



Access to electronic communications services for disabled consumers

	Statement & consultation
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Section 1

Executive summary

- 1.1 General Condition 15 contains a number of special measures for disabled end-users of communications services.
- 1.2 We have reviewed this General Condition in the light of the revised Universal Service Directive and of social and technological change.
- 1.3 The revised Universal Service Directive obliges Member States to empower national regulatory authorities such as Ofcom to specify, where appropriate, requirements to be met by broadband, as well as fixed and mobile, providers to ensure access and affordability for disabled end-users to electronic communications services equivalent to that enjoyed by the majority of end-users. However, in order to impose such requirements, Ofcom must be able to demonstrate that any such extension is appropriate, taking into account, in light of all the relevant evidence, considerations including objective justification and proportionality.
- 1.4 The legal framework for the requirements on communications providers (communications providers) is set by Articles 7 and 23a of the Universal Service Directive. Under those provisions, Member States are required to ensure that the provision of access to, and affordability of, services for disabled end-users is equivalent to that enjoyed by the majority of end-users.
- 1.5 In December 2012 Ofcom published a Call for Inputs about General Condition 15. The issues explored in this Call for Inputs were:
 - Updating the rules on the provision of bills and contracts in accessible formats to benefit other disabled end users, not just blind and visually impaired people, and to require fixed and mobile broadband providers to comply with this condition (not just voice operators);
 - Extending the requirement to provide a priority fault repair service for certain disabled end users to fixed broadband providers (not just voice operators);
 - Extending the current safeguard scheme for third party bill management to benefit all disabled end users who could benefit with help in managing their affairs, and to require fixed and mobile broadband providers to comply with this condition (not just voice operators);
 - Extending the safeguard scheme to allow disabled end users to nominate a third party who can notify their provider of faults with the service (to apply to voice and broadband providers); and
 - Adding an obligation for communications providers to regularly inform disabled subscribers of the products and services suitable for them.
- 1.6 The Call for Inputs made it clear that if the evidential threshold for modifying General Condition 15 in light of the relevant statutory requirements was not reached, then extending the General Condition in the ways being explored would not be possible.

- 1.7 We received 22 responses to the Call for Inputs. The evidence submitted in these responses was not sufficient to enable Ofcom to meet the threshold that would have been needed to change the General Condition at this time. In some areas, communications providers submitted evidence demonstrating that they were going beyond the requirements in the General Condition. In other areas, while some stakeholders supported extending the General Condition to broadband, they were not able to provide any additional evidence of why this was necessary or appropriate given the relevant legal and evidential thresholds.
- 1.8 Ofcom also commissioned research which is being published alongside this consultation into the value of broadband to disabled people. This did not show that disabled people were dependent on broadband to a greater extent than the general population, and hence did not support the need to extend existing provisions of GC15 to broadband services.
- 1.9 Information from communications providers indicated a gap in provision of material for consumers with learning disabilities. To address this, we are publishing an easy-read guide to mobile telephony alongside this consultation and will consider the scope for publishing further such guides.
- 1.10 Although we did not receive evidence to warrant extending the General Condition at this time, as part of our review of the General Condition we became aware that the existing wording was not completely clear in respect of the requirements for communications providers to allow consumers who are not disabled to make calls to disabled consumers using the text relay service. We have also identified a need to clarify how a provision in the General Condition to allow communications providers to levy local rate charges for calls using the relay service sits with the requirement, also in the General Condition, for disabled consumers to have access to the services at prices that are equivalent to those experienced by consumers who are not disabled.
- 1.11 We are therefore making proposals in this document to clarify that communications providers should allow consumers who are not disabled to use the text relay services. We are also proposing to remove the provision that allows communications providers to charge local rate for calls using the relay service. Under our proposals, charging for text relay would therefore be based solely on the requirements of the GC15 for of equivalent pricing. We are inviting comments on these proposals by 17 January 2014.

