

Code on Television Access Services

Statement by Ofcom

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Code on Television Access Services

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Ofcom published a draft Code on Television Access Services on 22 December 2003, setting out its proposals for giving effect to the requirements under the Communications Act 2003 on television broadcasters to provide subtitling, signing and audio description.

A significant number of bodies and individuals responded to the consultation, and we considered all the comments carefully before finalising the Code at Annex 1. We also took account of advice from the Advisory Committee on Older and Disabled People (Annex 3). Those comments which were not confidential have been posted on our website at

http://www.ofcom.org.uk/consultations/responses/tv_access_services/?a=87101.

Ofcom's response to those comments is summarised in Annex 2. We have also supplemented the regulatory impact assessment in the light of additional and updated information, and this is set out in Annex 4.

The annual targets applying to public service broadcasters are continued under the new Code. The Code also sets interim targets for the other broadcasters listed in Annex 5. Compliance with these targets is a licence obligation. However, we recognise that broadcasters will need time to make the necessary preparations, so these interim targets do not apply until 29 December 2004, the first anniversary of the entry into force of the legislation.

As the Code makes clear, we expect broadcasters to use reasonable endeavours to ensure that the subtitling, signing and audio description accompanying the programmes included in their services is made available to the greatest number of viewers in their homes (whether they receive their services by terrestrial signal, or by satellite or cable). We welcome the fact that several broadcasters have already taken appropriate steps in relation to those of their services broadcast by satellite, or have announced their intention to do so – in particular Sky and Five, as well as the BBC, ITV and Channel 4. Ofcom looks forward to working with them, with other broadcasters and with the cable system providers to secure similar provision in relation to their services on all platforms. We recognise that provision of audio description on cable systems will require significant preparation, and may not be achieved much before the end of 2005.

A copy of this document in a format suitable for use by screen readers has been posted on Ofcom's website. Ofcom can also provide documents to individuals in alternative formats (e.g. Braille, audiotape or large print) on request. We may also provide translations of documents into languages other than English. To request non-standard versions of documents, please contact the Ofcom Contact Centre at contact@ofcom.org.uk, by 'phone at 0845 456 or 020 7981 3554, or by textphone at 0845 456 3003. Please note that the time needed to produce an alternative format document will depend on the length of the document.

26 July 2004

Annex 1

Code on Television Access Services

Summary

1. This code sets out the requirements on subtitling, sign language and audio description ('television access services') that apply to television services licensed in accordance with the Communications Act 2003, the Broadcasting Act 1996, or the Broadcasting Act 1990. Ofcom notes that some broadcasters already provide television access services on a voluntary basis, and encourages broadcasters to do so where possible, even if they are not required to do so by this code.

Statutory provisions

2. Under Sections 303 to 305 of the Communications Act 2003 ('the Act'), Ofcom is required to draw up, and from time to time review and revise, a code giving guidance as to the extent to which television services should promote the understanding and enjoyment by persons who are deaf or hard of hearing, as well as those who are blind or partially sighted, or who have a dual sensory impairment (deafblind).
3. The code is to apply to licensed public service channels, digital television programme services, television licensable content services (TLCS), and restricted television services, as well any digital television programme services (DPS) provided by the Welsh Authority (including S4C Digital). The BBC Agreement requires the BBC to observe the code in respect of its principal public television services (BBCs 1, 2, 3, 4, CBBC, CBeebies, and News 24), subject to any exclusions agreed between Ofcom and the BBC having regard to the considerations set out in section 303(8). The code is not to apply to electronic programme guides provided under a TLCS or DPS licence, or to services comprising advertising (teleshopping), which is excluded from the definition of programme for the purpose of section 303.
4. Ofcom is required to set ten year targets for subtitling, signing and audio description, as well as five year targets for subtitling. It is also empowered to set other interim targets, and intends to do so in the way described below. The targets apply to the anniversary of the relevant date for the service in question.
5. The 'relevant date' for the purpose of determining the tenth anniversary of services is 1 January 1997 in the case of BBCs 1 and 2, 1 January 1998 for Channel 5, and 1 January 2000 for Channels 3 and 4 and S4C Digital. In the case of digital television programme services, the relevant date is the date on which the provision of that service began, and in the case of other television services, the date is the entry into force of the legislation, which is 29 December 2003. In the case of television services starting after 29 December 2003, the relevant date is the date on which provision of that service commenced. Ofcom may determine that a television service should be treated as a continuation of a previous service in order to prevent broadcasters from avoiding the requirements of this code by replacing one service with another.

6. Ofcom is also empowered to exclude certain types of programme or service from the requirement to provide television access services, or apply different targets to excluded programmes.

Targets

7. The statutory targets for broadcasters are expressed as percentages of the total number of hours of programming broadcast by the service, excluding advertisements. They rise from a low level to the ten-year targets prescribed by the Act, that is eighty per cent (80%) for subtitling, five per cent (5%) for signing and ten per cent (10%) for audio description. In the case of the BBC, Channel 3 and Channel 4, the relevant target for subtitling is ninety per cent (90%). The targets reflect the statutory requirement for subtitling to be applied at the rate of sixty per cent (60%) of non-excluded programmes from the fifth anniversary.
8. Licensed public service broadcasters and S4C which are already under an obligation to provide television access services are required to continue meeting the interim targets set in the Annex. The BBC is required to continue meeting the interim targets to which it has committed itself, also set out in the Annex. Other broadcasters are required to meet the targets set out in the Table below.

Table: interim annual targets for the provision of television access services with effect from the anniversary of the relevant date

Anniversary of relevant date	Subtitling	Signing	Audio description
First	10%	1%	2%
Second	10%	1%	4%
Third	35%	2%	6%
Fourth	35%	2%	8%
Fifth	60%	3%	10%
Sixth	60%	3%	10%
Seventh	70%	4%	10%
Eighth	70%	4%	10%
Ninth	70%	4%	10%
Tenth	80%	5%	10%

9. The targets and interim targets represent minimum obligations and apply in each year, from each anniversary referred to in the table and on a rolling basis starting each week from one week after the date to which the previous annual average has been calculated.

Excluded programmes

10. Ofcom may exclude programmes and services having regard, in particular, to:
- (a) the extent of the benefit which would be conferred by the provision of the assistance for disabled people in relation to the programmes;
 - (b) the size of the intended audience for the programmes;
 - (c) the number of persons who would be likely to benefit from the assistance and the extent of the likely benefit in each case;

- (d) the extent to which members of the intended audience for the programmes are resident in places outside the United Kingdom;
- (e) the technical difficulty of providing the assistance; and
- (f) the cost, in the context of the matters mentioned in paragraphs (a) to (e), of providing the assistance.

AUDIENCE BENEFIT

- 11. Ofcom considers that television services achieving an average audience share of all UK households over a 12 month period of 0.05% or more should be required to meet the targets, subject to passing an affordability threshold and not facing technical difficulties that are impracticable to surmount. Ofcom will publish quarterly figures derived from industry-wide data showing which channels meet or exceed this audience share.
- 12. The obligation will apply to channels that have achieved this share for four successive quarters, starting with the calendar year in which the fourth quarter figures are published. To aid planning for broadcasters not currently required by reason of audience share to provide television access services, Ofcom will carry out a mid year review based on the second quarter figures, and will advise broadcasters who seem likely to meet the annual average threshold.
- 13. In the event that the audience share of a television service currently required to provide television access services falls below the threshold in two successive quarters, Ofcom will notify the broadcaster that the obligation will discontinue at the end of the calendar year in question.
- 14. Television services aimed primarily at an overseas audience are exempt from television access service requirements.

TECHNICAL DIFFICULTY

- 15. Television access services need not be provided if Ofcom is satisfied that this would be impracticable on grounds of technical difficulty, including the following cases:
 - (a) audio description of music and news programmes and services, where there is little space within the dialogue/sound track to provide audio description, and less need. However, broadcasters are required to ensure that producers, editors and presenters are trained in techniques to describe the significance of images for the benefit of the blind and partially-sighted audience. Broadcasters are required to provide a statement of the training they are providing by 31 December 2004;
 - (b) provision of subtitling that is not supported by commercially-available set top boxes (e.g. Chinese or Urdu); and
 - (c) provision of subtitling or signing, where a service is broadcast with several different language feeds, making the choice of language for subtitling or signing problematic.

COST

16. Ofcom has determined costs per hour of providing programming with subtitling, signing and audio description. These have been used to calculate the costs of three levels of provision:
 - (a) Level One equates to the full current annual targets for subtitling, signing and audio description;
 - (b) Level Two equates to 66% of the current annual target for subtitling, as well as 100% of the targets for signing and audio description; and
 - (c) Level Three equates to 33% of the current annual target for subtitling, as well as 100% of the targets for signing and audio description.
17. In determining the applicable costs for each channel, Ofcom will have regard to the number of hours broadcast each day, the proportion of the schedule that is exempted from the provision of one or more access services, and the percentage of repeats.
18. Broadcasters whose services are not otherwise excluded will be required to achieve the highest Level of provision they can afford within a budget equating to 1% of their UK- derived qualifying revenue. 'Qualifying revenue' means the amount defined as such in the relevant licence, and includes 'multiplex revenue' attributable to digital programme service licensees. Only broadcasters unable to afford Level Three costs will be exempt from provision altogether on grounds of cost.
19. In determining the applicable amount of qualifying revenue, Ofcom will have regard to the most recent declarations of qualifying revenue.
20. In the case of channels in common ownership, Ofcom will determine which channels that are not otherwise excluded should provide television access services by averaging the total qualifying revenue across all services in common ownership. If this means that each of the channels would have an average qualifying revenue which would enable it to meet one of the three Levels at a cost of 1% or less of that average qualifying revenue, those channels will be required to provide the relevant Level of television access services. If the averaging of qualifying revenues would mean that none of the services would need to provide television access services, Ofcom will assess eligibility on the basis of the individual qualifying revenues attributable to each service.
21. Services which meet the 1% qualifying revenue threshold in the most recent declarations of qualifying revenue before the start of the next calendar year will be required to provide television access services at the appropriate level for the whole of the next calendar year.

