



The Mobile Broadband Group

www.mobilebroadbandgroup.com

The Mobile Broadband Group ('MBG', whose members are O2, Three, Vodafone and Everything Everywhere – which operates the Orange and T-Mobile brands in the UK) welcomes the opportunity to respond to Ofcom's consultation on the future of Relay Services.

In summary

- The MBG recognises the need for advances in communications technologies to benefit all in society, including those with disabilities.
- Indeed many recent mainstream advances in mobile and other communications technologies have achieved just that – text messaging, voice to text messaging, BlackBerry messenger, video calling, voice activated commands to name a few.
- Voluntary initiatives such as SMS-only packages and SMS 999 for deaf customers have also been introduced.
- However, the MBG is concerned that Ofcom's approach to assessing the needs of customers with disabilities and the services that should be provided to meet those needs, is flawed.
- It is the proportionality aspect of Ofcom's next generation text relay ('NGTR') and video relay ('VRS') proposals that particularly concerns us.
- At the last review in 2005, Ofcom was the only national regulatory authority ('NRA') in the EU to mandate TR for mobile and no NRA has since been subject to infraction procedures for not mandating it. Ofcom gold-plated the European framework, going further than was required. This gold-plating was costly and burdensome to mobile operators and TR has not delivered meaningful benefits to customers.
- Again Ofcom is proposing to go further than other NRAs, with two significant new requirements on communications providers, when there is little evidence to indicate that an upgrade of text relay (TR) is justified. We believe that, again, the proposals will result in significant stranded investment for mobile operators.

- The overwhelming experience is that customers prefer mainstream, non-intermediated services such as SMS, IM and e-mail to relay services. Such services thus give a more 'equivalent' experience to TR and Ofcom's interpretation of the EU requirement is misplaced.
- Moreover, if Ofcom's predictions are even partially fulfilled, it would represent a step change in the current annual cost to the communications service providers (CSP) from around £4m a year to well over £100m a year. It is therefore incumbent on Ofcom to consider other funding models.
- Companies and other organisations would benefit considerably if their customer communications were to be paid for by CSPs. They have their own responsibilities under equality legislation; the bar is not higher for CSPs. Companies pay for their business premises to be suitably adapted (with lifts, lavatories, ramps, hearing loops etc.), and their other modes of communication such as web-sites and correspondence to be configurable to a varied audience.
- It is anomalous, therefore, that in the sphere of telephony, the operating cost is deemed to be the liability of the provider of the adjusted service rather than the business required to make the adjustment.
- This is a discussion in which the Government also has a part to play and the MBG will shortly be writing to the Minister in question to raise the point.
- Ofcom's insistence that CSPs pay for TR is a disincentive to banks and healthcare providers (as examples) from being accessible in ways that speech and hearing-impaired citizens want – a non-intermediated solution. It removes any impetus on these businesses to evolve their customer contact models in tandem with changing customer needs. If they were made to pay for TR, they would be much more amenable to mainstream solutions.
- The MBG's assessment is that relay services will continue to be far less popular (and less 'equivalent') than non-intermediated services. If, on the other hand they are as successful as Ofcom predicts, it is inequitable to burden CSPs with all the costs. In either event, the proposals are not proportionate and the MBG strongly urges Ofcom to reconsider.

Next Generation Text Relay

Question 1: Do you agree that NGTR would provide greater equivalence than the existing approved TR service? Do you agree that we have considered an appropriate range of improvements?

The MBG does not accept that the changes proposed by Ofcom are required as a consequence of the new telecommunications package.

Equivalence

Unfortunately, for self-evident reasons, it is not currently possible for a CSP to provide a telephony experience to a deaf customer that is identical to that which is experienced by a hearing person.

We are therefore left to consider the evidence around which mode of communication provides the next best alternative to achieve communication between a deaf person and another party, whether deaf or hearing.

The overwhelming evidence from observing the behaviour of deaf customers is that they have a strong preference for non-intermediated services such as SMS, e-mail and Instant Messenger (IM). Thus, such services, while not perfect, give the customer a far more 'equivalent' telephony experience than any intermediated service such as TR.

