not obliged to do anything. It argued that Ofcom should investigate a more effective way to determine what constitutes an undue burden on broadcasters.

Ofcom's response

- 3.10 Having considered respondents' comments on the criteria for determining access service provision, Ofcom remains of the view that the current methodology is fit for purpose.
- 3.11 As regards the suggestions for change:
- a) we note that there is no universal measure of profit, so it would be impracticable to devise an approach that would apply consistently to all broadcasters. The existing mechanism, based on turnover, has enabled many channels whose income and/or audience share has fallen below the thresholds to be exempted;
 - b) the existing mechanism for adjusting subtitling levels does allow broadcasters to reduce subtitling provision so as to remain within the 1% expenditure cap, and which can result in subtitling requirements as low as 3% in year one and two of

the obligations.¹⁴ We do not think that there would be much practical benefit to users in even lower targets. Although we encourage broadcasters who do not meet the criteria to continue providing access services (as some do), we consider that this is ultimately a commercial decision for the broadcasters concerned;

- c) as regards RNID's point, whatever level the threshold is pitched at will result in a difference between the burdens borne by channels above and below the threshold. We remain of the view that the audience share threshold is pitched at an appropriate level. In 2009, the 80 channels with an audience share over 0.05% accounted for over 90% of viewing in the UK.

Audio Description targets

- 3.12 Ofcom sought views from consultees on three options – the status quo, under which relevant channels would continue to be required to audio describe at least 10% of programming (Option 1); an increase in the target for all channels to 20% (Option 2); and an increase in the target to 20% for public service channels only (Option 3). As part of the review Ofcom also published research that explored awareness and usage of audio description.¹⁵ Consultees' comments on the options and Ofcom's response are set out below. Comments on related issues are summarised at the end of this section under 'Other issues'.

Consultees' comments

Option 1 (status quo)

- 3.13 Option 1 was supported by several public service broadcasters (C4, Five and S4C), two multichannel broadcasters (Viacom, Viasat), and one other broadcaster.
- 3.14 Several broadcasters made points concerning awareness and usage of audio description. Some argued there was insufficient evidence that awareness had increased to the point that a higher target was justified (Channel 4, Five, one other). Usage had remained low despite reasonable levels of awareness (Channel 4, Five) even amongst those with a severe visual impairment, the group most likely to benefit from the service (Five). It was suggested that this might indicate that awareness does not translate into usage (Channel 4), or that users are content with present levels of provision (Viacom), or that currently there is over-provision of audio description (one other). Two broadcasters also argued that that it was unclear what factors might drive take-up (Channel 4, Five) and that there was little evidence that a greater volume of audio described programmes would result in increases in awareness or usage (Channel 4, another broadcaster).
- 3.15 Five argued that the evidence base in favour of increasing obligations was weak. It said that there was a lack of data on the volume of audio description hours viewed over time, as well as the number of audio description enabled DTT receivers in use. It said that the research did not explain why some visually impaired people with Sky or Virgin equipment do not make use of audio description despite an interest in taking up the service. Five considered this amounted to a failure to address the issues adequately, and provided a flawed basis on which to build a case for increasing broadcasters' audio description obligations.

¹⁴ See section 19 of *The Code on Television Access Services* for further information (See page 1 for web link)

¹⁵ *2009 Research into the awareness and usage of Audio Description*. Sept 2009 Ipsos Mori for Ofcom. (http://www.ofcom.org.uk/research/tv/reports/research_audio_description/Access_Services_Report.pdf)

- 3.16 Broadcasters were also concerned at the prospect of additional costs at a time when advertising revenues had fallen significantly, and might not recover for some time (Five, S4C, Viacom, Viasat, another broadcaster). Five and one other broadcaster also pointed to the adverse effects of digital switchover and consequent audience fragmentation on PSB revenues, the full effects of which could not be measured until switchover is complete. It was also argued that, even if extra costs were affordable, it was not proportionate to impose them unless the costs could be shown to be commensurate with the benefits (C4, Five, one other).

Option 2 (20% target for all channels)

- 3.17 Option 2 was supported by all but one of the advocacy groups representing visually impaired people and over 550 individuals who are themselves visually impaired or who have visually impaired family or friends. Other bodies supporting this option were BECTU, Chester & West Cheshire Social Services, CCP, GOC+, the BBC Disabled Staff Forum, internetsubtitling.com, Lancaster & Morecambe College, Manchester College, MMA, MEPDS, W4B TV & Radio Charity.
- 3.18 Many respondents stressed the value of television to visually impaired people (RNIB) as an important source of information and entertainment (Cheltenham Macular Disease Society), partly due to the inaccessible nature of many other hobbies and activities (several individuals). Against this background, and taking into account the research findings, existing levels of provision were considered inadequate by respondents. They argued that an increase in the target would broaden the range of audio described programmes available to visually impaired people (MAA, RNIB, TBA, many individuals), and enable more to be scheduled in daytime (RNIB), which would have value to visually impaired people who are retired or unemployed.
- 3.19 Some respondents highlighted the secondary benefits generated by audio description. These respondents argued that the access to information and entertainment provided by audio description was vital in achieving social inclusion for visually impaired people (RNIB, GOC+, Manchester College). Many individuals told us that audio description makes a significant difference to their lives by allowing them to participate equally in viewing programmes with family or by enabling lone viewing (Cornwall Blind Association, many individuals) which in turn creates feelings of independence and equality. It also provides respite for carers (West Lancashire Carers Centre). Consequently a large number of respondents called for a 20% target to be imposed on equality grounds (BECTU, The Everton Foundation, Kent Association for the Blind, 55 individuals), while some argued the targets should be higher (BCAB, GYVUG, internetsubtitling.com, Manchester College, RNIB, Sheffield Macular Disease Support Group, South Lincolnshire Blind Society and many individuals). Others pointed to the much higher levels of subtitling as evidence of both discrimination and the need for higher audio description targets (several individuals).
- 3.20 Three respondents asserted that, although more costly than the other options, Option 2 is clearly affordable. As justification, they argued that:
- a) several broadcasters already exceeded the current target (RNIB, MAA, an individual), so that the actual incremental costs they would face would be much less than the base case used in Ofcom's assessment (CCP). However, voluntary over-provision could not be relied upon, so a revised target was needed (RNIB);

