

Ofcom Consultation on the Review of Relay Services

Response from PhoneAbility

PhoneAbility welcomes the opportunity to respond to this consultation. While we have sought to compose our response around the specific questions posed in the consultation document, we have also made comments of a more general nature and, in some instances, commented upon parts of that document that were not directly linked to the questions asked.

To begin with, we have some doubts about the statement made in the Summary and in section 2.10 that ‘Member States are required to ensure that the provision of access to, and affordability of, services for disabled end-users is equivalent to that enjoyed by the majority of end-users’. For disability organisations, the way forward would be simple if that were strictly the case, as the law would be clear. Member States have no dispensation to decide on the basis of proportionality whether or not they will obey European law, so the only scope for national discretion would lie in the meaning of ‘equivalent’. Otherwise, no matter how unreasonable the law might seem, the basic obligation is to obey it, for considerations of ‘reasonable’ and ‘proportionate’ will be deemed to have been considered as part of the legislative process. The recent findings in respect of gender equality in the matter of insurance risk assessment and actuarial calculations assert the dominance of EU law as it is written. If the law is in fact as stated in these parts of the consultation document, the disability bodies (PhoneAbility included) will be entitled to conclude that the UK is in breach of its obligations and may want to press their case accordingly.

Our doubts arise because we are not convinced that the statement made is valid. Article 7 of the USD is cited as the source, and this states that ‘... Member States shall take specific measures to ensure that access to, and affordability of, [PATS] is equivalent to the level enjoyed by other end-users.’ The obligation is not to ensure these things, but to take specific measures to ensure them. It therefore recognises that no single specific measure can ensure the objective, nor does it require that all such specific measures as may be necessary to ensure it shall be taken. The present wording has been arrived at by deleting the qualification ‘where appropriate’ from the corresponding Article in the earlier Directive, so that Member States no longer have discretion as to whether or not to take specific measures, but the Directive is silent on the number and extent of such measures. We commented on this anomaly at the public consultation stage of the revised Directive, but it remains and – we have to conclude – deliberately so. Member States are in compliance if they take more than one specific measure, and we note that the United Kingdom has been careful to do this. If our reading is valid, then the UK has complied with its obligation under this and related Articles and disability bodies cannot raise charges of non-compliance, despite the impression that might be given in the consultation document.

The point is important because, if the law demands equivalence, proportionality cannot be a factor when assessing compliance; Ofcom, however, is required to take proportionality into account when arriving at regulatory decisions. We would not wish to see progress in implementing improved relay services delayed by legal wrangles, so we would welcome clarification from Ofcom as to their understanding of the position. All the parties could then proceed on a basis of the same understanding of European law, even if that understanding might be challenged at some future date.

Responses to Section 4 – 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?

We do agree with both of these statements. We welcome the improvements proposed for the conventional TR facility, although we are not convinced that all are readily possible and we believe that more consideration is required. We particularly welcome the proposal to extend that facility so as to provide a Captioned Telephony (CT) function, which we consider to be of enormous potential benefit to very large numbers of people with impaired hearing. Not only will the proposed improvements result in better access for those who could use the present TR service but may opt not to; it will also benefit many more in addition for whom TR as we know it is not at all appropriate.

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?

We agree, with great reluctance, to the implementation of NGTR using GC15. We do not regard this as a satisfactory mechanism for implementation, but we accept that it is probably the only means available if implementation is to be achieved within a reasonable time-scale. As mentioned in the previous response, we consider that more thought needs to be given to the proposed criteria for NGTR.

The fundamental problem that we observe with GC15 is that it gives the service providers no incentive to improve their services. As each provider will have to contain the costs incurred in delivering a relay service which is essentially loss-making, the resulting business model will be one in which each provider strives to minimise those costs. Service improvements which make the facility more attractive will simply increase losses, leading providers to wish that these loss-making customers would go elsewhere; only those improvements which result in lower costs will be viewed with enthusiasm. Ofcom's minimum performance standards for

approval will therefore by default become the maximum, and only by repeatedly reviewing and up-rating those standards will services improve further.

We would prefer to see a model in which providers would be rewarded for improving and up-dating their offerings. This could be done by applying the Universal Service principle, in that all providers offering telecommunication services to the public would contribute to a fund according to a formula linked to their revenues. Those providers designated as suppliers of NGTR service, and these could be all PATS providers, would be re-imbursed from the fund to the extent of their justified losses in delivering the service. So, although the fund's contributors and the beneficiaries might be the same group of companies, its income would be distributed to reward the higher performers – who would therefore benefit from attracting more relay service customers. Users would be offered choice, as providers' offerings would differ, and market forces would form the indicator to quantify success.