In the light of the almost ubiquitous adoption of mobile telephony and the very high penetration of fixed broadband, customers are using mobile and broadband connections to find alternative ways of communicating without TR. The MBG does not agree, yet again, that Ofcom is obliged by the new EU law to require TR in order to provide 'equivalence'. We made the same argument during the prior review in 2005, when Ofcom argued that mobile TR was required by EU law. It has only been mandated in the UK and no member state has been infracted for failing to provide mobile TR. The fact non-intermediated, non voice based services such as SMS are available on mobile was probably a key factor in the EU taking this stance.

Research

The MBG argues that our view is strongly supported by the research that Ofcom has presented in its consultation document:

It is appropriate to start this section with a brief history of the regulation of TR on mobile:

Prior to 2003: Standard public telecom operator licence – no requirement for mobile operators to provide access to TR

March 2002: the Universal Services Directive: Recital 13 *"Member States should take suitable measures in order to guarantee access to and affordability of all publicly available telephone services at a fixed location for disabled users and users with special social needs."*

May 2002: Oftel consultation on the General Conditions of entitlement

[June] 2003: General Condition 18 (now GC 15) was introduced and RNID Typetalk approved by Oftel as TR service

The 'consultation' carried out by Oftel in 2002 bore none of the characteristics that would justify such a description. No evidence was presented on the costs and benefits of TR, no options offered nor impact assessment carried out. Despite recital 13 to the Universal Service Directive referring only to fixed provision, a requirement was introduced to extend GC15 to cover mobile access.

As a consequence, mobile operators invested a considerable amount in systems to meet the general condition. This has turned out to be a waste, as virtually nobody uses mobile TR.

Customers continued to use mainstream mobile services such as SMS and mobile Instant Messenger. While these technologies, as mentioned above, are not identical to natural speech and the occasional message gets caught by congestion in the network, it does not take long to become proficient both at

speed, language and conveying emotion through text. And, most importantly, neither specially adapted devices are required nor any intermediation by a third party translator.

For this current consultation, Ofcom has improved considerably on the prior work by Oftel. Research has been carried out and some options are offered.

It is by no means conclusive from the research, though, that it is justifiable to place further regulatory and cost burdens on the CSPs, particularly where, as Ofcom concludes, it is so difficult to assess likely demand.

Ofcom state that TR is used for 33,000 calls per week¹. The MBG understands that the bulk of these calls are generated by about 11,000 regular users, down from about 25,000 users in the last 10 years. This represents a very small proportion of the 10,000,000 or so people that RNID states are either deaf or have hearing impairment in the UK. (Approximately 60% of TR use is for personal use and 40% for business use.)

Clearly the vast bulk of customers are increasingly choosing ways to communicate other than TR. We remain very sceptical about calls for further development of TR, because previous calls for the necessity of its extension to mobile proved so wide of the mark. Ofcom may suggest that this drop in demand is due to the service being out of date – but we would argue, instead, that consumers no longer find TR useful, because there are other, preferred means of communicating. Ofcom needs to provide more evidence of a demand for relay services over other communications means.

Ofcom has also published findings from Opinion Leader in its February 2011 report ‘Ofcom Relay Services.’ The published qualitative comments support our views.

The comments supplied by Mary were perhaps typical-

Tried text relay once – but never again. It is too difficult and frustrating to use

She texts, emails and uses webcam to contact friends and family

If she had to cope on her own, her first choice would be face-to-face communication so that she has total confidentiality and is able to lip-read. Her other choices would then be SMS text message or email.

What is important?

To be treated just like anyone else and to have a confidential, real time conversation

To be able to communicate 24/7 – especially in emergency situations

To have a choice of communication services including on the move “That is critical because that is the way we live our lives today”

The ability to see / “hear” the tone of the person you are communicating with

What would make a difference?

¹ Para 4.2 Review of Relay Services, July 2011

The ultimate for her is to be able to have a real time conversation with someone “That makes you feel like a real person”

More widespread acceptance of text

Not to have to rely on a third party to “listen” and communicate for her

A recurring point is that customers do not like the loss of confidentiality and control that comes from communicating via an anonymous third party speech to text interpreter. A requirement for these calls to be treated confidentially by relay assistants does not change the fact that a stranger is involved in a personal discussion.