- b) many broadcasters would be able to meet the higher targets under Ofcom's affordability criterion (MAA, RNIB), which would protect them from disproportionate costs; and
 - c) audio description production costs had fallen over time (RNIB, MAA) and might decline further if additional efficiencies were achieved as a result of higher targets (MAA). It was suggested that this could also have the effect of encouraging the growth of the secondary market in audio description files resulting in further potential costs savings (MAA).
- 3.21 Some respondents commented on the research conducted for the review. The RNIB suggested that it demonstrated the necessary growth in awareness, and that Ofcom should recommend to Government that the target be raised. Another expressed disappointment that the research did not assess the number of audio description users and suggested that this be done in future in partnership with RNIB (CCP). RNIB suggested that excluding RNIB members from the research may have led to awareness levels being under-reported.
- 3.22 Some respondents argued that digital switchover and the Digital Help Scheme would drive awareness and usage of audio description. These respondents considered that, as a result, it was the right time to increase the targets, particularly because the UK has an ageing population which stands to benefit from audio description in the future (MEPDS, RNIB, some individuals).
- 3.23 Most broadcasters, however, opposed this option. In addition to the reasons advanced by those who favoured the status quo (Channel 4, Five, Viacom, Viasat, S4C and another broadcaster), many non-PSBs argued that it would be unreasonable to impose a 20% target on them, as they lacked the economies of scale of PSBs (Discovery, SCBG), as well as the public funding available to some PSBs (SCBG). Some broadcasters argued that the smaller audiences for non-PSB channels meant that Option 2 was the least cost-effective option (SCBG, another broadcaster). It was also suggested that there could be perverse consequences – channels might have to meet the higher targets through more repeats (Virgin), or reduce their subtitling targets (RNIB, another broadcaster).

Option 3 (20% target for PSB channels only)

- 3.24 Some non-PSBs (Discovery, Virgin, SCBG, another broadcaster) and others (ACOD and several individuals) supported this option, as did three advocacy groups (NADP, TAG, Visually Impaired Surrey Heath). Three respondents argued that PSBs should lead the way on access service provision and promotion, both because of their PSB remit, and their ability to reach larger audiences (ACOD, Discovery, SCBG), and provide better quality programming (some individuals). Others suggested that it was a more cost-effective option than Option 2 (some individuals) without having a negative impact on subtitling (NADP, TAG, a broadcaster).
- 3.25 However, not all respondents agreed:
- a) two PSBs and one advocacy group (Channel 4, Five, RNIB) noted that the Act deliberately sought to extend access service provision across non-PSB channels. They considered that it would be a backward looking step to impose differential regulation in the future. It was also suggested that any additional obligations imposed on PSB channels would need to be weighed in any future calculation of the costs and benefits of PSB status (Five). Five proposed that any differential

regulation introduced should be based on an objectively verifiable measure that applies to all channels, such as audience share; and

- b) the RNIB and several individuals argued that Option 3 would increase the digital divide for visually impaired viewers, and presupposed that PSB channels are more relevant for blind and partially sighted people than for other viewers when there is no evidence that this is the case (RNIB).

Other comments

3.26 Some broadcasters (BBC, Sky, one other), RNID, ITFC and several individuals did not state a preference for any of the options. Three broadcasters said that they had or would increase the amount of audio description they provided on a voluntary basis:

- a) the BBC said that it recognised the value to users of audio description, and although disappointed by the outcome of the awareness and usage research, it would voluntarily increase its own audio description targets to 20% of transmission hours of non-excluded programming in 2% annual increments from 2011 onwards. It said that other PSBs should be allowed to decide for themselves whether they wish to agree to higher targets given the current pressures on commercial revenues;
- b) Sky said that, with the exception of its sports channels, it voluntarily provides 20% audio description on all of its wholly-owned channels which are required to provide access services. However, it argued that a blanket statutory 20% target might pose significant practical difficulties for some channels, without providing much benefit to users. It proposed a qualitative assessment of viewers' programme preferences and usage of audio description undertaken by Ofcom in conjunction with bodies such as RNIB. Sky argued that without this additional research, the case for increasing audio description targets across the board had not yet fully been made; and
- c) Channel 4 told Ofcom that it plans to increase audio description to 20% on its channels (Channel 4, E4, More4 and Film4) on a voluntary basis by January 2011.

Ofcom's response

3.27 The following section deals solely with points raised by respondents which are directly related to the three audio description options. We have responded to other issues in paragraphs 3.50 - 3.53.

3.28 Ofcom agrees with those consultees who were disappointed that research into awareness and usage of audio description did not demonstrate conclusively that there had been a significant increase as a result of the promotional campaign in 2008. However, even disregarding the short term spike in awareness as a result of the promotional campaign, there has been an increase in awareness amongst all UK adults with digital television – awareness stood at 45% in 2009, as against 37% in the 2008. The research suggests (but does not definitively demonstrate) that in 2009 a higher proportion of adults with visual impairments were aware of audio description (50%), and an even higher percentage of people with severe visual impairments (61%). That said, there is clearly scope for improving awareness of this relatively new service.