Section 2

Introduction

- 2.1 The General Conditions are a set of rules that apply to providers of communications services in the UK. In order lawfully to provide communications services, communications providers are required to comply with the terms of the General Conditions. General Condition 15 contains a number of measures designed to promote equivalent access to communications services for disabled people.¹
- 2.2 Under General Condition 15, all providers of publicly accessible telecommunications services (“PATS”, essentially voice communications services) in the UK must offer their disabled customers a range of services, including:
- Provision of free directory enquiries for visually impaired people;
 - Access to a text relay service for deaf and speech-impaired people;
 - Provision of a priority fault repair service for users with disabilities who have a genuine need for an urgent repair;
 - Provision of a safeguard scheme for disabled users who are dependent on the telephone, which must provide for third party bill management;
 - Mobile SMS access to the emergency services for users with hearing and/or speech impairments;
 - Provision of bills and contracts in accessible formats for blind or visually impaired users; and
 - An obligation to take reasonable steps to ensure that the services it provides in order to comply with General Condition 15 are widely publicised, including in appropriate formats and through appropriate channels for disabled end-users.
- 2.3 Although revisions have taken place over time (for example the addition in 2011 of the requirement to provide access to the emergency services via SMS and, more recently, the provisions on Next Generation Text Relay), many of the obligations in General Condition 15 are now around ten years old. Indeed, a number of the provisions were carried over from the former Telecommunications Act licences which were abolished when the current regulatory regime entered into force in 2003.
- 2.4 The revised Universal Service Directive (transposed in 2011) contains a number of provisions designed to protect disabled end-users, including obliging Member States to empower national regulatory authorities such as Ofcom to specify, where appropriate, requirements to be met by undertakings providing publicly available electronic communications services (“PECS”, which includes voice and broadband) to ensure that disabled end users have access to services of those undertakings equivalent to that enjoyed by the majority of end users; and benefit from the choice of undertakings and services available to the majority of end users.²

¹ <http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/general-conditions.pdf>

² http://ec.europa.eu/information_society/policy/ecomms/doc/136univserv.pdf

- 2.5 Article 7 of the Universal Service Directive makes provision for specific measures for disabled end-users as follows:

“1. Unless requirements have been specified under Chapter IV which achieve the equivalent effect, Member States shall take specific measures to ensure that access to, and affordability of, the services identified in Article 4(3) and Article 5 for disabled end-users is equivalent to the level enjoyed by other end-users. Member States may oblige national regulatory authorities to assess the general need and the specific requirements, including the extent and concrete form of such specific measures for disabled end-users.

2. Member States may take specific measures, in the light of national conditions, to ensure that disabled end-users can also take advantage of the choice of undertakings and service providers available to the majority of end-users.

3. In taking the measures referred to in paragraphs 1 and 2, Member States shall encourage compliance with the relevant standards or specifications published in accordance with Articles 17 and 18 of Directive 2002/21/EC (Framework Directive).”

- 2.6 The effect of Article 7 is to require Member States to impose Universal Service Conditions to secure the provision of equivalent access to PATS for disabled end-users unless they have imposed General Conditions.

- 2.7 Article 23a, introduced in the amendments to the Directive, provides that:

“Member States shall enable relevant national authorities to specify, where appropriate, requirements to be met by undertakings providing publicly available electronic communication services to ensure that disabled end-users: (a) have access to electronic communications services equivalent to that enjoyed by the majority of end-users; and (b) benefit from the choice of undertakings and services available to the majority of end-users. 2. In order to be able to adopt and implement specific arrangements for disabled end-users, Member States shall encourage the availability of terminal equipment offering the necessary services and functions.”

- 2.8 Section 51 of the Communications Act 2003 (the “Act”) was amended to incorporate these provisions. Section 51(2) provides that the power to set General Conditions for protecting the interests of consumers includes the power to set conditions for that purpose which specify requirements in relation to the provision of services to disabled end-users (section 51(5)(c) of the 2003 Act).

- 2.9 In relation to the exercise of these powers, a number of other provisions of the Act are relevant. By virtue of section 3 of the Act, Ofcom’s principal duties in exercising our functions, including those under section 51, are to further the interests of citizens in relation to communications matters and of consumers in relevant markets, where appropriate by promoting competition. Amongst other things, under section 3(4) Ofcom must have regard in performing these duties to the needs of persons with disabilities.

- 2.10 In addition, under section 4 of the Act OFCOM must, in carrying out functions such as those under section 51, act in accordance with the six Community requirements

set out in section 4. These include the requirements to promote competition in electronic communications networks and services and associated services and facilities, and to promote the interests of all persons who are citizens of the European Union.