OTHER EXCLUSIONS

22. Other television services excluded by section 303 of the Communications Act 2003 from the requirement to provide television access services are:
 - (a) those comprising advertising only, for example, a shopping channel;

- (b) electronic programme guides; and
- (c) those licensed outside the United Kingdom.

Changes in audience share and qualifying revenue

23. Ofcom will conduct a mid-year review of the audience share and qualifying revenue of channels licensed in the United Kingdom, based on the most recent four quarters for which corresponding data is available. Ofcom will notify the licensee, if on the basis of that review Ofcom considers that a channel is likely, in the following year, to become:
- (a) subject to a requirement to provide television access services;
 - (b) subject to a different Level of provision; or
 - (c) excluded from the requirement to provide television access services.
24. If a mid-year review indicates that the audience share of a television service providing television access services has fallen below 0.05% but remains at 0.04% or above, and this is confirmed by figures for the subsequent quarter, the licensee will be required to maintain the existing level of provision in the following year, against the targets applying in the current year. In the event that the average audience share remains below 0.05% in the following year, the requirement to provide television access services will cease at the end of that year, or earlier if the licensee demonstrates to Ofcom's satisfaction that continuation of the obligation would threaten the viability of the service.
25. If a service that ceases to be required to provide television access services subsequently regains the levels of audience share and / or qualifying revenue that would subject it to the requirement once more, the licensee will be required to resume provision at the appropriate Level described in paragraph 16 above. Ofcom will determine which level of annual target should apply in consultation with the licensee.
26. If, at any time, a licensee demonstrates to Ofcom's satisfaction that continuation of access service obligations would threaten the viability of its service, Ofcom may reduce, suspend or terminate those obligations.

Presentational and technical standards

27. Broadcasters are required to observe the appropriate standards set out in the following documents, which are available on Ofcom's website:
- (a) Guidance on Standards for Subtitling;
 - (b) Guidance on Standards for Sign Language on Television; and
 - (c) Guidance on Standards for Audio Description.
28. There are currently no technical standards for the means by which Television Access Services are to be made available to viewers. However, Ofcom expects television service providers to use reasonable endeavours to ensure that such

television access services can be accessed by the greatest number of viewers in their homes (whether they receive their services by terrestrial signal, or by satellite or cable).

Promotion of awareness

29. Ofcom requires television service providers to promote awareness of the availability of their television access services to potential users of the services by making available accurate and timely information to electronic programme guide (EPG) operators listing their services, and by providing similar information on their website. Ofcom will impose corresponding obligations on EPG operators through the code to be made under section 310 of the Act.
30. Ofcom will also expect television service providers to demonstrate that they are taking effective steps to publicise awareness of their television access services through other means, including periodic on-air announcements and information in publications aimed at persons likely to benefit from television access services.

Programming and scheduling

31. Ofcom expects that a majority of programming with subtitling and audio description will be scheduled at peak viewing times for each channel. However, as signing is currently only provided in open format, it is accepted that signed programmes may need to be shown outside peak viewing hours and recorded by viewers with hearing impairments. In selecting and scheduling programmes for which access services are to be provided, broadcasters should seek advice from disability groups about how best to maximise the benefits to the blind and those with visual impairments, to the deaf and hard of hearing, and to the deafblind. Ofcom encourages broadcasters not to seek to fulfil their obligations by scheduling multiple repeats of programmes, as this will detract from the benefit of providing access services to users.

Disability Discrimination Act

32. Broadcasters will need to have regard to their obligations under the Disability Discrimination Act 1995 to make reasonable adjustments in the delivery of services so as to make these accessible to disabled people and should seek their own advice on this.

Monitoring and compliance

32. Broadcasters to whom this code applies:
 - (a) are required to submit quarterly returns covering quarters starting from 1 January 2005, in the form and format to be notified separately by Ofcom. Ofcom will review the frequency of reports in the first periodic review of the code; and
 - (b) shall make and retain a recording in sound and vision in a form acceptable to Ofcom of every programme included in the service for a period of 60 days from the date of its broadcast, and provide a copy of the recording for examination and reproduction on request by Ofcom.

Review

33. This code is subject to periodic review. Ofcom expects to carry out a review within about 18-24 months of the date of publication.

Targets for public service broadcasters¹**Table 1: BBCs 1 & 2**

Service/ Year	2004	2005	2006	2007	2008
Subtitling	85%	90%	95%	97%	100%
Signing	3%	3%	4%	4%	5%
Audio description	6%	6%	8%	8%	10%

Table 2: BBCs 3, 4, CBBC, CBeebies, News 24

Service/ Year	2004	2005	2006	2007	2008
Subtitling	60%	70%	80%	90%	100%
Signing	3%	3%	4%	4%	5%
Audio description	6%	6%	8%	8%	10%

Table 3: Channel 3 regional licensees

Service/ Year	2004	2005	2006	2007	2008	2009	2010
Subtitling	83%	84%	85%	86%	88%	89%	90%
Signing	3%	3%	4%	4%	5%	5%	5%
Audio description	6%	6%	8%	8%	10%	10%	10%

Table 4: Channel 3 national licensee (GMTV)

Service/ Year	2004	2005	2006	2007	2008	2009	2010
Subtitling	58%	71%	79%	86%	88%	89%	90%
Signing	3%	3%	4%	4%	5%	5%	5%
Audio description	6%	6%	8%	8%	10%	10%	10%

Table 5: Channel 4

Service/ Year	2004	2005	2006	2007	2008	2009	2010
Subtitling	83%	84%	85%	86%	88%	89%	90%
Signing	3%	3%	4%	4%	5%	5%	5%
Audio description	6%	6%	8%	8%	10%	10%	10%

¹ The relevant twelve month period for audio description and signing on the BBC channels runs from 1 November, and for subtitling from 1 April. The relevant twelve month period for audio description and signing on ITV's regional services runs from 15 November. For the purposes of the tables above, a twelve-month period with more months in one calendar year than another is shown under the heading for that calendar year.

Table 6: Channel 5

Service/ Year	2004	2005	2006	2007	2008
Subtitling	60%	66%	72%	76%	80%
Signing	3%	3%	4%	4%	5%
Audio description	6%	6%	8%	8%	10%

Table 12: S4C Digital

Service/ Year	2005	2006	2007	2008	2009	2010
Subtitling	67%	69%	71%	73%	75%	80%
Signing	1%	1%	2%%	3%	4%%	5%
Audio description	6%	8%	8%	10%	10%	10%

Annex 2

Ofcom's response to consultation comments

1. This document summarises the main comments made by consultees (other than those who did not wish their comments to be made public), as well as Ofcom's response to those comments.

Respondents

2. Many disability groups responded, including Age Concern, the British Deaf Association (BDA), the Deaf Broadcasting Council (DBC), the Disability Rights Commission (DRC), Greater London Action on Disability (GLAD), Hearing Concern, the National Association of Deafened People (NADP), the National Deaf Children's Society (NCDS), the Royal National Institute for the Blind (RNIB), Royal National Institute for the Deaf (RNID), Sense, the Sign Language Channel Group (SLC), the Telecommunications Action Group (TAG) and the Wales Deaf Broadcasting Council (WDBC). A number of viewers with hearing and / or visual impairments also responded.
3. Broadcasters responding to the consultation included the BBC, ITV, Channel 4, Five (which simply said that the decision to provide audio description on its satellite service was highly appreciated), S4C, Music Choice, the National Geographic Channel (NGC), Trustar Global Medial Ltd (operator of The Golf Channel and YouTV), Bloomberg and UKTV. Other broadcasters submitted confidential responses.
4. In addition, there were submissions from television access service providers, including companies providing subtitling, signing and audio description services, including ITFC, IMS, Intelfax, WordWave and some others.

Question 1: Is overall audience share a reasonable proxy for the benefits to people with hearing or visual disabilities, or is there a practicable and better alternative based on objective data?

5. Amongst those who commented, there was general, although not universal, agreement that audience share was a reasonable proxy for audience benefits, or at least that there was no better proxy (BBC, Channel 4, NADP, NCDS, RNID, Sense, TAG, Trustar, UKTV, ITFC, Wordwave and other respondents). Sense also suggested that broadcasters provide access services for programmes likely to be of special benefit to disabled viewers, even if they were likely to attract a small audience share. RNIB said that audience share was not an appropriate measure of audience benefit for blind and partially-sighted people, except for channels with a low audience share. More work was needed to identify the type of programming for which audio description was needed to make them accessible.
6. Intelfax suggested that only services which failed both the audience benefit threshold and the affordability test should be exempted. IMS said that, as multi-channel platforms grow, audiences would continue to fragment, which

could lead to fewer channels providing access services. It advocated exempting only those channels that could not afford to provide access services, regardless of audience share.

Ofcom response

7. Having considered all the responses relevant to this question, Ofcom remains of the view that audience share within the UK is a suitable proxy for those factors relating to audience benefit set out in section 303(8)(a) to (c). We consider that it is reasonable to assume that people with sight and/or hearing impairments enjoy the same programmes as everybody else, and that audience share for television services is therefore a transparent, equitable and reasonable basis for selecting those channels that should provide television access services.
8. Accordingly, we believe that using audience share as one element of the mechanism for deciding which channels should provide access services (and which should not) helps to ensure that the approach is targeted at the needs of disabled viewers, is consistent with Parliament's clear intention that television access services should be provided across a wide range of television services, but is proportionate in excluding channels watched by very few people. In this connection, we note that the combined effect of Ofcom's proposals is to impose obligations on channels owned by large corporate entities such as Sky, Telewest, UKTV, Discovery and Viacom, and to exempt channels owned by smaller groups.
9. Nonetheless, as Ofcom explained in its consultation paper, we acknowledge that there would be merit in researching other ways of assessing the number of persons likely to benefit from television access services, and the extent of the likely benefit in each case. We have stated our intention to review the code in 18-24 months' time, and to carry out research in time for that review. In the meantime, we do not believe that it would be reasonable or proportionate to delay the publication of the code. We have amended the code to require broadcasters to have regard to the need to maximise the benefits of access services to disabled viewers, and to consult disability groups about how best this can be achieved within the framework of the code.
10. We consider that it would be unreasonable to require a channel to provide access services if it failed to meet either or both of the audience share or affordability tests. To do so would be to frustrate the purposes of the tests and risk requiring a channel that would provide few benefits to disabled viewers, or which could ill afford to provide access services, to do so.