- 3.29 It is clear both from the research and feedback to the consultation that many of those who use audio description consider it to be a valuable and enriching tool which also has a range of secondary benefits. It also seems likely from the research that there is significant interest from potential beneficiaries in using audio description. But the evidence for usage is difficult to interpret. The number of audio description users in the limited research sample means that we cannot point to any statistically significant change in usage between 2008 and 2009.
- 3.30 Ofcom does not agree that this demonstrates that awareness does not translate into usage. But it seems clear that translating awareness into understanding of how to use audio description, and then into a decision to take the necessary steps to use it may take some time. Further promotion will have an important part to play in this. It is particularly significant that 42% of respondents previously unaware of audio description but interested in using it already have the necessary equipment through their subscription to the pay TV platforms offered by Sky and Virgin. Once set up, these platforms provide audio description (when available) by default. Ofcom also agrees that digital switchover and the Digital Help Scheme will provide more people with the opportunity to take up audio description.
- 3.31 Consultees argue variously that provision of audio description may be inadequate, about right, or even too much. Ofcom does not consider that the research sheds much light on the adequacy or otherwise of provision. It does not follow that an increase in the targets will automatically translate into a significant widening of choice. There are two main reasons for this; first, many channels already exceed the current targets, so would not need to increase the amount of audio-described programming for some time; second, the legislation allows broadcasters to count repeats towards the target. Nonetheless, an increase in the target could contribute to some increase in choice for both new and existing users, and would provide the opportunity for broadcasters to broaden the range of audio-described programming.
- 3.32 Ofcom does not agree that decisions on whether to vary the targets should await qualitative research into the viewing preference and audio description usage of visually impaired people. Broadcasters are already under an obligation to consult with groups representing their interests, and the RNIB has previously told Ofcom that their viewing preferences mirror those of the general population. Given that many people have become visually impaired later in life, there seems no reason to doubt this. This view is also supported by those consultation responses which called for an increase in audio description across a wide range of programme genres, from documentaries and young people's programmes to sport and films.
- 3.33 Clearly, there are some types of programming where audio description is more or less beneficial, and Ofcom expects broadcasters to use their judgement and knowledge in deciding which programmes to audio describe. For its part, Ofcom recognises that some content does not easily lend itself to audio description and has exempted some types of programming (e.g. news and music) on the grounds that it is impracticable (though this may not be true of live sport, which is successfully 'audio described' both on radio and via locally-provided audio description at several football grounds). If an increase in the target was to pose particular difficulties for some channels, we would consider whether or not partial exemptions or other arrangements were appropriate.
- 3.34 Ofcom acknowledges the current financial pressures facing broadcasters as a result of the economic downturn. We have revised upwards our estimates of the costs of different options in the consultation document, as the original estimates for the PSB channels were not based on the most up-to-date repeat ratios. This resulted in the

costs for PSB channels being under-estimated. We have corrected the estimates using data collected for Ofcom's 2009 Communications Market Report; the revised estimates are set out in Annex 1.

- 3.35 Ofcom notes respondents' comments on the research. While we agree with the CCP that it would be very useful to know the number of people using audio description, there is currently no way of directly measuring this. As the visually impaired community are a particularly hard to reach demographic group, it would be necessary to conduct a very large survey to obtain a clear picture of the situation. This would arguably be disproportionately expensive and may still fail to accurately represent the true experience of visually impaired viewers. The RNIB's assertion that their members were excluded from participating in the research survey is incorrect. We do not therefore consider there to be an under-reporting issue with the research. Further information on the research methodology can be found in the full research report (see link on page 2).
- 3.36 We also considered the suggestion by the CCP that a more appropriate way of estimating the costs would be to look only at the cost of the additional audio description needed to reach the targets, in excess of any voluntary over-provision. In particular, the CCP suggested that Ofcom should instead have calculated the costs based on an average of the current levels of provision. However, it cannot be assumed that broadcasters will continue to exceed the relevant targets for audio description. Accordingly, we have set out in Annex 1 the revised estimates of the costs that broadcasters would have to meet if a 20% target was substituted for the current 10% target.
- 3.37 However, for illustrative purposes, we have prepared an estimate of what the incremental costs might be, assuming that channels operated by the BBC and Channel 4 fulfilled their voluntary commitment to provide 20% audio description on their channels, and that the remaining channels maintained the level of provision they did in 2009.¹⁶ These estimates are also set out in Annex 1. The revised estimates do not affect the number of channels expected to provide access services under any of the options.
- 3.38 Ofcom sees some merit in the suggestion by some consultees that it is no longer appropriate to distinguish levels of access provision by reference to whether a channel is operated by a PSB or non-PSB broadcaster. One respondent (Five) suggested that an objective criterion such as audience size might be more appropriate. However, as the main UK-wide PSB channels (BBC1, BBC2, ITV1, Channel 4 and Five) have audience shares that are substantially larger than the next tier of channels, and given that the BBC and Channel 4 have already committed to increasing audio description on most of its other digital PSB channels, it is unlikely that applying this criterion would make much practicable difference to that delivered by Option 3.

Ofcom's conclusions

- 3.39 Having carefully considered the arguments advanced by consultees for and against the different options, Ofcom considers that they are finely balanced:

¹⁶ The quarterly report for Q1 2010 suggests that most broadcasters are continuing to match or exceed the levels of provision in 2009 [http://www.ofcom.org.uk/tv/ifi/guidance/tv_access_serv/tvaccessrep/q110/]. However, it should be noted that the apparent level of provision can be skewed by changes in the relevant number of transmission hours, which excludes time devoted to advertising, including teleshopping. The Q1 figures for one PSB (Five) reflect the fact that it now shows teleshopping overnight, so that the amount of audio description it provides represents a larger proportion of relevant transmission hours.

- a) Option 1 (the status quo) already results in many channels broadcasting a much higher proportion of audio-described programming than is required by the Code. This includes channels broadcast by the BBC, ITV, Sky, UKTV and Virgin Media.¹⁷ Several of their channels audio describe nearly or more than 20% of their content and Sky, the BBC and Channel 4 have committed to audio describing 20% of their programming. It may be argued that this demonstrates that higher targets would be affordable to many broadcasters. However, it may also be that even if no change was made to the 10% target, many broadcasters would continue to audio describe at current or higher levels (without any detrimental impact on statutory subtitling levels), though there can be no guarantee of this;
- b) Option 2 (a 20% target applied progressively to both PSB and non-PSB channels) should broaden the choice of audio described programming available to visually impaired viewers in the long term. This option would continue the approach set out in the Communications White Paper,¹⁸ which made the provision of access service requirements part of the first tier of regulation applying to all broadcasters. To the extent that broadcasters did have to incur additional expenditure, the 1% expenditure cap would, in Ofcom's view, protect them from disproportionate costs. However, the same mechanism could also result in reductions in subtitling for hearing impaired viewers on a small number of channels.¹⁹ In the short term, for the reasons explained in (a) above, the initial benefits to visually impaired television viewers could be limited, as not all channels would need to increase the amount of audio description in order to comply with the increased targets; and
- c) Option 3 (a 20% target for the PSB channels only) would ensure a significant level of audio description on the most popular channels, but would cost significantly less than Option 2 (See Annex 1 for estimated costs). PSB channels continue to account for just over 60% of total viewing amongst the population as a whole. As ITV, Five and S4C already providing more audio description than they are currently required to, and as the BBC and Channel 4 have committed to provide 20% audio description on a voluntary basis, there would be little immediate increase in choice for visually impaired viewers. As in the case of Option 2, the current expenditure cap of 1% of relevant turnover should prevent the costs to broadcasters from becoming disproportionate. However, it would depart from the approach set out in the Act, and add to the opportunity cost of PSB status at a time when the benefits are being fast eroded.