We accept that in a model of this kind administration costs might be difficult to justify solely in terms of direct user outcomes. However, the model would allow of further factors that could be introduced to provide a far more effective accessibility outlook. The various economic analyses quoted do show that the wider benefits of better relay services extend far beyond the telecommunications sector, raising the question of how far that sector should be expected to meet the costs. We see great merit in this line of argument and we consider it only equitable that the public purse should bear some part of the service costs. It would be administratively simple for central Government to make some contribution to the fund, if not now then certainly when economic conditions improve. We go so far as to suggest that this should form a commitment in principle from Government as part of the implementation package. While we have not examined how such a fund might be extended in scope to cover other aspects of universal service, there is clearly a possibility to do this. It might even be extended to include some aspects of dedicated terminal provision, for which Ofcom is at present required to do no more than 'encourage'.

This extended approach to universal service could be particularly attractive since the prevailing conditions, which had once led Oftel to conclude that BT would incur no net loss through being a universal service provider, have now altered. We appreciate that it is beyond the scope of this consultation, but we anticipate that a fundamental review of universal service and its funding will be necessary at some juncture.

On the question of the criteria proposed for NGTR, we have some comments to offer and questions to ask.

The suggestion that NGTR could be accessed without dialling special prefixes is most attractive and, at least in theory, would lead to a significant step forward in attaining equivalence. In practice, we have some doubts. To achieve this, it would surely be necessary for all NGTR terminals and modems to announce their presence to the network (like Fax terminals) and this would require a major change in network and terminal standards that would not be backwards compatible. As far as we can see from the ICC study, the practical method of meeting the criterion would require the provision of dedicated numbers for registered users, and we question whether this would offer any advantage in equivalence. Presumably, all calls originating from these numbers would be routed to a relay service and, to make the system work, so

would all calls made to those numbers. Each number would have to be specific to a person and not to a household or a location (unless all the occupants were deaf, and needing the NGTR service). But how would the system know what form of relay assistance was required, or even if a relay was required at all when the text-to-text mode was to be invoked? What would hearing callers, ie when originating the calls, experience if they did not know the called parties? Would there be network announcements (and in what form) to indicate that a relay service was being invoked, and on what tariff would these callers be charged? We request that more information be provided on these points.

We have been unable to ascertain from the proposed amendments to GC15 what facilities are mandated for hearing callers who wish to make calls to deaf users through the relay service, in whatever mode. The present wording refers to obligations towards users who 'because of their disabilities' need to make calls by making use of text. This clearly excludes hearing users but that may not matter in that a hearing user simply makes a voice call over the network, having dialled the prefix or the registered number. It begins to matter when it comes to charges because it is not clear whether the subsidised service is to be available to hearing people who wish to converse with deaf subscribers. If it is not available, then equivalence is being frustrated by a financial barrier in making calls to deaf people, although this can be circumvented (with some inconvenience) by the deaf party 'calling back'. In our view, the intention needs to be made clearer.

Question 3

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

We do agree, given that there are several areas of complexity to be resolved and various commercial and technical measures to be implemented. We would expect that improvements to the present TR service could be introduced over a shorter span, as preparations are made for upgrading it to an NGTR specification. We would argue very strongly for the USC obligation on BT to be kept in place until there is at least one NGTR facility ready for roll-out.

Responses to Section 5 – 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.

We do consider that a mandated VR service is required if BSL users are to enjoy equivalent access to publicly available telecommunications services (PATS).

Our basis for this conclusion is that deaf people have, for many years, been ill-served by the public telephone services – to an extent that goes far beyond the obvious, given that these were traditionally voice services. While many important technological developments have made it possible to overcome restrictions endured by the deaf, economic and regulatory factors have prevented their application in any other than the most basic manner. Short-comings of the text relay service are only now being addressed (as set out in Section 4 of the consultation document) and we do note with much satisfaction that Ofcom does not find it necessary to ask if these proposed improvements are necessary. The questions posed relate instead to their sufficiency.

The arrival of broadband, and a revised EU legislative approach that brings this within the regulatory regime, mean that the advantages of this technology can now begin to be embraced in a context of universal service. This is welcome, if overdue, but even the improved facilities to be offered by NGTR are of little use to people whose main method of communication is sign language. Video telephony is now quite widely used, is available to sign language users, and has been shown to be suited to their needs. As a result, users of BSL (for example) can converse with one another, but not with non-users. Commercial video relay services that overcome this problem have been operational in the UK for several years but the costs of these do act as a barrier for most potential users – therefore their access to telecommunications is by no means equivalent. We see this as discriminatory, and indeed quite contrary to the currently accepted concepts of equality. We do of course accept that there is a very pertinent question of how a subsidised VR service should be funded, but that does not detract from the very real need for it.