This is further borne out by the quantitative analysis in Table 3.1.

For example, the data given for methods of deaf people communicating with hearing friends and family:

e-mail 75%, SMS 63%, Telephone 52%, Instant messenger 24%, TR 18%

In the light of there being only about 33,000 calls being made per week on TR, the 18% that are using TR cannot be using it very often (the survey doesn't say what proportion of communication is done using each of these technologies).

It is hardly surprising that TR scores so low compared to other technologies. Table 4.1 sets out the communications features that deaf customers list as being the most important (no disruption to service, easy to use equipment etc.). On all counts these other technologies are superior to TR.

The main difficulties arise when deaf customers are trying to communicate with organisations such as the local council or bank. Only e-mail and the standard telephone register as popular methods of communication. This suggests that it is much more important to educate organisations to receive multiple channels of communication rather than extend the capability of the TR technology that organisations are already failing to interact with properly.

There is also evidence that banks are reluctant to use TR as they're communicating financial information, while doctors' patients are reluctant to use TR for medical reasons as their personal, medical health information is being read by a third party operator.

It would be better for banks, NHS, DVLA etc. to be accessible by email and other direct forms of communication.

The principal problem is that businesses and organisations in the wider economy are failing to make 'reasonable adjustments' to accommodate the different modes of communication that deaf customers want to use. Such organisations are not good at interacting with TR in any event. They have, after all, their own responsibilities under equality legislation. The bar is not higher for CSPs and they should not be asked to underwrite – and perpetuate – the shortcomings of others by having to fund a TR service.

Funding

The MBG's main concern with NGTR is that capital costs will be incurred in introducing a service that will be little used. There is also the high opportunity cost of diverting scarce internal resources from other

potentially more popular and needed services, or away from developing technological advancements which would be superior to TR.

However, if the NGTR is to be adopted to the extent that Ofcom predicts, the opposite problem arises. Mobile operators may be faced with the high operating costs of paying for the intermediary translators.

In the UK, BT piloted TR in the early 1980s, when it was a state owned monopoly and there was no particular need to think about funding, because the costs could easily be recovered from other subscribers.

Thirty years on, the world is different; the market is competitive and costs of operating NGTR at the level Ofcom predicts could represent a material proportion of industry profits in the UK. While mobile operators remain committed to accessibility for all, there cannot be an assumption that it is a communications provider's duty alone. And, of course, end users with disabilities can only be expected to pay equivalent costs to 'hearing' customers.

It is time to consider where the responsibility for paying for relay services properly lies. However, Ofcom dismisses the need to consider this important issue and its Impact Assessment quite clearly surmises that the costs are to be borne by the CSPs and the benefits are to accrue to society at large in what they assess as 'broader social value'. This is self-evidently inequitable, unjustifiable and disproportionate.

Ofcom has omitted the called party as a beneficiary. Commercial organisations are benefiting considerably if their customer communications are to be paid for by CSPs. Companies, after all, are used to the notion that they pay for their business premises to be suitably adapted (with lifts, lavatories, ramps etc.), and their other modes of communication such as web-sites and correspondence having to be configurable to a varied audience. It is anomalous that, in the sphere of telephony, the operating cost is deemed to be the liability of the provider of the adjusted service rather than the business.

It not logical that CSP's should have to pay for banks or utilities to speak to their customers through TR (or VRS), anymore than it would right for Ford to pay for adapted vehicles or lift companies to pay for the rollout of all adapted lifts in businesses across the UK and their continued operation (as opposed to the premises owner that is installing and using them.)

Ofcom has gone beyond its remit in seeking to impose such costs on communication providers. The business/organisation in question should be paying for the intermediation costs of communicating with its own customers.

Furthermore, Ofcom's insistence that CSPs pay for TR serves as a disincentive to banks and healthcare providers (as examples) from being accessible in ways that speech and hearing-impaired citizens want – a non-intermediated solution. If they were made to pay for TR, they would be much more amenable to mainstream solutions.

