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Dear Sukh

Review of Relay Services

SSE welcomes the opportunity to comment on the proposals for development of the text relay services, currently made available to customers who wish to use them by means of a combination of General Condition (GC)15 and a Universal Service Condition (USC) on BT.

SSE has a retail business providing fixed line telephony services and uses the regulated product 'wholesale line rental' (WLR) to provide this retail offering. There are hundreds of retail suppliers using WLR and this product is relied upon to provide many of the technical General Condition obligations in a fit-for-purpose manner at the wholesale level. We consider that WLR should continue to provide, as a matter of equivalence under the terms of BT's Undertakings, the same relay service – as this is developed – to the end customers of BT's wholesale customers as is provided to the end customers of BT Retail.

We have provided a response to the consultation questions in the attached Appendix but our main comments are set out below.

Concern on removal of wholesale obligation on BT via USC

We are very concerned that Ofcom is proposing to remove the current USC obligation on BT to provide and fund the relay service. We set out our concerns in detail in response to question 2 in the consultation and, in a nutshell, consider that this would have a detrimental effect on the competitive position of smaller providers of publicly available telephony services (PATs) in the market.

Opportunity to Review Funding and Organisation of text relay service delivery

We recognise that, as technology develops, there will be interest from relevant customer groups and perhaps political pressure for the relay services made available to certain types of disabled end customers when they use PATs to be improved. It seems appropriate to review the relay services in that light from time to time. From our perspective as a user of WLR, we do not find the funding and charges for our customers' use of the text relay service to be clear and transparent. We would like to see the opportunity of a review of relay services used also to establish more transparent arrangements for the funding and charging of the service on a coordinated basis for the benefit of the retail market and its end customers.



We propose that an industry body is formed to manage the availability of the required type of relay services throughout the retail PATS market. We would expect this body to entail participation both from those who provide infrastructure to support the retail market (most of these will be vertically integrated communications providers (CPs) with their own retail arm) and from those who only provide retail services. There are many hundreds of the latter type of CP and their participation would have to be accommodated on a representative basis. In contrast, it might well be feasible and desirable to include directly in the group each infrastructure operator – especially if they each have to make technical adjustments to their own systems to support changes that BT might make towards a next generation text relay (NGTR) service. Although BT might continue to be the main provider of the required relay service, this arrangement would bring other infrastructure providers into the technical decision-making on an equal footing and allow greater transparency than currently exists on the costs and funding of the required service.

One of the benefits of the existence of such a body, tasked with maintaining and developing the provision of relay services to a required functional standard, would be that it would act as a point of liaison for Ofcom and other interested parties in how the services are run and how they can be developed. It would also transparently deal with the funding of the required service(s) and how charges are to be applied in a fair and proportionate manner across the wider community of retail PATS suppliers and thence to the base of end customers. The body could be co-regulatory in order to ensure that the services are efficiently provided to end users with acceptable quality and while meeting overall regulatory objectives – these could be set out in a governed document, subsidiary to GC15, to enable the technical detail to be set out and managed with appropriate flexibility as technology develops.

Ofcom has a duty to consider self and co-regulatory arrangements, due to the following wording in s3.4 of the Act: “(c) *the desirability of promoting and facilitating the development and use of effective forms of self-regulation*” and has previously consulted on when these approaches could be used.¹ We believe that the situation that Ofcom has described in the consultation would give it adequate justification to impose a GC requiring infrastructure-providing CPs to belong to the type of co-regulatory body we have described, for the purpose of developing and maintaining specialist services for a sector of consumers and ensuring that costs are recovered in a fair and transparent manner across the supply chain for the services concerned. It is also perhaps relevant to note that the Department of Business, Innovation and Skills included questions about the use made by regulators of co-regulatory arrangements in its recent consultation² on regulatory enforcement.

I hope that these comments are helpful and would be happy to discuss them if you have any queries.

Yours sincerely

Aileen Boyd
Regulation Manager

¹ See <http://stakeholders.ofcom.org.uk/consultations/coregulation/>

² See <http://www.bis.gov.uk/Consultations/transforming-regulatory-enforcement-discussion?cat=closedawaitingresponse>

Consultation Questions

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 find it difficult to comment on this as we have little feedback from our customers on their experience of the BT service to which we provide access through our use of WLR. There is a need for careful consideration of the costs and benefits of any change to the current service – we believe Ofcom would have a clearer view of the cost side of the equation if the sort of industry body that we have advocated in our covering letter were already in place.

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?