3.40 We doubt that further analysis and research would allow a definitive view to be reached on whether to recommend any changes to the current statutory target. In particular, Ofcom notes that our 2009 research results on awareness and usage were not conclusive. In order to obtain more reliable results, a very large survey would be needed to generate a randomly-sampled group of potential audio description users large enough to provide answers on awareness and usage that were statistically significant to a 95% confidence level (Ofcom's usual benchmark).

¹⁷ *Television Access Services: Fourth Quarter Report for 2009*. Ofcom, Feb 2010

(http://www.ofcom.org.uk/tv/ifi/guidance/tv_access_serv/tvaccessrep/q409/)

¹⁸ *Communications White Paper – a new future for communications*, DCMS, December 2000

(http://www.culture.gov.uk/images/publications/communicationswhitepaper_fullreport.pdf)

¹⁹ On the basis of current data, Option 2 would mean that two channels would cease to be required to provide any access services (FX and Nick Junior), while subtitling requirements would be reduced to Level 3 on Nickelodeon and Virgin1.

- 3.41 Even if this was a proportionate approach, quantifying the benefits of increasing audio description would be complex, since it would entail monetising benefits whose subjective value will vary from person to person (e.g. the value of the entertainment accessed, a sense of inclusion, the benefits to family members who have previously described what is going on in a TV programme). While approaches could be constructed to generate possible values, they would ultimately rest on subjective judgements.
- 3.42 The original decision to impose a 10% audio description target on all broadcasters except those exempted in accordance with section 303(9) was taken by Parliament on the basis of the then Government's legislative proposals. A regulatory impact assessment considered the estimated costs to broadcasters of compliance, but did not seek to quantify the potential benefits. In explaining its objectives, the Government said that 'Access to television services for people who are deaf or hard of hearing, or who are blind or partially sighted is important so that they can play a full part in society'.²⁰ In considering whether or not to vary the statutory target, it will be a matter for the Government to decide what factors to take into account.
- 3.43 Given these circumstances, Ofcom considers that it would be appropriate to report the findings of the consultation to Government, but not to make a specific recommendation. In the event that the Government considers it appropriate to seek changes to the current access services regime, Ofcom would work with the Department of Culture, Media and Sport to give effect to the changes.

Television services targeting areas outside the UK

- 3.44 Ofcom invited comments on its decision to assess whether there is a case for removing the exemption on access service provision currently applied to non-domestic channels, many of which are transmitted elsewhere in Europe.

Consultees' responses

- 3.45 ACOD, RNIB, Sense (Scotland), TAG and a broadcaster agreed that this issue should be re-examined. Two respondents considered that non-domestic licensees should be required to meet the same targets as UK facing channels (ACOD, Sense (Scotland)).
- 3.46 A number of non-domestic licensees were opposed to the proposal arguing that:
- a) although access service provision in Europe is increasing, obligations faced by broadcasters licensed overseas may be either lower or limited to terrestrial channels, potentially putting Ofcom's non-domestic licensees at a competitive disadvantage if they were required to meet the same obligations as Ofcom's domestic channels (Discovery and SCBG);
 - b) it would result in significant costs for non-domestic licensees (Discovery, SCBG Viacom, a broadcaster) and that such a change would be more costly and technically more difficult than UK provision, in some cases prohibitively so (Discovery and SCBG); and
 - c) the decision to require access services on non-domestic channels should be postponed until more evidence on costs and technical issues is collected and

²⁰ Section 5.6.1. Communications White Paper (See web link page 16)

until there is more clarity on the levels of provision in the rest of Europe. (Discovery and SCBG).

- 3.47 Viacom requested clarification from Ofcom on what would be an “acceptable level” of voluntary provision and suggested that failure to provide this information would be likely to deter broadcasters from investing in provision on a voluntary basis.

Ofcom’s response

- 3.48 Until Ofcom has a clearer understanding of the access service landscape in Europe it is not possible to define what would be an “acceptable level” of provision. To this end, Ofcom is continuing to gather information in relation to the provision of access services on licensees’ non-domestic channels broadcast to Europe.
- 3.49 We have written to non-domestic licensees seeking information on whether or not they are providing access services, and what practical obstacles, if any, stand in the way of further provision. We shall examine this carefully, together with information from other sources, taking into account the size of the various target markets, and will discuss the findings with non-domestic licensees before considering whether further action is justified. In the event that we conclude that regulatory targets are desirable, we would expect to consult on such proposals in the usual way. In the meantime, consistent with the provisions of Article 3(b) of the AVMS Directive, Ofcom has also written to all non-domestic licensees that broadcast to Europe to encourage them to provide access services.

Other issues

Other comments on audio description matters

- 3.50 A number of consultees also commented on other aspects of audio description:
- a) some called for more promotion of audio description (ACOD, AI, RNIB, TBA and several individuals) both to improve awareness of the service and explain how to use it. Specific suggestions included announcements or logos at the start of audio described programmes (DAA, ITFC, an individual), and on programmes trails (the CCP). The BBC considered some additional promotion in conjunction with some increase in audio description provision may lead to greater usage. However, Five argued against conducting any further promotion until Ofcom had carried out more research. Some (ITFC, RNIB) called upon platform providers such as Sky, Virgin, Freeview, and Freesat to do more; Five suggested that Ofcom should play a role in facilitating this.
 - b) some individuals praised the improving quality of audio description; others identified scope for improvement both in audio described commentaries, including occasional inaccuracies (e.g. character or place names); as regards programmes without audio description, some respondents criticised the absence of voiceovers for on-screen information that would not be evident to visually impaired viewers, such as telephone numbers and names/job titles;
 - c) there was also frustration that audio description was not always provided consistently, for example, when it was present for some episodes of a series, but not on subsequent series, or on repeats. The RNIB noted that some programmes were incorrectly flagged in EPGs as being accompanied by audio description;