The Government also has a role to play in this debate and the MBG will be writing shortly to the Minister in question to raise the point.

Impact assessment

In order to assess whether it is proportionate to upgrade to NGTR, Ofcom must provide an appropriate assessment as to whether the marginal benefits will exceed the marginal costs.

As already mentioned, there is a fundamental flaw in this particular assessment because the costs are borne by one party and the benefits accrue to society as whole.

We also note that Ofcom has only assessed scenarios where there is flat or increased uptake. The strong possibility remains that TR will continue to decline as mobile phones, tablets and PCs become more widely adopted and capable and customers increasingly use non-intermediated methods of communication. This will not mean NGTR will be cost effective but rather supports our view that it is not an appropriate intervention as the benefits are so small.

Ofcom has not clearly identified in its research the circumstances in which NGTR might be used by customers in preference to mainstream circumstances - who they would contact, how often and for how long. It is therefore not possible to have any confidence in demand projections.

The MBG also remains very unclear as to how Ofcom can assume that there will be no capital cost in integrating NGTR into a mobile context and capability. Until we understand in detail what might be involved, it is difficult to comment with precision. However, as with TR before, there will certainly be significant set-up and integration costs if a useful service is to be presented to customers.

In its impact assessment, Ofcom should bear in mind the Government's position on regulation in times of recessionary pressure. The 'one-in, one-out' rule is not an obligation for Ofcom, but we would suggest that Ofcom should adopt such a position as a matter of best practice. It cannot – and should not – introduce new regulations without thought of where it can deregulate. The Government's second statement on one-in, one-out notes the 'crucial' feature of the new rules as being: "Government Departments are now required to identify and get rid of regulations before they can bring in new rules."²

One-in, one-out does not apply to regulation mandated by Europe, but it is clear from the example of TR that the introduction of NGTR and video relay – especially as they apply to mobile – is not a requirement of the Framework Directive. NGTR and video relay are extra regulation emanating from Ofcom absent requirements from the European Commission.

Question 2: Do you agree with the proposal to implement NGTR through the amendment to GC15? Do you agree that the criteria we propose satisfactorily embody improvements we suggest for NGTR?

At the last review of GC15 2005, Ofcom was the only NRA in the EU to mandate TR for mobile. It has been costly, and it has not been a success. Again Ofcom is proposing to go further than other NRAs, with two significant new requirements on CSPs. We do not concur that Ofcom's proposals are required or proportionate.

We also have the following comments about the proposed amendments to GC15 and the criteria:

- We would like clarification on the use of the words "provide facilities" in a, b and e of the draft GC15.5. This would seem to contradict what Ofcom says in the consultation, which is that it cannot require CPs to ensure all devices can be used to access relay (e.g. at 4.7 Some uses may depend on the availability of suitable software or apps, the provision of which is outside our remit).

² 'One-in, one-out: Second Statement of New Regulation', September 2011, p.3

- Ofcom has not explained why proposed GC 15.5 e should be a requirement. There is no explanation of why prefixes should not be used and no consideration of the impact this may have on operators (e.g. for billing and the identification of NGTR users).

Question 3: Do you agree that a period of up to 18 months for implementation of NGTR, following an Ofcom statement, is appropriate?

The main dependency will be the length of time the relay platform provider will take to upgrade to NGTR. The MBG understands that such a platform does not exist today – not just in the UK but anywhere in the world. In addition to building the platform, those to whom GC15 will apply will have to instigate a significant project to integrate billing systems and customer services as well as providing access to emergency services. Initial discussions with the platform provider suggest that an 18 month timetable suggested by Ofcom is a very ambitious timescale in which to accomplish the upgrade of TR alone.

Video Relay

Question 4: Do you consider that the requirement to ensure equivalent services for disabled end-users would require a mandated VR service in some form for BSL users? Please indicate the basis of your response.

As with TR, the overwhelming evidence from observing the behaviour of deaf customers is that they have a strong preference for non-intermediated services such as SMS, e-mail and Instant messenger. Thus, such services, while not perfect, give the customer a far more ‘equivalent’ telephony experience than any intermediated relay service.