- 2.11 Section 47 of the Act is also important in this context. It provides that OFCOM must not, as far as relevant here, modify a general condition, unless we are satisfied that the modification is: (a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates; (b) not such as to discriminate unduly against particular persons or against a particular description of persons; (c) proportionate to what the modification is intended to achieve; and (d) in relation to what it is intended to achieve, transparent.
- 2.12 The effects of these provisions are, broadly, as follows. Article 23a of the Directive and section 51 of the Act mean that Ofcom could, if appropriate, extend the obligations in General Condition 15 to broadband services. However, we would first have to be able to demonstrate that any such extension was appropriate. That involves having sufficient evidence to support an assessment that the extension is, amongst other things, objectively justifiable and proportionate, and is consistent with our duties.
- 2.13 In order to help us judge whether the General Condition should be expanded in this way, Ofcom published a Call for Inputs on 12 December 2012.³
- 2.14 The issues explored in the Call for Inputs were based on discussions with stakeholders and Ofcom research. They included:
- updating the rules on the provision of accessible contracts to benefit other disabled end users, not just blind and visually impaired people, and to require fixed and mobile broadband providers to comply with this condition (not just voice operators).
 - extending the requirement to provide a priority fault repair service for certain disabled end users to fixed broadband providers (not just voice operators);
 - extending the current safeguard scheme for third party bill management to benefit all disabled end users who could benefit with help in managing their affairs, and to require fixed and mobile broadband providers to comply with this condition (not just voice operators);
 - extending the safeguard scheme to allow disabled end users to nominate a third party who can notify their provider of faults with the service (to apply to voice and broadband providers); and
 - adding an obligation for communications providers regularly to inform disabled subscribers of the products and services suitable for them.
- 2.15 As well as calling for evidence via the Call for Inputs, we carried out some research in order to make comparisons with other EU countries and with other regulated sectors in the UK. The results of this research are set out in an appendix to this Statement.

³ <http://stakeholders.ofcom.org.uk/binaries/consultations/1047872/summary/condoc.pdf>

- 2.16 We also commissioned market research designed to test the value of broadband to disabled people. The research report is published as an appendix to this Statement.
- 2.17 This document sets out our conclusions from the Call for Inputs.
- 2.18 In addition, during the course of our review we became aware that the wording of General Condition 15.3 was not entirely clear on the provisions relating to provision of and charging for text relay calls. We are therefore making proposals in this document on options to clarify the intention of the existing General Condition 15.3, and inviting views on those proposals.

Impact Assessment

- 2.19 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This reflects section 7 of the Act, which requires Ofcom to carry out impact assessments where its proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the majority of its policy decisions. For further information about Ofcom's approach to impact assessments, see the guidelines, Better policy-making: Ofcom's approach to impact assessment, which are on Ofcom's website.⁴
- 2.20 Specifically, pursuant to section 7 of the Act, an impact assessment must set out how, in our opinion, the performance of our general duties (within the meaning of section 3 of the Act) is secured or furthered by or in relation to what we propose.
- 2.21 The analysis presented in this document represents an impact assessment, as defined in section 7 of the Act. In Section 8 we discuss all of the relevant factors and options that we have considered in respect of proposed changes to General Condition 15.3, including their impact on stakeholders including both consumers and suppliers.

Equality Impact Assessment

- 2.22 Ofcom is also required to assess the potential impact of all our functions, policies, projects and practices on the equality of individuals to whom those policies will apply. Equality impact assessments (EIAs) assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers regardless of their background or identity.⁵
- 2.23 We have considered whether or not our proposal to clarify the wording of General condition 15.3 will have a particular impact on race, age, disability, gender, pregnancy and maternity, religion or sex equality. We do not envisage that the proposals contained in this consultation will have a detrimental impact on any particular group of people. Our proposal to amend the wording of General Condition 15.3 is designed to ensure that charging for relay calls cannot be higher than for calls on which the relay service is not used, ensuring equivalence of access to, and

⁴ http://stakeholders.intra.ofcom.local/binaries/consultations/better-policy-making/Better_Policy_Making.pdf

⁵ Ofcom conducts equality impact assessments in order to fulfil our duties under section 149 of the Equality Act 2010

affordability of, publicly available telecommunications services for disabled end-users.