Question 5

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

We take the view that all forms of subsidised service need some measure of restriction, unless they are inherently self-limiting in resource demands. The evidence shows that VR cannot be considered as self-limiting, so an imposed limit must be accepted. We see the real question here as not whether a VR service should be restricted, but how. We do have serious concerns over the form of limitation proposed in this consultation document.

No responsible authority can initiate a subsidised service that might have unlimited resource demands, and we note that Ofcom has no powers to impose unlimited financial burdens on the companies that it regulates. We accept that there has to be a cap on expenditure, and we also accept Ofcom's argument that a simple financial cap would have disastrous consequences for end-users, if the cap limit was reached before the end of an accounting period. We note with surprise that this form of question has not been posed in the context of NGTR, where demand for the captioned telephony component of the facility is impossible to predict but could – because of the very large number of people described as 'hard of hearing' – become enormous. Ofcom has been content to suggest (Section 4.104) that, if the cap was about to be exceeded, a review would take place - leading to possible service limitations being applied.

Ofcom has not taken this approach with VR. In contrast, it is assumed that any reasonable cap (based upon presumed availability of funds) is likely to be exceeded, so severe limitations must be imposed at the outset. We will comment further on this point in the following responses.

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.

We believe that, subject to a financial cap (Method 2), communications providers should be encouraged to provide VR services on a market-driven model. This would, in our view, provide a balance between costs and resources. Importantly, it would minimise the need for continual regulatory intervention and encourage development and improvement of the service through offering the right sort of incentives to providers.

We accept that a financial cap is essential, and this has for many years been a feature of most of the mandated services which are essentially loss-making. It also happens to match the concept of ‘reasonable adjustments’, since it has never been an objective of equality legislation to obstruct service providers in the pursuit of their legitimate business. But, for reasons already discussed, a financial cap is an unacceptable measure if it is taken in isolation, so it must be supplemented with some more finely tuned methods of managing demand.

We note that, despite all the effort put into preparing financial analyses, the only cost figures that attract any degree of confidence are £9.6 M as a minimum and £149.8 M as a maximum. Even these figures are not absolute limits, and we also wonder why Ofcom has chosen to work with a per minute cost of £3.15 when all the evidence from UK sources puts this cost at less than £3. We conclude that, at the lowest estimate of total cost, a VR service is both proportionate and affordable – because that annual cost is not significantly greater than that of the present, rather minimal, TR service. It would seem that Ofcom’s arguments are based upon a distrust of that lowest estimate, since there is a presumption that it would inevitably be exceeded, so demand must be ruthlessly held back. We would argue that a viable VR service could be initiated on the basis of a low estimate, provided that measures were available to manage demand as and when it was seen to be growing. If it should seem foolhardy to embark upon a mandated service on the basis of the very lowest cost estimate, we would propose that it be regarded as a Pilot Service, to gather evidence of how a subsidised VR service would actually work in the UK. We cannot see any reason to give credence to the higher estimates of costs presented in the various analyses because there is no evidence (in a UK context) that provides confidence in any one of them. Thus the approach of starting with the lowest and putting it to the test is as logical as any other.

Using Ofcom's models, we have considered how demand management measures could be applied. Method 1, with restrictions upon times and days of service, is a necessary consequence of having a limited supply of BSL interpreters – available manpower must be concentrated on periods of greater demand. As more interpreters become available, the time/day limitations could be relaxed (but with a financial consequence from having to work unsocial hours). Method 3, a monthly allocation of minutes, also seems to us to be inevitable if a fair division of resource between users is to be achieved. Method 4, for handling workplace use, does seem to us to be the least controversial aspect of the proposals, since it would clearly be inequitable for the telecommunications industry to subsidise employers in carrying out their equality obligations (or, for that matter, to relieve Government of the costs of assisting disabled people into employment). Method 5, advance booking of calls, is in our view best seen as a facility to aid users rather than as a means of controlling demand.

Our conclusions from these considerations are that elements of all of these models could be incorporated into a scheme based upon mainstream commercial practice, with advantages to users, providers and to the regulator. Private-user contracts with allocations of 'free minutes' are common and fully accepted in telecommunications packages. Free minutes of VRS could substitute for free minutes of voice calls – not necessarily on a one-for-one basis – and when the free allocation was used up VRS calls would be charged at the unsubsidised rate for the remainder of the charging period. Allowances would not be transferred or carried forward. It may not even be necessary to confine free VRS minutes to BSL users, since those who do not use BSL would have limited use for them. Free VRS minutes as an option for every contract subscriber would allow hearing users to communicate with BSL users by means of the relay, and we would regard this as legitimate and desirable.