- d) some individuals suggested that there are sometimes problems with the sound mix on audio described programmes, including background music drowning out audio description; two suggested that more set top boxes should include features that enable users to adjust the volume of audio description;
- e) 40 individuals and three other bodies (ACOD, BCAB, GYVUG) called on manufacturers to improve the usability of receivers and the EPGs provided on them. Suggestions included a larger range of audio description enabled set top boxes, and more user friendly remote controls. Several wanted improvements in EPGs such as wider use of the feature on Sky's EPG, which gives an audible 'beep' when an audio described programme is highlighted. Some respondents pressed for the availability of 'talking EPGs' that could render speech into text;
- f) a number of respondents called for Ofcom to intervene directly to encourage better equipment and platform accessibility (GOC+) and to ensure that the availability of suitable equipment was publicised at points of sale (ITFC) with three broadcasters citing Ofcom's Section 10 duties in this area²¹. (BBC, Channel 4 and Five); and
- g) The RNIB wanted Ofcom to require broadcasters to provide an audio description listings service for all channels.

Ofcom's response

3.51 As regards the other comments relating to audio description:

- a) Ofcom agrees that there is a need for greater promotion of audio description in order to improve levels of awareness, and will discuss with broadcasters and advocacy groups what practicable ways there are of achieving this. Ofcom does not agree with the argument advanced by Five that promotion of audio description should await the outcome of further research. We are satisfied that further promotion is necessary to 'promote the understanding and enjoyment' of television by people with visual impairments;
- b) Ofcom is aware that visually impaired viewers do provide direct feedback to broadcasters on the quality and accuracy of audio description, and that advocacy groups facilitate this process. Ofcom believes that this is the most effective and persuasive way of ensuring that broadcasters are aware of what works well, and how audio description can be improved;
- c) Ofcom agrees that it makes sense to ensure that audio description is provided consistently. Our guidelines already make clear that 'when a series of programmes commences with access services, every effort should be made to ensure that all programmes in the series are accompanied by the relevant access services'. We will draw the comments of consultees to the attention of broadcasters, and remind them of the guidelines;
- d) Ofcom notes that the way in which audio description is provided on some platforms (as an alternative sound mix comprising both the original sound track and audio description) means that not all receivers allow the volume of audio description to be adjusted separately from the original sound track. Ofcom is aware that many visually impaired viewers (but by no means all) are older

²¹ Section 10 of the Act gives Ofcom a duty to promote the development and the availability of easy to use consumer equipment, although it doesn't provide Ofcom with any formal regulatory powers in relation to equipment.

people, who may also have some hearing impairment. We will discuss with relevant advocacy groups and broadcasters on whether this is a widespread problem, and what solutions may be practicable;

- e) while Ofcom is encouraged that there is now a far wider range of audio description-enabled equipment than was available a few years ago, we agree that there is considerable scope to make it more usable. We will renew our discussions with manufacturers to encourage them to bear this in mind when designing or commissioning new equipment. We note that a number of EPG providers have been working on developing text to speech EPGs that could be used with existing equipment, but that these have not yet materialised. We will encourage EPG providers to bring forward the provision of 'talking' EPGs. In the meantime, we welcome the recent announcement by a manufacturer that it will be producing set top boxes with speaking EPGs;
- f) Section 10 of the Act does not provide Ofcom with any formal regulatory powers in relation to equipment. Nonetheless, Ofcom works in partnership with others to make progress in this area e.g. by participating in the work of the Digital TV Group on the future development of access services. Ofcom welcomes innovations by platform providers and manufacturers to improve accessibility, and will continue to encourage manufacturers to continue to develop the accessibility of their products; and
- g) as regards the suggestion of a stand-alone audio description listings services, Ofcom is aware that the TV Help website²² provides listings details for audio described programmes on Freeview channels, and that attempts to provide details on all channels foundered on the problem of funding.

Comments on other aspects of television access services

3.52 Respondents also commented on other access service issues:

- a) some bodies reiterated concerns about the intelligibility and reliability of subtitling (particularly live subtitling), pointing out that errors can render programmes inaccessible (NAPD, TAG). One (NAPD) suggested that repeats of live programmes should have pre-recorded subtitles, and that only these should count towards the subtitling target. Another (TAG) suggested that subtitling failures should not count towards the target;
- b) there were also concerns about the quality of subtitling produced outside the UK and platform variations in the screen position of subtitles (ACOD). Sense (Scotland) suggested that some subtitles do not conform to the minimum size guidance, and called on Ofcom to enforce compliance. It also wanted Ofcom to examine the scope to vary the size of subtitles. It argued that both this, and the presentation of subtitles in a black box rather than on a grey or transparent background, could make subtitles more legible for deafblind people;
- c) RNID urged Ofcom to encourage broadcasters to treat access services as an integral part of programme content when selling them to other broadcasters;
- d) several respondents wanted improvements in the provision of access services in new media formats, including Video On Demand ('VOD') services (ACOD, NAPD, RNIB, TAG and 5 individuals). The voluntary provision of audio description on the

²² See Freeview Audio Description TV Schedule at (<http://www.tvhelp.org.uk/audes/schedule.php>)

BBC iPlayer was welcomed by ACOD, RNIB and two others; ACOD also welcomed the provision of subtitling of 4 On Demand in this area and called on Ofcom to put pressure on other providers, as did RNID. Some organisations (RNIB, TAG) wanted regulation to be extended to non-linear services, in order that sensory impaired viewers were not disadvantaged as VOD services replaced television as the main means of watching programmes. Channel 4 suggested that there should be a debate about the provision of access services in a future beyond linear television; Discovery and SCBG argued that, as a new type of content, VOD should be given time to establish itself before regulatory intervention is considered;

- e) RNID suggested there are gaps in access service provision on HD channels which need to be addressed;
- f) RNIB and another individual wanted Ofcom to ensure that all interactive services, including those accessible through the red button, were accessible to visually impaired people; and
- g) ACOD accepted that Black and Minority Ethnic ('BME') channels do not meet the audience share threshold for access service provision. Nevertheless, it was concerned that older and disabled consumers of these channels (many of whom will have English as a second language, and who may not consume much PSB content as a result) are being deprived of any access service provision. ACOD encouraged Ofcom to work with broadcasters targeting BME audiences to see if they can voluntarily provide a greater level of access services than they do at present. ACOD considered this could have consumer and business benefits for this audience group.