Question 2: Is the audience share threshold of 0.05% appropriate as the basis for determining whether channels should, in principle, provide television access services, or should it be set higher or lower?

11. Most respondents agreed that the proposed audience share was appropriate, at least to start with (BBC, Channel 4, NCDS, RNID, Sense, Wordwave and other respondents). Some respondents agreed with the general proposition, but suggested exceptions. One television access service provider felt that on public interest grounds, exceptions should be made for the news channels that did not quite meet the 0.05% audience share threshold. IMS agreed that 1% was a reasonable percentage, subject to its view that affordability should be the sole criterion. RNID wanted Ofcom to encourage other broadcasters to

provide television access services on a voluntary basis. A number of respondents expressed concern that some well-known channels did not appear on the list. NGC said that the Code should make clear that the 0.05% audience share threshold applied to all UK households.

12. Whilst expressing understanding of the 0.05% threshold, the DBC disliked the notion that access should be driven by popularity alone, and called for Ofcom to encourage sharing of resources in order to achieve a reasonable distribution of access across channels. ITFC said that major news channels should not be excluded on grounds of audience share and qualifying revenue. Intelfax said that it did not understand the rationale for adopting an audience share threshold of 0.05%, given that it was inherent in a multi-channel universe that audiences would be fragmented. TAG, while understanding the economic considerations, was reluctant to endorse any threshold that would have the effect of exempting channels from access service obligations. NADP believed that Ofcom should be working towards a situation where there were no exclusions.
13. NGC said that the 0.05% share should not be lowered. Trustar and UKTV advocated increasing the threshold to 0.1%, on the grounds that very few disabled people would benefit from access to programmes on channels with an audience share of 0.05%; UKTV said that audio description and signing requirements should only be introduced when audience shares reached 0.25% or more. Another broadcaster said that, if audience share was accepted as a proxy for audience benefit, the threshold should be raised to 1% or 2%.

Ofcom response

14. The proposed audience share threshold of 0.05% was based on a judgement about what was appropriate, having regard to the views of Parliament and public expectations arising from debate about the issue during the passage of the Communications Act 2003. Responses to our consultation have reinforced our view that this threshold continues to command general support, that it strikes a reasonable balance and that there are no better arguments pointing to a different level. This threshold will mean that 70 or so channels accounting for over 95% of peak-time viewing will be required to provide access services. If the thresholds were set higher (say, 0.1%), then this would be reduced by more than ten channels, while a threshold of 1% would mean that, apart from PSB channels, only two channels would be required to provide access services in addition to the PSBs already doing so. We do not consider that this would meet the public policy objective of significantly broadening access to cable and satellite television. On the other hand, we consider that it would be disproportionate to require channels with audiences with an audience share smaller than 0.05% to provide access services, given the comparatively few disabled people who would benefit. The code has been amended to make clear that the audience share threshold is based upon all UK households.

Question 3: Is the approach to exempting services on grounds of technical difficulty appropriate?

15. Several respondents (IMS, ITFC, NADP, NCDS, RNID, Sense, TAG, WDBC) questioned the presumption in the draft code that subtitling of music and live discussion programmes need not be provided on grounds of technical

difficulty. Sense was not convinced that the audio description of music and news programmes would be too difficult, a view shared by RNIB. Another respondent (Mrs Vivienne Pozo) said that subtitling of songs added greatly to the enjoyment of such programming. A television access service provider said that it was perfectly possible to sign music, and that it was an important means for people using signing to access contemporary culture. DBC was opposed in general to 'pre-emptive' exemptions, and sought prior consultation before specific exemptions on grounds of technical difficulty were granted.

16. By contrast, some respondents (Crown Castle, Trustar and another broadcaster) welcomed the proposed exemptions, and pressed for these to be extended:
 - Crown Castle suggested that provision of access services for music, news and shopping channels would be technically difficult and disproportionately expensive, so they should be exempted.
 - Trustar felt that the costs of providing audio description and signing for sports programmes would be disproportionate for a small channel, and that blind and partially-sighted people would place greater value on audio description of drama and entertainment programming.
 - One broadcaster suggested that targets for signing in children's programmes should be lower than for adult programming, as signing could have a negative effect on non hearing-impaired viewers.
17. Some respondents (IMS, ITFC, RNID, Wordwave and one other) also claimed that, contrary to the suggestion in the consultation paper, subtitling in non Latin-based languages could be supported by set top boxes.
18. RNIB suggested that if, on cable platforms, capacity was an issue, priority should be given to providing audio description for public service broadcasters pending a solution covering all broadcasters.

Ofcom response

19. We acknowledge that it is practicable to subtitle live discussion programmes. The published version of the code reflects this. By the same token, we expect relevant music channels to use their best efforts to subtitle music programmes, and have removed the proposed exemption from the code. Following discussions with MTV (one of the main providers of music channels), they have raised the issue with the Music Publishers' Association.
20. As regards the other points raised by consultees:
 - we do not agree that sports programmes should be exempted from audio description, although we do agree that it would be appropriate for broadcasters to consult representative groups before determining what types of programmes to audio describe. While audio description of live sports events programmes may, in effect, require the provision of a complete commentary, we do not agree that it is technically impracticable, as a separate feed is required for audio description, regardless of whether that comprises a mix of original commentary plus audio description, or a completely separate commentary geared to the needs of people with visual impairments. It would be open to broadcasters, if they chose, to make arrangements to relay a radio commentary in order

to audio describe a sporting event. The alternative - of denying blind people any opportunity to enjoy televised sports programmes – would not be proportionate, or consistent with the spirit of the Act;

- we do not accept Crown Castle’s arguments that it is too technically difficult and hence disproportionately expensive to provide access services for music, news and shopping channels. As indicated above, we see no obstacle to the provision of subtitling, and the same arguments apply to signing of news programmes. Nevertheless, pure shopping channels are excluded from the requirement to provide access services as they constitute advertising, and so do not comprise programmes for the purposes of section 303 of the Act;
 - we do not agree that children’s programming should be exempted from signing requirements, as this would be discriminatory.
21. We have reviewed the practicability of delivering subtitling in non Latin-based languages to viewers using currently available set top boxes, and confirmed that the assumptions made in our consultation paper were correct. As viewers in the UK have no means of procuring suitable set top boxes that would support subtitling in non Latin-based languages, we have concluded that it would be disproportionate to require relevant broadcasters to provide such subtitling. However, we shall watch to see if circumstances change.
22. Ofcom is discussing with cable operators the technical and other issues that need to be overcome in order to facilitate audio description on cable platforms. Accordingly, it would be premature to consider prioritising audio description on some channels over others.

Question 4: Is qualifying revenue a reasonable proxy for affordability on the part of television service providers, or is there a practicable and better alternative based on objective data?

23. Several respondents (IMS, ITFC, Intelfax, Sense, Channel 4 and another broadcaster) agreed, explicitly or implicitly, that it was reasonable to assess the extent to which broadcasters could afford to provide access services. A few disability organisations disagreed - RNIB said that the only acceptable criterion for determining whether access services should be provided should be the whether such services were required to benefit from the type of programming broadcast. NADP’s view was that exclusions on grounds of affordability should have no place in a society striving for equality of access.
24. There was less consensus on the mechanism for assessing affordability. TAG agreed that it was a reasonable proxy, but inclined to the view that access services should be seen as a mandatory part of programme provision. Some respondents (IMS, Intelfax, Sense) condoned the use of qualifying revenue as a proxy for affordability, although few felt that it was ideal. NCDS and Sense wanted to see qualifying revenue figures published, while Intelfax suggested that all channels should have to spend 1% of their qualifying revenue on access services, regardless of audiences sizes. Two other broadcasters said that they had no comments or had no alternative to suggest. NGC said it should be made clear that only qualifying revenue derived from the UK was relevant.

25. UKTV and another broadcaster argued that qualifying revenue was not an appropriate means for measuring affordability, and that regardless of the difficulty in aggregating figures and reporting, profitability must be the most appropriate measurement. UKTV suggested that setting a proportion of operating costs would be an alternative.

Ofcom response

26. We believe that it is necessary to consider the extent to which broadcasters can afford to provide access services before imposing obligations to provide them. It would be disproportionate to force channels to leave the market if they could not afford to provide such services. It would also be against the interests of consumers – both disabled and others – since it would diminish choice, and eliminate the possibility that such channels would be able to afford to provide access services in future.
27. We also remain of the view that it would not be practicable, at least in the short term, to base assessments of affordability on profitability. As the consultation paper noted, profit figures are not prepared by different companies on a consistent basis. It would also be possible for broadcasters to assess operating costs on a different basis. While it would be possible to overcome this by requiring broadcasters to make declarations of profit or operating costs on a comparable basis especially for this purpose, this approach would require very intrusive and detailed regulation, and would take a considerable time to establish, increasing the regulatory burden on broadcasters, and significantly delaying the publication of the code, to the disbenefit of disabled viewers. We consider that it makes sense, pending the first review, to use a consistent and available measure like qualifying revenue. Accordingly, we shall use qualifying revenue to determine requirements to be imposed in 2005. We agree that the code should make clear that only qualifying revenue from the UK is relevant, and have amended the code to make this clear. We shall be seeking views on a proposal to use a slightly different measure in due course – relevant turnover – in the context of a consultation on charging principles. In the meantime, it would not be practicable to publish qualifying revenue figures, as these are commercially confidential.