No. We have significant concerns with the approach to NGTR implementation that Ofcom proposes. We cannot understand why Ofcom is proposing to remove the obligation currently on BT under a Universal Service Condition (USC) to provide and fund the current text relay service. Instead, we consider that this USC obligation should continue to be used – extending it towards the proposed NGTR service if, following robust cost/benefit analysis, this is judged necessary.

The obligation around providing the text relay service to end customers under GC15 is easily met for all parties so long as at least one party has the obligation to provide the underlying wholesale service to other CPs. If Ofcom removes the obligation on BT to provide the service on a wholesale basis, then there is no certainty that BT will continue to make it available – as recognised in the consultation at paragraph 4.112 “... BT chose to sell this service to its competitors on a wholesale basis [emphasis added]”.

Having a material retail obligation but no sure source of wholesale support for that obligation would represent a significant barrier to entry to the retail market for smaller, “systemless” service providers who typically enter the market using high-level active wholesale products such as WLR. As Ofcom is aware, there are hundreds of retail CPs who have already entered the market on this basis and who are dependent on BT’s USC obligation to provide the relay service as part of WLR in order to fulfil their GC15 obligations. Their individual scale in the market would make it very difficult for them to set up, fund and obtain approval for their own NGTR service in respect of their relatively small customer bases.

Even if BT “chose” to continue providing the text relay service as this develops into NGTR, there is no guarantee that they would charge competitors for the service on a fair basis or provide it to the same standard and quality as they provide to their own customer base. It is precisely this sort of consideration that usually results in recognition of the need for provision of an essential “utility” type service to be regulated – especially where the economics of scale suggest that it is a natural monopoly. We would suggest that provision of any form of text relay service has the characteristics of a natural monopoly and that, with the removal of the USC obligation on BT, Ofcom would be moving BT’s de facto monopoly in provision of this underlying service from regulated to unregulated status.

It does not require much imagination, in a brief “forward look”, to see that this could cause problems in the market and for end customers. We expect that the community of end users of text relay and NGTR would also prefer to use a service that is regulated “at source” rather than merely via GC15, which puts obligations on parties that do not necessarily have the scale or scope in the market to provide credible alternative service provision in the event of any problems experienced by their customers in the service provided by an unregulated monopoly.

These concerns lead us to the view, in relation to Ofcom’s duties under section 3 of the Act (discussed at the end of section 4 of the consultation) that Ofcom has not adequately considered the effect of removing BT’s USC obligation on competition in the retail markets for fixed-line telephony. Competition appears in Ofcom’s principal duty and again in section 3.4:

(b) the desirability of promoting competition in relevant markets

Certainly, there is no discussion in the consultation about the effect of this step on smaller service providers using WLR. In our view, the regulatory burden that they could face as a result of Ofcom’s action is disproportionate and against the principles of better regulation that are also part of the framework within which Ofcom must make its decisions.

In 2008, Ofcom consulted³ on the question of telephone directory information obligations and regulations, which entailed a proposal to remove USC obligations on BT and KCOM in this area. The proposals in that consultation were supported by analysis of the extent of commercial availability of services such as the provision of printed directories. Ofcom concluded in that particular case that the commercial provision of printed local directories was then sufficient to ensure continued provision of these directories without the need to have specific USC condition requiring designated CPs to provide them. In contrast to the reasoning set out by Ofcom in that consultation, there has been no analysis of whether the wholesale service of text relay provision would continue to be provided if the relevant USC obligation was removed. Our view, as discussed above, is that this cannot be guaranteed and that, even if BT were to continue provision on an unregulated basis, there could be ongoing competition concerns about the situation.

The only circumstance in which we believe the removal of the current USC obligation on BT would be justified is one where the alternative governance arrangements, entailing all relevant CPs, had been set up as discussed in our covering letter. We do believe that such an industry body, mandated through an appropriately worded GC, would be a suitable way forward for Ofcom to ensure that all relevant CPs are involved in maintaining existing relay services, developing them as required and having their opportunity to influence the path of that development.

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

We have no idea what length of time would be reasonable for BT – or anyone else – to implement NGTR.

³ See <http://stakeholders.ofcom.org.uk/consultations/dirinfo/>

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.

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

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.

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 are not clear whether this proposed extension to the text relay service is required. It would appear that further discussion is required with infrastructure providers to assess costs as it appears likely that these would extend beyond the direct costs of providing the service and encompass costs for individual infrastructure providers as well. We believe that discussion should take place within an appropriate forum of relevant CPs as discussed in our covering letter.