Ofcom's response

3.53 As regards these comments:

- a) Ofcom asks broadcasters to monitor playout at regular intervals to ensure that access services are being provided correctly, and we are aware that most leading broadcasters do so. Ofcom also has a programme of random monitoring of the provision and quality of access services, and receives feedback from access service users. It is clear from both monitoring and feedback that the quality of some live subtitling is not of the same standard as pre-recorded subtitling. The difficulty of accurately subtitling human speech virtually instantaneously means that mistakes are inevitable, given the constraints of current technology and human error. Previous enquiries by Ofcom suggest that there is no easy answer to the occasional problems that do occur, but we will look again at this issue. In the meantime, we encourage viewers to notify broadcasters of subtitling failures; we know that most take these seriously and take them up with their access service suppliers;
- b) Ofcom is aware that user preferences for subtitling styles vary considerably; many, for example, prefer subtitling to be shown over a transparent background so that the picture is not completely obscured. Although we do suggest that broadcasters should conform to the guidelines on subtitle size, there are technical constraints that do not yet make it practicable to allow users to vary the size of subtitles. For example, to ensure that viewers of programmes formatted for wide-screen TVs are not disadvantaged if they watch programmes on conventional televisions because broadcasters must define a 'safe area' for subtitles which constrains how large they can be;

- c) Ofcom notes that it is a matter for broadcasters to decide how to exploit commercially the content they produce or commission. Nevertheless, we are pleased to observe that there is now a secondary market in access service 'files', which are sometimes (but not always) a more cost-effective way of providing access services for an acquired programme than producing them from scratch;
- d) we note the respondents' comments on access service provision and VOD. The powers conferred on Ofcom by the Act to require broadcasters to provide access services on television do not extend to VOD services. On 18 March 2010, Ofcom designated the Association for Television On Demand ('ATVOD') as the co-regulator for VOD editorial content. One of the duties designated to ATVOD by Ofcom was duty under section 368C(2) of the Act, to encourage VOD service providers to ensure that their services are progressively made more accessible to people with disabilities affecting their sight or hearing or both in relation to access services. In the Designation, Ofcom made clear that ATVOD, must provide Ofcom with a detailed plan setting out how it will fulfil this duty. ATVOD must also include proposed guidance for VOD service providers which must be approved by Ofcom.²³ Ofcom has, and will continue to encourage broadcasters to re use their broadcast access services on VOD content where possible and we welcome the progress made in this area by BBC and Channel 4.
- e) Ofcom has discussed with broadcasters the provision of access services on HD channels. We expect broadcasters to include access services as soon as possible in the case of those channels which are simulcast or time-shifted versions of standard definition (SD) channels already required to provide access services. As with SD channels, stand alone HD channels will be required to provide access services when they meet Ofcom's audience share and affordability criteria. It is clear from our discussions with broadcasters that there remain some technical problems, not least with the platforms used to deliver HD channels, which Ofcom is not empowered to regulate. Nonetheless, we are encouraged by the positive approach being taken by broadcasters, and believe that access services will become available on many HD channels well before this becomes the usual means of accessing this content;
- f) the access service obligations do not currently extend to "red button" and interactive services, however Ofcom notes respondents comments on the subject and recognises that as technology develops this is an area that Ofcom should keep under review; and
- g) Ofcom remains of the view that it would not benefit viewers of channels, including those targeted at BME audiences, if the imposition of access service requirements meant that channels had to close or take other measures that reduced the quality of the service. Accordingly, Ofcom will continue to apply the rules on the selection of channels on a uniform basis, but will contact licensees providing channels targeted at BME audiences in the UK to ask them to consider providing some level of access service provision.

²³ *The regulation of video on demand services.* Ofcom, Dec 2009
<http://www.ofcom.org.uk/consult/condocs/vod/statement/vodstatement.pdf>

Section 4

Review of signing arrangements for low audience channels

Introduction

4.1 Alongside the Access Services Review, Ofcom has also conducted an assessment of the current alternative signing arrangements the details of which are contained in this section.

Background

4.2 In December 2007, Ofcom published a statement²⁴ explaining its decision, with effect from 1 January 2009:

- a) to exclude channels with an audience share of between 0.05% and 1% other than public service channels from obligations to meet the signing targets set out in the Code on Television Access Services;
- b) to require excluded channels to transmit a minimum of 30 minutes of sign-presented programming each month between 7am and 11pm, this amount to be kept under review;
- c) to apply (a) and (b) flexibly in the light of criteria set out in section 303(8) of the Act, which enable it to take account of matters such as the benefits to deaf people; and
- d) not to impose the requirements in (b) above if it is satisfied that alternative arrangements proposed by broadcasters would be likely to provide better assistance for deaf people using sign language, such that the requirements under (b) need not be imposed.

4.3 Ofcom also published an appendix to the Code, which included the criteria by which it would assess alternative arrangements proposed by broadcasters.²⁵

4.4 Sky and the Community Channel proposed an alternative arrangement by which eligible channels would make annual contributions to a Trust, which would commission sign-presented programmes to be broadcast on the Community Channel. Ofcom confirmed that the proposals were acceptable, and the British Sign Language Broadcasting Trust ('BSLBT') was created to commission the sign-presented programmes. Most eligible channels chose to participate in this arrangement ('the BSLBT arrangement').²⁶

²⁴ *Signing on television – new arrangements for low audience channels*, Ofcom, Dec 2007

(<http://www.ofcom.org.uk/consult/condocs/signing/statement/statement.pdf>)

²⁵ *Code on Television Access Services*, Annex 3 (See web link page 1)

²⁶ 62 channels took part in the arrangement in 2009, and 58 channels will take part in 2010. Some of the original contributing channels are no longer eligible for the arrangement in 2010, while some other channels have become eligible for 2010.