Question 5: Assuming it is appropriate, is the proposed limit on expenditure for access services of 1% of qualifying revenue reasonable, or should the limit be higher or lower?

28. Channel 4 agreed, provided the actual costs of providing access services were borne in mind. RNID criticised the adoption of 1% as arbitrary and negative, suggesting that it could incentivise broadcasters to seek high quotes for services, in order to bring their costs above the ceiling. If, nonetheless, this approach was adopted, RNID suggested a limit of 2% instead. Sense agreed, but did not want this to lead to further exemptions. RNIB reluctantly endorsed 1% in 'very clearly defined circumstances' but did not say what these might be. IMS noted that there was no solid financial justification for the figure, but did not proffer an alternative approach.
29. NGC welcomed the proposal for a 1% limit, but sought assurances that qualifying revenues from channels aimed at non-UK audiences should be excluded. However, some broadcasters sought a lower limit on the grounds that 1% would represent a disproportionate financial burden. One suggested

somewhere between 0.5% and 0.65%. Another said that 1% represented a significant proportion of a business's revenue, and that it should be regarded as an upper limit, with scope for reductions. Another broadcaster reiterated its view that qualifying revenue was not an appropriate measure, and suggested a limit of 1% of profitability.

Ofcom response

30. Ofcom considered various alternative figures, in the light of the share of profits that the percentage of qualifying revenue would represent, the impact that this would have on the number of channels required to provide access services, and the Government's public policy objective that there should be a significant broadening of access for disabled viewers. Assuming profits of 5% on revenues, we concluded that a ceiling of 1% of qualifying revenues would be reasonable, as this would account for 20% of profits. At the same time, it would ensure that there was a significant increase in the number of broadcasters required to provide access services. We then tested the proposal for a limit of 1% of qualifying revenue in pre-consultation meetings with broadcasters and disability groups in September 2003. Although we invited views on this and other aspects of the initial proposals, we did not receive any substantive alternative proposals, either at the meetings, or in the period before the consultation document was published. We therefore consulted on the basis of a limit of 1% of expenditure. While we understand that some broadcasters would prefer the ceiling to be lower, we do not consider that the arguments advanced demonstrate that our proposals would impose a disproportionate burden. We do not agree that such a limit will incentivise broadcasters to seek high quotes for such services; in assessing the likely costs, we have assumed an average figure, even though the actual costs for broadcasters may vary somewhat. This should incentivise broadcasters to seek the most cost-effective solutions, as we shall not be exempting broadcasters whose costs are above the level assumed. We agree that the code should make clear that qualifying revenue from non-UK channels should be excluded, and it has been amended to make this clear.

Question 6: Does the proposal to set interim targets at the end of years one and five strike the right balance between securing immediate and growing benefits for people with disabilities, and allowing flexibility for broadcasters to shoulder this new regulatory burden?

31. Responses from disability groups (NCDS, RNIB, RNID, TAG), people with disabilities and providers of television access services (IMS, Intelfax, ITFC) all pressed for annually-increasing targets for television access services, rather than the stepped approach proposed in the consultation paper. Both the RNIB and RNID expressed concern that the proposals would not lead to the dramatic increase in the access services they had been lead to believe would result from the Communications Act, and were contrary to the intention of Parliament. Intelfax said that the lack of annual targets would simply complicate Ofcom's task in determining whether channels were meeting their minimum targets. In relation to signing, a television access service provider advocated raising targets at two-year intervals, as had been done by the ITC. However, the DBC said that interim targets at the end of years one and five struck the right balance, subject to the proviso that these were seen as minimum amounts. It said that the targets should rise at a steady rather than steep rate, in order to allow for the build-up of access provisions and the training of skilled staff.

32. Some broadcasters (Channel 4, UKTV and one other) welcomed the flexibility that fewer interim targets would provide. However, one broadcaster criticised the implied threat that Ofcom would intervene if broadcasters failed over time voluntarily to increase the amount of access services offered above the minimum targets. The BBC noted that, as proposed by the draft code, it would continue to meet its annual interim targets. It would also offer some subtitling on BBC Parliament, although this did not achieve the proposed audience share threshold of 0.05%.
33. Pointing to the fact that, historically, very few people had been able to benefit from audio description because of the lack of suitable receivers, S4C wanted the audio description targets suspended until suitable equipment had been taken up by potential users. It also said that, given the very small numbers of Welsh speakers using sign language (as distinct from BSL users) and problems in finding suitably qualified signers, S4C would face particular difficulties in significantly expanding the amount of signed programming. It suggested that Welsh language programming be excluded from signing requirements. S4C also said that it would face rights problems if programmes made or dubbed in Welsh had to be subtitled in English, as it had relied on the fact that the programmes in Welsh would be largely inaccessible to audiences outside Wales to avoid the need to pay for encryption.

Ofcom response

34. In the light of comments from consultees, and advice from Ofcom's Advisory Committee on Older and Disabled People (ACODP), Ofcom agrees that simply setting interim targets at the ends of years one and five would not provide the necessary assurances of a smooth progression, particularly in the light of the reasonable point made by one broadcaster that it is not appropriate for Ofcom to imply that regulatory intervention would be forthcoming even if broadcasters simply met the interim targets. In addition, Ofcom considers that there is a good case for a faster increase in the targets for audio description, given that it can now be provided both through satellite and digital terrestrial broadcasts.
35. Accordingly, the code now provides for interim targets for subtitling and signing to be set at the end of years one, three, five and seven. In respect of audio description, Ofcom has set annual interim targets rising to the statutory target of 10% of non-excluded programmes by the end of year five. This level is then to be maintained up to the end of year ten and beyond, subject to any decision that the Secretary of State may take to increase the statutory target.
36. However, given that many households in Wales are able to receive audio described programmes broadcast by satellite or DTT (in the latter case, through set top boxes which have become commercially available during the consultation period), we do not consider that it would be appropriate to suspend audio description targets applying to S4C. Ofcom accepts that S4C faces particular problems in signing problems, but believes that these could be mitigated over time if S4C encouraged the training of Welsh speakers in sign language (possibly in conjunction with other broadcasters in Wales), to avoid the delay and expense of sending programmes to England to be signed. As regards subtitling, Ofcom notes that S4C is able to meet its current obligations, and is prepared to discuss any difficulties that it may encounter as the quota increases. As S4C points out, its digital-only channel (S4C2)

would not be required to provide access services, as it does not meet the audience share threshold.

Question 7: Is it appropriate to set lower level requirements for those broadcasters deemed unable to meet the full requirements of Level One, or should such broadcasters be exempted completely?

37. Disability groups tended to favour approaches which broadened or increased the requirements placed upon broadcasters. NADP and TAG said that the full requirements should be applied to all broadcasters; NCDS agreed, except where specific types of programming were exempted. DBC said that channels should share resources if necessary to achieve a reasonable distribution of access across popularly used channels. RNIB saw no value in having different levels of regulation for access services; RNID agreed, at least in the early years of the transition period. Sense said that if channels were unable to meet the full requirements of Level One, they should do as much as they could within the limit of 1% of qualifying revenue.
38. IMS said that the fact that many channels, including those listed in Levels Two and Three of Annex C to the consultation paper, provided subtitling on a voluntary basis indicated that it was not the regulatory burden that Ofcom implied. It also pointed out that some channels had been obliged in the recent past to provide access services by the rules applying to DPS licensees prior to the entry into force of the Act, and saw no reason why they should not continue to do so. ITFC agreed that different requirements were appropriate, but said that the practical implications needed to be made clear in the code.
39. Broadcasters tended to favour approaches which would diminish or remove the requirements on channels which were not required to meet Level One obligations. Music Choice felt that it was inappropriate for broadcasters providing Level Two or Level Three services to have to meet the targets for signing and audio description in full; Tristar also wanted more flexibility in this area. UKTV suggested that Level Two and Three requirements be focussed exclusively on subtitling, on the grounds that it was cheaper and that more people would benefit. Another broadcaster felt that the different levels added unnecessarily to the complexity of the scheme, and would make monitoring complicated. It advocated the exclusion of all channels where the exempted programmes would constitute at least 50% of output. One respondent suggested that if broadcasters could demonstrate that they were unable to afford the requirements, they should be able to opt out, with Ofcom retaining the right to carry out audits in cases of doubt. Crown Castle said the provision of lower level services could be disappointing and confusing to the target audience, and that only channels able to provide Level One services should be required to provide access services. Channel 4 queried why Levels Two and Three provided for audio description and signing obligations to be met in full, given that many more people could benefit from subtitling.

Ofcom response

40. Ofcom remains of the view that, while it is reasonable to require broadcasters to spend up to 1% of their qualifying revenues on access services, it would not be appropriate to require more. On this basis, the only alternative to imposing lower levels requirements would be to exempt altogether those channels which could not meet the requirements in full. Ofcom does not think that this would be beneficial to disabled viewers. While Ofcom recognises that

some channels have chosen to provide access services for commercial reasons (particularly subtitling), it considers that it would not be reasonable to treat such channels differently from others.

41. As the financial circumstances of a channel may change between one mid-year review and another, Ofcom considers it prudent to provide that, if a broadcaster can demonstrate to Ofcom's satisfaction that continuing provision of access services would jeopardise the viability of the service, it may modify, suspend or cancel the obligations. The code has been amended to reflect this.
42. Given that people using subtitling benefit from much more programming than those using signing or audio description, Ofcom considers it reasonable that broadcasters who cannot afford to meet the targets in full, but who can make a useful contribution (e.g. Level Two or Level Three), should be required to give priority to audio description and signing.

Question 8: Is it appropriate to assess average qualifying revenues across channels in common ownership, where this would deliver more channels with access services, while retaining the option of assessing channels on an individual basis if this would be more advantageous to disabled audiences?