The size of the free allowance would, on this model, be a matter for the service provider to determine, subject to a regulatory minimum. This would be a business decision, taken with the aim of making the service more attractive (ie in comparison with that offered by competitors) and therefore bringing in more customers. It is of course essential, if this model is to work, that additional customers should equate to more revenue, and not less. As in our response to Question 2, on NGTR, we regard it as vital to develop a funding model in which providers of a 'better' service do not suffer financial penalties as a result. This means that the criteria for disbursement of the available funds must be disconnected from those applied to their collection. We believe that it is possible to devise such a system, as outlined in our response to Question 2.

There would be an implementation cost in setting up such a funding model, and we cannot quantify this at present. It need not be substantial, because the objective of using such a model is that service providers would be motivated by conventional business considerations: regulatory decisions on the allocation of funds would be minimised. Service providers' income from the fund would be directly linked to hours of VR time 'sold'. They would make no direct profit from selling this amount of time, but their net losses would be covered. Network externalities would then be expected to yield indirect profits, as a consequence of the extra network traffic that was generated. These factors would allow each provider to decide how generous it could afford to be in setting the allowance of free minutes (above the regulatory minimum).

There is clearly a constraint resulting from the capacity available from the companies offering the relay service. This capacity can be expected to increase only gradually (because trained BSL interpreters will represent a 'shortage specialty'), and this increase will be demand-driven. We see a danger that costs could be forced up, on whatever service model is adopted, as a result of such manpower shortages but this is a matter for the further consultations. This is the area of Question 7.

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?

We accept that the proposed restrictions are necessary and appropriate in the initial stages of the service, while assessments of demand are being made and measures to recruit and train additional BSL interpreters are being established. We also accept that it would be wrong to proceed at too great a rate, because the lack of available interpreters would lead to widespread imbalance and conflicts. We do want to see a service model which encourages the easing of the restrictions at the earliest opportunity, and preferably by commercial rather than regulatory actions. We believe that, in this way, the best service to users can be delivered that is consistent with the available resource.

We have argued for a funding model in which the contributions that are levied are pooled and re-distributed to the service providers in a way that recognises their net losses (in providing a VR service). These providers will benefit from the increased network traffic that results from their VR services, although not from the services themselves. This will provide them with incentives to develop and improve their services, within the overall constraint of the financial cap set by Ofcom and calculated according to the expected availability of funds. Service developments should be expected to include extensions to the monthly 'free minutes' and to the operational hours and days of the service, although these would clearly be dependent upon the ability of the contractor (being a company procured to deliver the service) to offer that additional capacity.

We presume that Ofcom does not know, at the present time, what level of funding will be available. Its proposals must therefore include severe restrictions upon the level of service, as a safety measure. Our preferred approach would differ from Ofcom's in that we anticipate that a VR service could be commenced if funding that marginally exceeds the minimum requirement could be guaranteed. As and when funding above that level is seen to be required, the pressure to raise it will come from users and will be directed at service providers themselves, as well as at Ofcom.

We see a further advantage in our proposed approach, in that the move towards equivalence would be driven on just the same basis as any other form of service improvement, namely by user demand influencing business practice and commercial decisions. This appears to us to be preferable to relying upon prescriptive regulatory decisions which are necessarily a stage removed from direct customer reactions.

Annex

A note on conversation speed with TR/NGTR

We observe that Ofcom does not intend to mandate any specific speech-to-text technology, rightly in our view. Nevertheless, we believe that there are possibilities for higher translation rates that are not considered in the ICC Report, although it is difficult to be certain of this given the extent of redaction in the public version. Speech recognition using re-voicing does call for a noise-free environment, but there are ways of achieving this other than the use of architectural sound-proofing that is mentioned and is undoubtedly expensive. We agree that use of noise-cancelling (differential) microphones is unlikely to be satisfactory because these tend to have a poor frequency response due to dimensional factors, but there are now electronic techniques using phase reversal of the noise signature that achieve better results. To what extent have these been considered? We understand that they can be implemented at far lower cost – and far more speedily – than making major adaptations to buildings. It is a technique that would seem to have great promise for call centres, for applications where it is important to maximise the signal to noise ratio at the input to a speech recognition system.

Even without turning to speech recognition, there are manual keyboard configurations that are capable of significantly higher speeds than the QWERTY keyboard. Ergonomic keyboards, with trained operators, are claimed to allow speeds which could be a significant improvement over any QWERTY system.

We would not suggest use of phonetic keyboards, such as Palantype, because this requires the employment of highly trained operators and is consequently expensive. Furthermore, as the consultation document makes clear, there are very few such operators available.

The use of alternatives to the current systems should, in our view, be examined in greater detail and Ofcom could usefully encourage potential NGTR providers to do this. It becomes of particular importance when the captioned telephony aspect of NGTR is considered, because the conversation speeds achieved there will not be aided by factors such as faster turn-round or the ability to interrupt. Nevertheless, it is vital when captioned telephony is being used by hard-of-hearing people that the captions should keep pace with the received speech.

20th October 2011