Moreover, as the adoption and capability of mobiles, tablets and PCs improves, we expect to see an increase in the use to which BSL users put mainstream communication. As with TR, Ofcom has not provided compelling research as to the circumstances (who would be called, how often etc.) in which BSL users will prefer VRS over non-intermediated services.

Furthermore, as the cost of making a VRS call is very much greater than the cost of TR, the issue of who pays is even more important to consider.

As has already been mentioned, companies in the wider economy have their own responsibilities under equality legislation to make reasonable adjustments for their disabled customers. The bar is not higher for telecommunications companies. Indeed, the DCMS response to the Merits Committee indicates clearly that both Ofcom and DCMS share the view that equivalence is a broad concept, not tied to any particular service and is “not mandated by the amendments to the USD”. Companies pay for their business premises to be suitably adapted (with lifts, lavatories, ramps etc.), and their other modes of communication such as web-sites and correspondence to be configurable to a varied audience. It is anomalous that, in the sphere of telephony, the operating cost is deemed to be the liability of the provider of the adjusted service.

What constitutes a ‘reasonable’ adjustment is a dynamic concept. In the light of the improved uptake and capability of broadband, Ofcom is now proposing that is practical for CSPs to offer VRS. If this is the case,

then it becomes a 'reasonable adjustment' for companies in the wider economy to offer it to their customers as a means of accessing customer services. The 'equivalence' measures in the European package do not set a higher bar for CPs than for other companies in the economy.

As Ofcom mentions there are already examples of organisations offering, and paying for, VRS to access their customer help lines. There is no reason at all for organisations in the wider economy not to follow their example, if Ofcom judges that this is now a reasonable thing to happen – without it being to the cost of the CSP. The duty should not be solely placed on the CSPs simply because Ofcom has remit over CPs, unlike in the wider community.

The MBG would also like to raise a serious practical issue. Ofcom mentions that the technical capabilities of mobile networks do not make them suitable for VRS. The mobile operators are constantly striving to improve capacity and capability and so such a situation may not last forever. Nevertheless, there is no point in imposing general conditions on organisations, with all the integration and opportunity costs that are entailed, if there is no immediate physical ability to meet them. If there are to be further requirements placed on mobile operators, they should be phased accordingly. We would reiterate the points made above that there is no EU requirement for relay services to be provided in a mobile context. Indeed, there is currently no regulatory requirement to provide broadband services at all, which makes the requirement to provide VR on telephony providers somewhat unusual - not all telephony subscribers will also subscribe to a broadband bundle. Would we be expected to provide broadband and the means to access broadband services to those voice customers who aren't already broadband subscribers?

Question 5: Do you agree that a restricted service would be more proportionate in providing equivalence for BSL users than an unrestricted service?

The MBG has had the opportunity to discuss this issue with some of the VRS providers. We understand that, if an unrestricted service was to be offered, and Ofcom's predictions realised, the community of signers would be overwhelmed in the first instance. While more signers may later become available, in response to increased demand, a restricted service would be the only realistic approach.

Question 6: Please provide your views on Methods 1 – 5 for a restricted VR service discussed above. Are there any other methods that are not mentioned that we should consider? In making your response, please provide any information on implementation costs for these solutions which you believe is relevant.

A further model to consider is a VRS for calling organisations and businesses, such as NHS, banks, contact centres etc, where 'per call charges', which covers the signer, are accepted by the company/contact centre receiving the call (reverse charges).

Question 7: Do you agree that a monthly allocation of minutes combined with a weekday/business hours service would be the most appropriate means to restricting the service?

With respect to questions 6 and 7, the MBG's primary concern is the inequity of the liability to pay being placed at the door of the CSP.

That said, an unrestricted service, which has a projected annual operating cost of over £100m, would be a very disproportionate allocation of resources, when there are so many other demands to extend communications capacity to rural communities, low income families etc. etc. A restricted service during

the day, with a limited minutes allocation per user would be one way of sharing scarce resources fairly. However, in view of the limited information currently available and uncertainties around the solution and the availability of signers, it is difficult to assess whether this would be the “most appropriate” means of restricting the service.