43. Disability groups (NCDS, RNIB, RNID, Sense, TAG) and access service providers (IMS, ITFC) supported this approach, while broadcasters (Channel 4, Crown Castle, UKTV, Trustar and two other broadcasters) argued that channels should be assessed on an individual basis. Another broadcaster said that the two possible approaches represented double jeopardy for broadcasters; Ofcom should choose one or the other in order to achieve simplicity or consistency. UKTV said that averaging qualifying revenue across different channels was not an appropriate approach; consistent with the thrust of the code, a channel should only be required to provide access services if it was in a position to do so in isolation. UKTV and one other broadcaster said that Ofcom's approach could render individual channels uneconomic, leading to closure. This would be inconsistent with Ofcom's duty to secure the availability of a wide range of television services.

Ofcom response

44. We remain of the view that it is legitimate for Ofcom to consider whether the owners of a licence for a service which meets the audience share test are likely to be able to afford to provide access services, having regard to revenues from all their licences for services with an audience share which meet the same test, and their ability to secure preferential rates for access services by purchasing these centrally. It is a matter for the owners of licensees to determine how they will apportion costs for access services amongst their licences. It is reasonable to expect that all channels will be loss-making for a period after they are started, and must eventually demonstrate a profit or close. Ofcom accepts that the imposition of extra costs may extend the period during which a new channel is loss-making, and could increase the attrition rate amongst new channels, or even discourage some channel launches. Ofcom considers that, in most cases, television companies will be reluctant to close channels until it becomes clear that, even with the additional costs, they have little prospect of becoming profitable. Given the significant number of competing channels, Ofcom does not

consider that such closures, or decisions not to enter the market, would be likely to have a significant effect upon consumer choice. However, Ofcom does accept that its proposals will impose extra costs upon shareholders – indeed, this is explicit in the Government’s own regulatory impact assessment.

Question 9: Is the mechanism proposed for mid-year reviews of changes in audience share and qualifying revenue a reasonable means of identifying the need for consequential changes, or is there a better alternative?

45. There was general support (DBC, IMS, ITFC, NADP, NCDS, RNID, Sense, TAG and a broadcaster) for an annual review. Channel 4 said that it would be important to look at data for a full year. RNID and ITFC also urged Ofcom to keep the costs of providing access services under continual review. Trustar expressed concern that the notice period for channels required to provide access services as a result of the mid-term review was not long enough to equip and train the relevant staff; it asked for at least 12 months’ notice.
46. One broadcaster said that an annual review would result in constantly changing access service targets, which would create uncertainty and confusion amongst broadcasters, and place a heavy burden both on them and upon Ofcom. It advocated reviews every 3 to 5 years instead to create some stability for planning purposes. Crown Castle also suggested less frequent reviews.
47. The same broadcaster also asked that the code clarify what impact if any, a hiatus in the provision of access services due to a reduction in audience share would have on the ‘relevant date’ (i.e. the start of the ten year transition period to the minimum targets specified in section 303 of the Act).

Ofcom response

48. We note that most of those who commented supported an annual review. We consider that it would be appropriate, given that this is a dynamic market, so that audience shares and qualifying revenue may change significantly and that new channels may be launched relatively frequently. The code says that Ofcom will carry out a review having regard to financial and audience share data for the most recent period of 12 months for which complete data is available. We will carry out a review each year during March and April, using financial returns for the 12 months ending in December, and audience share figures for the corresponding period. Any changes to obligations stemming from the review would come into effect the following January, allowing broadcasters several months to make the necessary changes.
49. We see no reason why annual reviews of the audience share and qualifying revenue should result in constantly changing targets. The targets will remain fixed – the review will only affect the few channels whose qualifying revenue and / or audience share rise above or fall below the relevant thresholds, and who will consequently need to provide access services, or may cease to do so.
50. The relevant date for the start of the ten year period is defined by the Act in section 303 of the Act, and would not be affected by any hiatus in provision during that period. The same is true of the statutory 60% target for subtitling by the fifth anniversary of the relevant date. As regards interim targets for

signing and audio description, the code explains that, if a television channel is required to resume providing access services, the level of the interim target will be determined by Ofcom in consultation with the channel provider.

Question 10: Are the provisions of the draft code relating to the provision of information and publicity about television access services appropriate?

51. There was general support (BBC, IMS, ITFC, NADP, NCDS, RNID, Sense, TAG, UKTV and another broadcaster) for the proposals to require broadcasters to provide information about the television access services, and publicise their availability. UKTV pointed out that it would not be practicable to require licensees to achieve this in listing magazines, many of which devoted little space to programme details, and which omitted information on some channels altogether. Among specific suggestions made by the RNIB were the use of consistent terminology for types of access service, accurate identification in listings of programmes that carried access services, provision of information in different formats (e.g. large print, Braille), and an audible cue or spoken reference to alert viewers to audio-described programme.

Ofcom response

52. Ofcom welcomes the steps already taken by broadcasters and EPG providers to publicise the availability of television access services, and looks forward to more being done once the code is in force.

Other comments

Scheduling

53. WDBC strongly objected to the provision in the draft code sanctioning the broadcasting of signed programmes outside peak-time hours – it was highly unreasonable, they said, for deaf people to be expected to record programmes for later viewing. RNID suggested that it would not be unreasonable for broadcasters to show short amounts of signed programming during daytime hours, and asked Ofcom not to discourage this. They also pointed out that peak viewing times for channels varied according to the audiences served. The DBC agreed and called for creative solutions to allow full access to certain live programmes.
54. Intelfax suggested that broadcasters might face practical difficulties in scheduling the majority of audio description at peak viewing times, particularly if there was a disproportionately high percentage of live programming at these times. Channel 4 said that, while much of its audio described programming was shown at peak viewing times, it also wanted to cater for the needs of particular audiences, such as young children.

Ofcom response

55. Ofcom is aware that some broadcasters already show programming in day-time and shoulder-peak slots, and does not wish to discourage this. The code says merely that it may be necessary to broadcast signed programmes outside peak-times, but does not mandate this. However, given that viewers who do not require signing find in-vision signing distracting, and that showing programmes in peak-time could result in loss of audience share and advertising revenue for broadcasters, Ofcom does not consider that it would

be appropriate to require day-time or peak-time slots for such programmes. However, Ofcom will keep the code under review in the light of research into ways of providing signing that can be superimposed on television pictures at the option of the viewer.

56. Ofcom remains of the view that it is reasonable to ask broadcasters to schedule the majority of their audio described programmes at peak time viewing times for their channels, given that overall requirements remain low. Ofcom also considers that, in selecting programmes for which access services are to be provided, broadcasters should have regard to the likely benefits to the intended audience, in the light of the relative popularity of the programmes for audiences as a whole, and the extent to which appreciation of the programme by people with particular disabilities depends on the provision of relevant access services. The code has been amended to reflect this.

Repeats

57. Sense asked for clarity over whether repeats of programmes, particularly those repeated more than once, would count towards quotas, particularly in view of the very low quotas for some access services. RNIB pressed for frequent repeats to be avoided. In view of the low statutory target for signed programmes (5%), a television access service provider argued that it should apply to new content only. It said that the assumption in the regulatory impact assessment that channels would repeat 50% of their content was far too high, and was discriminatory. It would allow channels to meet their obligations by signing far fewer than 5% of programmes.

Ofcom response

58. Ofcom is sympathetic to the argument that frequent repeats should not be allowed to count towards the targets, particularly for programmes which are signed or audio described, given that the statutory targets are much lower than for subtitling. However, we do not consider that the Communications Act would permit this. Section 303 of the Act sets overall targets in relation to the proportion of the service to be accompanied by access services, regardless of what proportion of the service comprises repeats. Nonetheless, we do consider that it would be appropriate in the light of the duty imposed upon Ofcom by sub-section (1)² to encourage broadcasters not to meet their obligations by scheduling multiple repeats, and we have amended the code to make this point.
59. The repeat rate assumed in the context of the consultation paper was a conservative view on the basis of information then available. With the benefit of returns from licensees in respect of 2003 received earlier this year, we have been able to use actual repeat rates for many channels and determine proxy repeat rates (by reference to the nature of the channel) for the remainder. We shall use these figures as part of the formula for establishing the cost for each channel of meeting television access service obligations.

² 'It shall be the duty of Ofcom to draw up ... a code giving guidance as to .. the extent to which services .. should promote the understanding and enjoyment by [people with hearing and/or visual impairments] .. and the means by which such understanding and enjoyment should be promoted.'

Exemptions

60. Noting that Ofcom assessed the financial benefits to people with disabilities as being substantially greater than the costs to broadcasters, the RNID urged Ofcom to reconsider its proposals to allow exemptions.
61. Other suggestions included:
- provision for access services to accompany programme promotions, as this provides useful information to viewers (Mrs Pozo);
 - provision for access services to accompany news channels aimed overseas, such as BBC World (Mrs Pozo), on the grounds that this would benefit UK citizens overseas. By contrast, another broadcaster sought assurances that channels intended for overseas audiences would be exempted from the requirements of the code;
 - the exemption of programming aimed at pre-school audiences, from access service requirements (a broadcaster);
 - giving priority to signing for schools programmes (NCDS); and
 - exemption for Bloomberg's financial news channel on grounds of technical difficulty and audience size (Bloomberg); and
 - the removal of the blanket exclusion of shopping channels (NCDS, RNID).

Ofcom response

62. Ofcom:
- considers that the exemptions it has proposed are justified in the light of the financial and practical impacts that removing the exemptions would have on broadcasters, for the reasons set out in response to the points raised on questions 3, 4, 5 and 7. In calculating the costs of providing access services for each channel, Ofcom will take account of the proportion of the schedule that comprises exempted programming for one or more access service;
 - notes that programme promotions are not excluded from the definition of programmes, so there is no obstacle to broadcasters providing access services in relation to them;
 - does not consider that the relatively small number of UK citizens who might watch channels aimed at overseas audiences would justify requiring those channels to provide access services;
 - considers that it would be discriminatory to exempt programming aimed at particular demographic segments from providing access services, or to give priority to particular segments (such as school children). We understand that at least one of the two providers of school programming will provide tapes comprising signed versions of schools programmes at no additional charge to any school requesting them;
 - notes that on audience share grounds, Bloomberg will not be required to provide television access services; and
 - notes that shopping channels that are exclusively devoted to advertising products cannot be required to provide access services, as their content is not defined as 'programmes' for the purposes of this section of the Act. However, the same does not apply to mixed genre channels.