- 4.5 Programmes commissioned by the BSLBT are shown three times per week on the Community Channel and are also available on the websites of the Community Channel and the BSLBT.
- 4.6 Ofcom required that broadcasters participating in the BSLBT arrangement commit to a two year period, to give the parties involved (broadcasters, the BSLBT, the Community Channel and BSL users) certainty for a reasonable period. The two year period concludes at the end of 2010. Ofcom indicated that it would review the BSLBT arrangement after it had been in place for 12 months, to give all parties time to adapt if the arrangements were felt to no longer be suitable after the end of 2010.
- 4.7 Ofcom did not propose any changes to the level of funding which each participating channel must contribute to the BSLBT at this time, given the continuing adverse economic conditions.

Scope of the review

- 4.8 Ofcom has reviewed the BSLBT arrangement to ascertain whether it continues to meet the criteria laid out in the Code, namely that alternative arrangements must:
- a) contribute to a diversity of sign-presented programming broadcast between 7am and 11pm;
 - b) incorporate effective mechanisms for taking account of the views of deaf groups about the preferences of deaf people for programming; and
 - c) ensure that the terms of access to sign-presented programming are no less favourable to sign language users than access to the channel in respect of which alternative arrangements are proposed.²⁷
- 4.9 In addition, Ofcom sought views from interested stakeholders.

Alternative arrangements criteria

Diversity of sign-presented programming between 7am and 11pm

- 4.10 The BSLBT has commissioned programmes across a wide range of genres, including a magazine programme, a chat show, deaf sports coverage, a children's programme, dramas, short films and a documentary. Some of this programming has been recognised by the deaf film and television industry and by a disability campaigning organisation at separate awards ceremonies.²⁸
- 4.11 Ofcom is therefore satisfied that the BSLBT arrangement fulfils this criterion.

Taking account of the preferences of deaf people for programming

- 4.12 The BSLBT encourages its audience to give feedback on its programmes via its website and its Facebook page. It has also published a questionnaire on its website, and distributed the questionnaire at meetings of deaf people. It plans to recruit an

²⁷ Code on Television Access Services, Annex 3, (See web link page 1)

²⁸ One episode of 'Wicked!' received the Best Television Programme award at the Deaffest Film & TV Gala Awards 2009, and the series 'Wicked!' was highly commended for 'Doing Media Differently' at the RADAR People of the Year Awards 2009.

outreach worker, who will visit deaf clubs with a view to building awareness of the BSLBT and gathering feedback. The BSLBT will take account of this feedback during commissioning rounds.

4.13 Ofcom is therefore satisfied that the BSLBT arrangement fulfils this criterion.

Terms of access

4.14 Many of the channels that contribute to the BSLBT are available on Freeview, so they can be received without charge viewers with a set-top box or a television set with built-in Freeview capability. One of the slots which the Community Channel dedicates to BSLBT programming is at 8am on Mondays. Although the Community Channel had been expected to lose access to Freeview at digital switchover, arrangements are being put in place to allow it to continue to have a Freeview window. The terms of access to the BSLBT programmes will thus continue to be no less favourable than access to the contributing channels.

4.15 Ofcom is therefore satisfied that the BSLBT arrangement fulfils this criterion.

Views from stakeholders

4.16 In the third quarter of 2009, Ofcom held discussions with the BSLBT, the Community Channel, the RNID and the British Deaf Association (BDA), as well as some broadcasters, in order to decide upon the most appropriate method for seeking stakeholders' views on the BSLBT arrangement. Following these discussions, Ofcom invited comments from deaf people who use sign language, and from broadcasters who contribute to the BSLBT, on whether the arrangement should continue in 2011 and beyond.

Deaf BSL users

4.17 Ofcom, with assistance from the RNID and BDA, formulated a questionnaire for completion by deaf people who use sign language. The questionnaire asked respondents whether they preferred programmes presented in sign language or programmes presented in English and translated into BSL by an interpreter. The questionnaire also asked whether respondents would prefer for the BSLBT arrangement to continue, and whether respondents would feel differently if BSLBT programmes were no longer available on Freeview (since there was uncertainty at the time as to whether the Community Channel would continue to have a slot on Freeview following digital switchover).

4.18 Copies of the questionnaire were posted or emailed to more than 150 organisations and clubs for deaf people. The questionnaire was also made available on the Ofcom website, in both English and BSL. It was publicised in the BDA magazine and on internet forums for deaf people. People who work for the BDA and RNID also agreed to tell deaf BSL users about the questionnaire and where to find it.

4.19 The overwhelming majority of responses to the questionnaire indicated a preference for sign-presented over sign-interpreted programming.

4.20 The majority of respondents told us that they would prefer for the BSLBT arrangement to continue, rather than for low audience channels to show sign-presented programmes on their own channel. Of those respondents who supported the BSLBT arrangement, the majority stated that their support was contingent upon

BSLBT programming continuing to be available on Freeview. ACOD also expressed concern that BLSBT programming should continue to have a presence on Freeview.

Broadcasters

- 4.21 Ofcom wrote to all of the broadcasters who contribute to the BSLBT, asking whether they would prefer to continue with the BSLBT arrangement, assuming that Ofcom decides that it remains an appropriate alternative to the regulatory requirements set out in the Code.
- 4.22 Ofcom also suggested that it may be appropriate for broadcasters to commit to a minimum of a further two years, and to give no less than 12 months' notice if they wish to revert to complying with the regulatory requirements set out in the Code, or to propose other arrangements as an alternative. Ofcom invited broadcasters to comment on this suggestion.
- 4.23 The broadcasters who provided responses were content to continue to participate in the BSLBT arrangement for a further two years, with a 12 month notice period.
- 4.24 The Community Channel, which broadcasts the BSLBT's programmes, told Ofcom in a meeting that it considers the programming to be of a high standard, and that the Community Channel is "very excited about a continuing partnership" with the BSLBT.

Ofcom's response

- 4.25 Ofcom considers that the BSLBT arrangement continues to meet the criteria laid out in guidance to the Code, is popular with BSL users, and enjoys the continuing support of participating broadcasters.
- 4.26 Ofcom has no objection to the arrangement continuing in 2011 and beyond, provided eligible channels agree to participate for a rolling two-year period, with the option to give 12 months' notice of withdrawal at the end of the first 12 months. If eligible channels choose not to participate, they must revert to providing 30 minutes per month of sign-presented programming on their own services. In accordance with the existing arrangements, if Ofcom informs a participating channel that it will not be required to provide access services in the following year, that channel may withdraw from the arrangement as of 1 January, and should inform the BSLBT of its intentions as soon as possible.