Interactive services

63. RNIB said that requirements for audio description should be assessed in the same way for interactive services as for any other channel.

Ofcom response

64. As interactive services such as those available in conjunction with Sky News or BBC News 24 are broadcast (albeit in a continuous loop), they would in principle attract obligations to provide access services. In practice, it is clear from audience share data that none of the interactive services (including those offered by other providers) would achieve the requisite audience share to justify provision of access services. In the unlikely event that such services did achieve a sufficient audience share prior to the next review, Ofcom would need to consider how difficult it would be to provide accompanying access services in the light of the circumstances prevailing at the time. Against this background, we see no need formally to exempt interactive services from the provision of access services at this stage.

Technical standards

65. RNIB, RNID and a television access service provider said that it was essential for broadcasters to comply with the existing technical standards on the preparation of audio description, signing and subtitling. The BBC said that they would recommend the use of DVB subtitling when the technical standards were reviewed, on the grounds that this could deliver a consistent and easily read image and that the bit-rate was in practice more efficient. Another broadcaster noted that there were a variety of different ways of meeting the different obligations (e.g. audio description) on different platforms, and urged Ofcom to work with the industry to establish the most cost effective solution for the business and the end user. UKTV said that it was concerned that it would be obliged to deliver audio description by squeezing two audio tracks into the space currently occupied by one.

Ofcom response

66. Ofcom has made clear that broadcasters should comply with existing technical standards on the preparation of access services. It will invite comments on these standards when they are next reviewed. Ofcom recognises that there are a variety of different approaches to securing the delivery of access services (e.g. different technical means of delivering both subtitling and audio description), but considers that the choice of these should be a matter of commercial judgement for broadcasters in consultation with platform providers. This would include decisions by broadcasters about whether to purchase additional capacity for audio description, or to use existing capacity to compress audio tracks.

Audio description standards

67. RNIB was encouraged by Ofcom's proposal that broadcasters should use reasonable endeavours to ensure that access services could be used by the greatest number of viewers in their homes regardless of whether they received television by cable, satellite or digital terrestrial signals. However, it does not want Ofcom to prescribe what system should be used. Channel 4 hoped that Ofcom would encourage manufacturers of digital receiving equipment to incorporate technology that would enable use of the more spectrum-efficient and versatile receiver-mix version of audio description.

ITFC said that Ofcom should make clear that this was the preferred version where practicable.

Ofcom response

68. Ofcom does not propose to prescribe which system should be used to deliver access services to viewers in their homes, but considers that it would not be reasonable for broadcasters to use systems which do not enable the greatest number of viewers to use access services.

Training

69. RNIB said that, in addition to providing television access services, there were other measures that could be adopted to make programming more accessible, including visual awareness training for producers and presenters to make sure that key information provided on screen (e.g. contact details) was also provided verbally.

Ofcom response

70. The code already provides that licensees are required to ensure that producers, editors and presenters are trained in techniques to describe the significance of film footage for the benefit of the blind and partially-sighted audience. The code says that licensees should prepare a statement of this training by 31 December 2004.

Reporting and monitoring

71. RNIB said that it was essential that Ofcom monitored issues related to audio description, including the balance of programming across genres and both peak and non-peak viewing hours, the amount of repeats, and compliance with technical standards. NCDS and RNID also wanted effective monitoring of compliance with the code.

Ofcom response

72. We shall require broadcasters to report regularly on the amount of access services they are providing, to keep records of the programmes for which access services are provided, and to keep recordings for a period of 60 days so that we can check if necessary whether they are complying with their obligations under the code. However, given the large number of television channels that will now be required to provide access services, we shall normally only monitor the provision of those services when we suspect that there may be problems. We encourage viewers (and organisations representing their interests) to complain to the relevant broadcasters if they are dissatisfied with the access services accompanying a particular problem. If they are not satisfied with the response, Ofcom will consider what further action would be appropriate.

Reviews

73. RNIB asked for an assurance that there would be periodic reviews, with a broad remit covering issues such as industry practice, technological and market developments, and levels of provision. The review should look also at the quality of provision; it considers that broadcasters too often opt for audio

description of programmes that require minimal audio description but help to fulfil the quota.

Ofcom response

74. We have amended the code to make it clear that it is subject to periodic review. The review will cover all relevant matters. The code also requires broadcasters to consult disability groups about how best to maximise the benefit to disabled audiences when selecting programmes to be accompanied by access services.

Annex 3

Recommendations of the Advisory Committee on Older & Disabled Persons

15 June 2004

David Currie
Chair
Ofcom
Riverside House
2a Southwark Bridge Road
London
SE1 9HA

Dear David,

Television Access Services Code

I am writing to you ahead of the Ofcom Board's consideration of the Television Access Services Code to draw your attention to the recommendations made by Ofcom's Advisory Committee on Older and Disabled People on the draft code at our meeting on 6 May 2004.

The Advisory Committee made the following recommendations:

Recommendation 1: Annual targets

- The annual targets for the five PSB channels should continue as planned and there should be biannual targets for the digital channels that were being required to provide services for the first time, in years 1, 3, 5, 7 and 10. As ten-year targets for audio description were only 10%, these should be 'front loaded' or 'rebalanced' to require provision of a higher proportion of accessible programmes in the early years. The Committee would like to see Parliament revisit these targets given advances in technology since the Communications Act was passed. Broadcasters that could not afford to meet the full range of targets should nevertheless be encouraged to take steps to improve access.

Recommendation 2: Costs

- Ofcom should take full account of the current costs of access services when it redrafts the initial code. The Committee expected that this would increase the number of channels required to provide services.

Recommendation 3: Parliament

- When drafting the code Ofcom should take account of all the assurances given by Ministers when certain prescriptive recommendations were

withdrawn during the passage of the Communications Bill. The code should be broadly in line with Parliament's expectations.

Recommendation 4: Scheduling of accessible programmes

- There should be greater access to programmes with subtitling, signing and audio description at peak times. The Committee was aware that peak times could differ from channel to channel. A significant number of older and disabled people were at home and watched television during the day. The focus on peak viewing should not be at the exclusion of other broadcasts and broadcasters should be sensitive to the access requirements of people who watched their programmes at different times of the day.

Recommendation 5: People with dual sensory impairment

- The code should make specific reference to deafblind people to signal that it was a distinctive disability with particular access requirements.

The Board will have by now received the full minutes of our meeting where this issue is discussed, so you will be able to place the recommendations in the context of the discussion that took place.

As you know, this is an issue of great significance to disabled people and the Advisory Committee hopes its recommendations will assist the Board as you make decisions on the final code. We look forward to reading the report of your meeting and hearing the outcome of your deliberations.

Mike Whitlam
Chair, Ofcom Advisory Committee on Older and Disabled People

Annex 4

Regulatory impact assessment

1. Ofcom invited comments on the preliminary regulatory impact assessment in the consultation document. In the light of those comments and further information about costs, Ofcom has revised the assessment. The assessment looks at the impact in the period up to the first review, on the assumption that this takes place 24 months after the code is published. The review will look at the regulatory impact of any proposed changes, as well as changes driven by movements in costs.
2. In preparing the assessment, and as required by section 7 of the Communications Act 2003, Ofcom has had regard to such general guidance as it considers appropriate, including related Cabinet Office guidance. While we take the Cabinet Office guidelines into account, Ofcom reserves the right to prepare regulatory impact assessments in the manner it considers appropriate to the circumstances of each case. In this case, we do not consider that it is necessary to carry out a Competition Assessment or Small Firms' Impact Test on the lines set out in the Cabinet Office guidelines, as Ofcom's proposals already take account of the need for proportionality when imposing regulatory burdens that might hinder competition or bear particularly heavily on small firms.

Policy objective

3. The objective is to give effect to the statutory obligations on Ofcom to issue guidance on the measures (including subtitling, signing and audio describing a proportion of their programmes) that television service providers should take to help people with visual and / or hearing impairments to understand and enjoy their programmes. The Government's own regulatory impact assessment made clear that it wanted to extend requirements for subtitling, signing and audio description to cable and satellite broadcasters to help broaden access to cultural and recreational resources, and to promote greater social inclusion³. Ministers made clear that they expected this to lead to a dramatic increase in the amount of subtitling, signing and audio description⁴.
4. Parliament approved the Government's legislative proposals. Accordingly, Ofcom does not consider it either necessary or appropriate that it should seek to demonstrate that the policy is justified because the benefits outweigh the costs. Rather, Ofcom considers that its task is to give effect to the legislation in a manner which is proportionate. It is for this reason that Ofcom intends to require channels to provide access services only if they pass an audience benefit test and the qualifying revenue threshold. Nonetheless, Ofcom has set out its view on the the range of benefits arising from the different options, as well as a possible approach to valuing them.

³ Paragraphs 57-58, Regulatory impact assessment (TV & Radio Services), DCMS, June 2003. http://www.communicationsbill.gov.uk/pdf/tv_radio_assessment_update.pdf.

⁴ Communications Bill, Consideration of amendments on Report, 1 July 2003, Column 844., Hansard.

Risk assessment

5. Many cable and satellite broadcasters already provide subtitling on a voluntary basis, although few provide audio description and signing. Ofcom is also aware of broadcasters who do not intend to provide such services unless required to do so. Without the imposition of obligations through the code, it is likely that that voluntary provision will be confined largely to subtitling for people with hearing impairments. People relying on audio description or signing to enjoy and understand television will be severely limited in their choice of programmes. Even where audio description is provided for some programmes, it is likely that broadcasters would be reluctant to make it available on all platforms.

Options

6. This assessment evaluates the following options:
- (a) option one: a base case which assumes that Ofcom will choose not to exercise its powers to set interim targets, so that the only targets in force would be those already applying to public service broadcasters and to Digital Programme Service licensees. Although it is likely that some cable and satellite broadcasters would continue to provide some subtitling on a voluntary basis, we do not have data on how much programming is accompanied by access services, and in any case, the amount might fluctuate in the absence of specific obligations. In effect, this option would maintain the status quo;
 - (b) option two: balancing the benefits of access services against the burdens on television licensees. We have assessed the option proposed in consultation, in which only those television stations which pass an audience benefit test and an affordability test would be required to provide access services, in accordance with targets set out in the Code accompanying this document; and
 - (c) option three: at the other end of the regulatory spectrum, the option of requiring all television licensees to provide access services as a pre-condition for entering and/or remaining in the market. For this purpose, we have assumed that Ofcom would set annual interim targets for all services. For the purposes of this assessment, which covers the period up to the first review, we have assumed that the targets applying would be those set out in the Code accompanying this document.

Cost assumptions

7. This summary of cost assumptions looks both at direct costs (i.e. the costs of producing subtitles, signing and audio description) and indirect costs (i.e. capital equipment for inserting these services into the broadcast stream, and the costs of transmission, where applicable).

Production costs

8. The regulatory impact assessment published with the consultation document included average costs based on information supplied by access service providers and broadcasters in the second half of 2003. In response to the consultation, some access service providers said that they had reduced the

prices of access services, particularly subtitling. We expect many of the cable and satellite broadcasters to be able to benefit from these lower prices. However, some broadcasters that are already providing television access services are likely to remain locked into existing contracts for much of the period under review. Accordingly, we asked access service providers to provide details of their current prices, but also used the costs incurred by selected broadcasters providing access services. This resulted in a range of figures, of which we have selected a simple average, as set out below:

Table 1: Production costs for television access services

Access service		Range	Average
Subtitling	Recorded	£270 - £480	£410
	Live	£170 - £700	£460
Audio description		£575 - £850	£670
Signing		£600 - £880	£760

9. For the purpose of deriving an average annual cost⁵, we have taken into account assumptions that:
- (a) channels broadcast 24 hours a day;
 - (b) none of the programming is excluded from access service requirements; and
 - (c) channels would repeat 50% of their programming.
10. A cost figure is built up from a channel's daily broadcast hours (discounted by the relevant repeat rate) to a yearly figure, which is then multiplied by the relevant quotas and hourly costs of the three access services, with the total cost figure being expressed as a percentage of the channel's qualifying revenue. The implications for a 24 hour channel are as follows:

Example: Subtitling

Daily Hours × (1 – Repeat Rate) × 365.25 × (Subtitling quota × Hourly cost)

= Annual subtitling cost.

Table 2: Average annual costs for television access services
(see assumptions in paragraph 9)

Access service	Subtitling	Signing	Audio description
Cost	£162,171	£51,719	£30,681

⁵ For the purpose of assessing the costs applicable to individual channels, we use the actual number of hours broadcast each day, the estimated proportion of programming likely to be excluded from access service requirements (on the basis of programme schedules), and actual data on repeats for 2003 where these has been supplied, or a proxy figure where they have not.

Transmission costs

Signing

11. The additional cost of transmitting a programme with open signing (as distinct from its production) compared to one without is zero, whatever the platform.

Subtitling

12. On the basis of expert advice, and of information provided to us, we have assumed that no additional costs would be incurred in transmitting subtitling. Although up to 64 kbits/s might be required, broadcasters (and cable platform providers) would in practice be able to accommodate this within their existing capacity.

Audio description

13. Licensees broadcasting on DTT are already required under their licences to provide audio description, so we have assumed that they would incur no additional transmission costs.
14. On the basis of information made available to us from a variety of sources, we have assumed that providers of satellite-delivered capacity will need to use capacity of between 64kbit/s and 192 kbits/s to deliver a pre-mixed audio description sound track alongside the original video and sound tracks. The circumstances of individual channels will vary – many are one of a ‘family’ of channels occupying a leased transponder, with scope for temporary adjustments in the capacity allocated to each, or for statistical multiplexing, while a some occupy a fixed bit-rate on a shared transponder. We have assumed that channel providers will be incentivised to use capacity already available to them, using a variety of approaches to free up capacity for a pre-mix track, including temporary reductions in the amount of capacity allocated to the original video and sound tracks, improvements to coding efficiency, and statistical multiplexing or temporary re-allocations between different channels where this is feasible⁶. Accordingly, we have not assumed any incremental transmission costs for satellite feeds of audio description.
15. On the basis of information made available to us by a cable operator, we have assumed that the cost of headend equipment for inserting audio description in the broadcast stream would be £5000 per channel per cable system. We have assumed a similar figure for headend equipment to insert audio description in the satellite broadcast stream. We have assumed that this expenditure would be amortised over 5 years.

Monitoring and enforcement costs

16. Ofcom believes that if either option two or option three is adopted, it will be necessary for Ofcom to provide an additional post to undertake monitoring and compliance work. For this purpose, we have assumed that most of the monitoring work will be complaints-led, and that a full-time Associate would be required at an annual cost of £60,000 (including salary, pension and

⁶ We will discuss with channel providers what approach they plan to take to providing audio description on their satellite and cable services in order that we can understand any issues that they consider relevant.

overheads etc). We have factored this into the costs of those options, as the costs would be recovered from relevant licensees.

Total costs

17. The combination of production, transmission, and monitoring and enforcement costs (all of which are ultimately borne by licensees) is set out in the table below.

Table 5: Average total costs for television access services

Level of service⁷	Level 1	Level 2	Level 3
Production	£272,746	£211,647	£152,345
Transmission	£23,597	£23,597	£23,597
Monitoring & enforcement	£1,000	£1,000	£1,000
Total	£297,343	£236,244	£176,942

Benefit assumptions

Viewers with hearing and/or visual impairments

18. As explained in paragraph 4 above, Ofcom starts from the proposition that, by enacting the Communications Act, Parliament has accepted the Government’s view that, as a matter of public policy, access by people with hearing and / visual impairments to multichannel services should be broadened significantly. Nonetheless, although Ofcom does not consider it either necessary or appropriate that it should seek to demonstrate that the policy is justified because the benefits outweigh the costs, we have set out our view on the range of benefits arising from the different options, as well as a possible approach to valuing the benefits to the target group.
19. People with hearing and / or visual impairments should benefit significantly from the provision of subtitling, sign language translation, and audio description, as these services will greatly enhance their enjoyment of television. Given the important role that television plays in the culture of society, the ability of disabled viewers to enjoy so-called ‘water cooler’ television will also help to promote social inclusion⁸.
20. It is clear that there are a substantial number of people with disabilities who would benefit from access services. On the basis of independent research, the Royal National Institute for the Deaf estimates that there are about 9 million deaf and hard of hearing people in the UK (of whom 8.3 million suffer mild to moderate deafness, and 700,000 suffer severe to profound

⁷ The Code accompanying this document explains the target levels required under Levels 1, 2 and 3.

⁸ People without sensory impairments may also benefit from access services from time to time. One cable provider is already publicising subtitling on the grounds that it is not solely for the hearing-impaired – it can also benefit adults for whom English is a second language, who want to avoid disturbing sleeping children etc.

deafness)⁹, and that the number is rising as the number of people over 60 increases. Of these, a number use British Sign Language as their first or preferred language. Ofcom is not aware of any independently-validated surveys of the number of people who use British Sign Language, but current estimates vary between 50,000¹⁰ and 70,000¹¹ - the Government's RIA assumed 60,000. As regards potential users of audio description, research published in 1999 by the (then) Department of Social Security suggests that there are just under 2 million people with a 'seeing' disability¹².

21. Ofcom has looked at how the benefits to users of an increase in television access services could be valued. One way of monetizing them would be to survey users, applying techniques such as stated preference or conjoint analysis, to build up an idea of how much users would be willing to pay to have these services. However, this would require a considerable amount of time and resources to accomplish, which would not be appropriate or proportionate given the proposition described above.
22. Given that the main intention of the legislation is to increase access services on multichannel services (other than PSB services), an alternative approach would be to look at prices of multichannel television packages currently bought by the UK viewing public. The basis for this would be that, for many current and potential users of television access services, the services themselves make the difference between multichannel being usable and not usable, and for other users, access services would considerably enhance their understanding and enjoyment. If this is the case, then we could use the willingness to pay of the general public for multichannel TV as a proxy for the willingness to pay of access service users for those services.
23. In examining such willingness to pay, we can also have regard to the actual channels which the consultation paper suggested should provide access services (for example, UKTV channels, Discovery channels, SkySports 1-3 and SkyMovies 1-9 etc.). Some of these broadly correspond to the selection of channels usually found in 'basic' subscription packages, while others (the film and sport channels) are to be found in 'premium' packages. Some users might be willing to pay only for a basic package, while others would prefer a premium package. The largest multichannel subscription provider, Sky, offers basic packages containing most of the general entertainment channels for

⁹ The National Study of Hearing carried out by the Medical Research Council Institute of Hearing Research (Adrian Davis, Hearing in Adults 1995, Whurr) found the prevalence of different degrees of deafness for each age group in the UK population. These prevalence rates have been found to stay fairly constant. It is the age profile of the general population that changes and this affects the total estimated numbers of deaf and hard of hearing people in the UK. RNID's estimates come applying the Medical Research Council prevalence rates to the current population figures. Because most deafness is age-related, as the number of elderly people in the population increases, the total number of deaf and hard of hearing people also rises.

¹⁰ RNID (www.rnid.org.uk/)

¹¹ British Deaf Association (<http://www.britishdeafassociation.org.uk/>).

¹² 'Disability in Great Britain' DSS Research report No 94 HMSO (1999), Emily Grundy et al. This reports that 23% of those that are disabled have a 'seeing' disability (Table 3.6) and that 8, 582, 000 are disabled in Great Britain (Table 3.1). This gives 1.97m as having a seeing disability. The criterion for inclusion in this group is whether a person has difficulty seeing a friend across the road even when wearing glasses.

just under £20 a month, while the Sky World package, for £40 per month, includes sports and film channels.