Annex 1

Revised estimates of costs of the audio description options

Introduction

A1.1 This section outlines the methods used in the review to assess the costs and benefits of each of the audio description options, and explains subsequent revisions that we have made to these estimates.

Background

A1.2 As part of the review, Ofcom published its assessment of the costs and benefits for each of the three options for future audio description provision.

Benefits

- A1.3 We measured the benefits of each option to hearing and visually impaired people simply in terms of the volume of hours of programming they deliver to access service users. Our assessment was limited to the availability (as opposed to the usage) of programming containing access services, as reliable data on how many hearing and visually impaired people use subtitling and audio description is not available. We refer to the total volume of programming in a year containing a particular access service as audio described/subtitled 'broadcast hours' (BH).
- A1.4 In addition we generated an additional metric, called 'weighted broadcast hours' (WBH). The calculation presupposes that - for the levels of provision we are examining - an hour of programming containing access services broadcast on a more popular channel is likely to generate more additional hours of actual viewing than an hour broadcast on a less popular channel, as more people are likely to watch it. If we represent benefit to users in terms of additional hours of *viewing*, then an extra hour of access service provision on a more popular channel is likely to generate a greater benefit than an additional hour on a less popular channel. The weight used is the channel's audience share, so that the more popular a channel is, the greater the weight attached to it. The result for each channel is then summed to give the total weighted broadcast hours for each option. For example: 3 channels A, B, C have respective audience shares of 60%/30%/10%. If 100 additional hours of programming was broadcast on each this would be an increase of 300 broadcast hours in total (3 channels x 100 hours) but just an increase of 100 WBH hours (i.e. $(100 \times 60\%) + (100 \times 30\%) + (100 \times 10\%) = 100 \text{ WBH}$). However if Channel A alone broadcast 200 additional hours of programming, there would be an increase 200 broadcast hours, but an increase of 120 WBH (i.e. $200 \times 60\% = 120 \text{ WBH}$).
- A1.5 It is important to note that the weighted broadcast hours metric has been constructed as a tool for evaluation, and that it does not tell us how much programming containing access services the average viewer actually watches. Rather, it is intended to capture the assumption that access service provision on more popular channels has the potential to generate a greater benefit than access service provision on smaller channels. As such, weighted broadcast hours help us to assess proportionality: requiring additional access service provision on smaller channels is likely to produce a lower level of benefit than requiring additional

provision on a channel with a large audience share. The approach is also based on a number of assumptions which are explained in 6.12 of the consultation document (see footnote 1).

Costs

A1.6 We measured the costs of each option in terms of both the total costs that broadcasters would bear and, in the case of Options 2 and 3, the costs over and above the costs of continuing with the current targets (variable costs only). We pointed out that, given the actual or planned level of audio description offered by broadcasters, several of which have exceeded the current statutory requirements, these estimates overstated the actual incremental costs that broadcasters would incur.

Cost revisions

A1.7 Since the publication of the review we have revised our estimates of the costs of the options. The original estimates did not include the most up to date programme repeat rates for some of the PSB channels. As a result some of the repeat rates were overestimated. This has been corrected using data collected for Ofcom's 2009 Communications Market Report. We now estimate that the cost of the existing AD provision is likely to be higher for some of the PSB channels than we originally assumed, and that as a result, the estimated costs of each of the three options are higher (see Table 1). The current and previous estimates are shown in the fifth row of Table 1.

A1.8 We also considered the suggestion by CCP that a more appropriate way of estimating the costs would be to look only at the cost of the additional audio description needed to reach the targets, in excess of any voluntary over-provision. In particular, CCP suggested that Ofcom should instead have calculated the costs based on an average of the current levels of provision.

A1.9 Ofcom notes that it cannot be assumed that broadcasters will continue to exceed the relevant targets for audio description. Accordingly, we have set out in the sixth row of Table 1 below the revised estimates of the costs that broadcasters would have to meet if a 20% target was substituted for the current 10% target.

A1.10 However, for illustrative purposes, we have prepared an estimate of what the incremental costs might be, assuming that channels operated by the BBC and Channel 4 fulfilled their voluntary commitment to provide 20% audio description on their channels, and that the remaining channels maintained the level of provision they did in 2009.²⁹ These estimates are set out in the seventh row of Table 1 below.

²⁹ The quarterly report for Q1 2010 suggests that most broadcasters are continuing to match or exceed the levels of provision in 2009 as a proportion of transmission hours (see http://www.ofcom.org.uk/tv/ifi/guidance/tv_access_serv/tvaccessrep/q110/).

Table 1: measurable costs and benefits of the three audio description options

	Option 1 – status quo	Option 2 - 20% target for all channels	Option 3 - 20% target for public service channels
1. Number of channels providing access services (total audience share)	64 (88.9%)	62 (87.6%)	64 (88.9%)
2. Benefits to AD users: a. Total broadcast hours (% change) b. Weighted broadcast hours (% change)	a. 61,654 b. 716	a. 119,510 (+93.8%) b. 1425 (+99%)	a.69,507 (+12.7%) b.1261 (+72%)
3. Impact on subtitle users: a. Total broadcast hours (% change) b. Weighted broadcast hours (% change)	a. 447,110 b. 6453	a. 389,736 (-14%) b. 6340 (-1.8%)	a. 447,110 (0%) b. 6453 (0%)
4. Current (previous) estimated cost of meeting existing 10% target	£3.78m (£2.94m)	N/A	N/A
5. Current (previous) total estimated cost of 20% audio description	N/A	£7.56m (£5.73m)	£5.28m (£3.52)
6. Current (previous) estimated cost of a 10% increase to 20% audio description	N/A	£3.78m (£2.78m)	£1.5m (£0.6m)
7. Estimated incremental cost of reaching 20% target	N/A	£0.94m	£0.30m

A1.11 Notwithstanding the revisions to the estimates, there would be no change to expected number of channels providing access services under any of the options.