24. These two prices might be said to form a range within which general willingness to pay for the bulk of the channels proposed for access services quotas are contained. If we use these packages as a proxy then it might be reasonable to assume that the same proportion of potential users of access services would be willing to pay for them as the proportion of overall UK households that subscribe to multichannel services – currently one third. One third of the potential UK television access services user base is 3.7 million (one third of 8.945 million deaf people, 1.97 blind people and 60,000 sign language users).

25. Finally, the assessment needs to recognise that whilst subscribers who do not have hearing and / or visual impairments can understand and enjoy all the television services, those who rely upon access services will be limited by the amount of programming accompanied by access services. For the purposes of this assessment, which deals with the period under review, this would comprise 10% of non-excluded programming to be subtitled, 2% with audio description and 1% with signing, assuming the option on which Ofcom consulted is implemented. This yields the following calculations:

$$(8,945,000 \times 1/3 \times 10\%) + (1,970,000 \times 1/3 \times 2\%) + (60,000 \times 1/3 \times 1\%)$$

$$= 311,500 \text{ annual subscriptions at } \pounds 20 \text{ to } \pounds 40 \text{ per month.}$$

26. This gives us a range of £75 million to £150 million as a proxy for the benefits to current and potential users of television access services implicit in the option on which Ofcom consulted – corresponding to option two in this assessment. While this includes the value of subtitling already undertaken by some channels on a voluntary basis, option two would serve to secure this provision.

Broadcasters

27. As the Government's regulatory impact assessment noted, cable and satellite broadcasters will be able to increase their audiences by attracting greater numbers of sensory impaired people to their channels. Many of the channels required by the code to provide access services have already chosen to provide subtitling on a voluntary basis, indicating that they consider it commercially worthwhile. The potential audience of deaf and hearing impaired people seems likely to grow given demographic trends towards longer life. The commercial benefits of attracting people who use signing or audio description are less likely to outweigh the costs.

28. Public service broadcasters, which are already subject to access service targets comparable to those now applying to cable and satellite broadcasters, will benefit in due course by the lower prices now offered by access service providers as a result of changes driven in part by the expansion of obligations.

Access service providers

29. External providers of television access services will benefit significantly from contracts with broadcasters to provide subtitling, signing and audio description.

Assessment of options

Option one: status quo

30. In the base case, no non-statutory interim targets would be set for cable and satellite broadcasters, though public service broadcasters (PSBs) would continue to be subject to progressively-increasing annual targets, and Digital Programme Service licensees (e.g. those made available as part of the Freeview or Top-Up TV arrangements) would continue to be subject to their existing obligations. This underestimates the amount of subtitling that would be likely to be provided on a voluntary basis, and therefore the likely cost of the base case. However, we do not have reliable data on the amount of subtitling undertaken on a voluntary basis. The annual hours of subtitling, signing and audio description and the costs of the base case are calculated as follows, and the results are set out in Table 3 below:

Table 3: Estimated total costs of option one
(for year beginning 1 January 2005)

Channel	Costs			Total costs
	Subtitling	Signing	Audio description	
PSBs	£18,152,259	£1,893,221	£3,621,214	£23,666,694
DPS licensees	£4,459,368	£529,059	£743,426	£5,731,853
Total	£22,611,627	£2,422,280	£4,364,640	£29,398,547

31. There would be no incremental benefits to consumers (including disabled viewers), broadcasters or access service providers since provision would not be significantly different from current provision.
32. There is little risk that broadcasters would be adversely affected by continuing with the status quo; for PSBs, access services account for a very small proportion of total costs, while those providing access services could stop providing them if they wished to. The main risk, as described in paragraph 6 above, is that provision of access services for viewers with hearing and / or visual impairments would not improve, and that current and potential users of audio description and signing would continue to be restricted to a very limited amount of programming. This would mean that the policy objective could not be achieved.

Option two: balanced approach

33. In this option, costs for the three services, including transmission, are calculated for the non-PSB cable and satellite channels under the criteria described above (over 0.05% audience share, as long as costs amount to 1% of QR or less). Production costs for those services currently on DTT have

been netted off, as these would be incurred under the base case (option one). The results are set out in Table 4 below:

Table 4: Estimated total costs of option two
(for year beginning 1 January 2005)

Channel	Costs			Total costs
	Subtitling	Signing	Audio description	
Option one	£22,611,627	£2,422,280	£4,364,640	£29,398,547
Incremental costs of option two	£5,068,238	£1,656,448	£1,227,451	£7,952,137
Total	£27,679,865	£4,078,728	£5,592,091	£37,350,684

34. The potential benefits are described in paragraphs 17 to 25 above. We calculate that the channels required to provide access services under this option would account for nearly 95% of peak-time viewing – the great majority of the most popular channels. In sum, the benefits to current and potential users of television access services could be estimated at between £75 million to £150 million a year. As these benefits considerably exceed the costs, we have not sought to place a value on the benefits to external providers of access services of the work that would be placed with them by broadcasters, although they would clearly benefit.
35. Shareholders of channels required to provide access services will need to bear the additional costs identified in Table 4. It is likely that it will take longer for those channels which are not showing a profit to demonstrate whether continued investment is worthwhile, and possible that individual channels will be closed. While the highly competitive and fragmented nature of the television market means that periodic channel closures and relaunches are an inevitable feature, we do not consider that large-scale closures would be likely. In particular, we consider that licensees will be reluctant to surrender licences if their channels already enjoy an audience share in excess of 0.05%. If they do, it is likely that others will step into their place. Accordingly, there is unlikely to be much impact on consumers.

Option three: full provision

36. If all UK-licensed channels serving the UK were obliged to provide television access services, this would require some which were marginally profitable to do so at a loss. For this purpose, we have assumed that all channels which would be required to pay 2% or more of qualifying revenue would cease to be profitable and would close rather than incur continuing losses, and that only 50 or so channels would actually provide services. On this basis, using the same basis for calculation as described above, the results are set out in Table 6 below:

Table 5: Estimated total costs of option three
(for year beginning 1 January 2005)

Option / Cost	Costs
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	Subtitling	Signing	Audio description	Total costs
Costs of option one	£22,611,627	£2,422,280	£4,364,640	£29,398,547
Incremental costs of option two	£5,068,238	£1,656,448	£1,227,451	£7,952,137
Incremental costs of option three	£1,337,998	£437,297	£1,362,089	£3,137,385
Total	£29,017,863	£4,516,025	£6,954,180	£40,488,069

37. We estimate that the benefits to consumers would not be significantly different than under option two; while option two would in theory deliver channels accounting for 100% of peak-time viewing, we doubt that many of the additional channels could afford to comply in practice. Neither do we believe that full provision would result in significant additional benefit to broadcasters, as it seems unlikely that access to additional less popular channels would result in a significant number of additional viewers subscribing to / watching these channels. It is possible that costs would diminish slightly as further economies of scale were derived, though it is not feasible to estimate what savings might accrue to broadcasters. The benefits to access service providers would equate broadly to the costs to broadcasters.
38. However, we believe that this option would have considerable risks for broadcasters, as it would add significantly to the costs of channels operating at a loss or at a marginal profit. For example, a channel earning a 5% return on turnover would have to pay out 40% of its profits if the cost of access services accounted for 2% of their qualifying revenues. We consider it likely that some of the channels facing this situation would respond by failing to comply with the obligations, and that if pressed to comply, might choose to exit the market. Clearly, this would be bad for shareholders, and would reduce the attractiveness of the UK as a destination for investment in broadcasting. It would also be bad for viewers (including those without hearing and / or visual impairments), as it would diminish choice overall. For this reason, we consider that the disadvantages of this option would outweigh the benefits.

Conclusions

39. Ofcom believes that option one would not deliver the public policy objectives sanctioned by Parliament, and would not therefore be appropriate. Nor do we believe that it would be consistent with the obligations of broadcasters as service providers under the Disability Discrimination Act. We also consider that option three could lead to a significant number of channel closures, and would not greatly improve the benefits to disabled viewers. By contrast, we believe that the option two would enable disabled viewers to understand and enjoy programmes on those channels accounting for over 95% of peak-time viewing, while channels with relatively few viewers and small revenues would be exempted from the requirement to provide access services. We believe

that this constitutes a proportionate and relatively unintrusive means of securing the policy objective.

Annex 5**Channels required to provide television access services****Level One (full requirements)**

BBC 1	Sky Movies 3 (Premier 2)
BBC 2	Sky Movies 4 (Moviemax 2)
BBC 3	Sky Movies 5 (Premier 3)
BBC 4	Sky Movies 6 (Moviemax 3)
BBC News 24	Sky Movies 7 (Premier 4)
CBBC	Sky Movies 8 (Moviemax 5)
CBeebies	Sky Movies 9 (Premier Widescreen)
ITV 1	Sky Cinema 1
ITV 2	Sky Cinema 2
Channel 4	Sky Box Office
Channel 5	Disney Channel
S4C Digital	Disney Playhouse
ITV News	Disney Toon
E4	MTV
Sky News	MTV Hits
Sky One	MTV Base
Sky One Mix	VH1
Sky Sports 1	VH1 Classic
Sky Sports 2	TMF
Sky Sports 3	Nickelodeon
Sky Sports Extra	Hallmark
Sky Sports News	Sci Fi Channel
Sky Travel	Paramount
Sky Movies 1 (formerly Premier)	
Sky Movies 2 (Moviemax)	

Level Two (full requirements for signing and audio description; 66% of subtitling)

Living TV	UKTV Gold
Discovery Channel	UKTV G2
Bravo	UKTV Food
Challenge TV	UKTV History
Trouble	UKTV Style
Granada Plus	UKTV Documentary (Horizons)
Cartoon Network	

Level Three (full requirements for signing and audio description; 33% of subtitling)

History Channel	The Hits
Discovery Home & Leisure	Magic TV
National Geographic	Smash Hits
Fox Kids	Kiss TV
The Box	Kerrang