Structure of this document

- 2.24 In sections 3-7 we consider the issues raised in the Call For Inputs, setting out the responses received, our analysis and our conclusions.
- 2.25 In section 8, we set out options to clarify the text of General Condition 15.3.
- 2.26 In Annex 5 we summarise practices in relations to provisions for disabled consumers in other regulated sectors and in other countries.

Section 3

Information in accessible formats

- 3.1 General Condition 15.9 currently requires providers of PATS to make available, free of charge, and in a format reasonably acceptable to any subscriber who is blind or whose vision is impaired, upon their request (a) any contract (or variation to that contract) between the subscriber and the provider, and (b) any bill rendered for those services. General Condition 15.9 goes on to provide that an acceptable format would, for these purposes, consist of print large enough for the subscriber to read, Braille or an electronic format appropriate to the reasonable needs of the subscriber.
- 3.2 This is not an exhaustive list of accessible formats. Some disabled consumers require other formats, for example tinted rather than bright white paper.
- 3.3 We have considered the case for extending the scope of General Condition 15.9 to include not just blind and visually impaired subscribers, but also other subscribers which, by reason of their disability, would benefit from the provision of contracts and bills in an accessible format. We also considered the case for extending the General Condition to cover fixed and mobile broadband providers, as well as voice providers.
- 3.4 The questions asked in the Call for Inputs were:
- i) What do communications providers currently do in order to comply with General Condition 15.9?
 - ii) Do fixed and mobile broadband service providers currently offer bills and contracts in accessible formats? If not, does this cause particular problems for disabled users?
 - iii) What is the experience of disabled people in terms of the ability to read and understand bills and contracts from communications providers?
 - iv) What evidence is there of the effect of disabled peoples' experience with regard to billing and contract formats on their access to relevant communications services?
 - v) Are there any groups of disabled people that are not adequately served by General Condition 15.9 and how might this be addressed?
 - vi) Which accessible formats should be expressly included in General Condition 15.9
 - vii) For fixed and mobile telephony providers, how many disabled customers currently request bills and contracts to be provided in accessible formats?
 - viii) What are the costs of providing contracts and bills in accessible formats for fixed voices services and what might be the additional costs of providing broadband contracts and bills in accessible formats?
 - ix) How are the costs on (viii) affected by the bundling of voice and broadband services and providers' ability to give customers single contracts and bills covering both?

- 3.5 Respondents to these questions mainly focused on two areas: extension to Easy Read and extension to broadband. These are set out in detail below.
- 3.6 Only one communications provider provided information about the cost of compliance with the existing condition, and this was in a confidential response.

Extension to Easy Read

- 3.7 In the Call for Inputs we asked for views on whether it might be appropriate to extend General Condition 15.9 to include people with learning disabilities who might benefit from bills and contracts presented in Easy Read.
- 3.8 Easy Read is a format designed to make documents more accessible to people with learning disabilities.⁶ It uses clear language and fewer difficult words to help simplify the text and help promote understanding.
- 3.9 Previous Ofcom research found that people with learning disabilities struggle to understand their bills.⁷ The research showed that few of the participants could read and understand bills on their own, and most tended to need help from other people.

Responses

- 3.10 No respondent submitted evidence that a lack of accessible formats was inhibiting take-up of communications services.
- 3.11 Extension to Easy Read was supported by the National Association of Deafened People.
- 3.12 Action on Hearing Loss did not specifically support obligations around Easy Read but pointed out that Plain English benefits all consumers. Action on Hearing Loss also said that users of British Sign Language (BSL) may benefit from having information in sign language in person (through an interpreter), through a video relay telephone call or a video with BSL interpretation of key information.
- 3.13 No communications provider reported that they had ever received a request for Easy Read.
- 3.14 All communications providers who mentioned Easy Read suggested it was likely to be difficult and/or disproportionate for it to be a mandatory requirement of GC15, and several said that contracts could not be provided in this format as it would change their meaning.
- 3.15 The Mobile Broadband Group (MBG) doubted that it would be proportionate to impose this requirement only on the electronic communications sector. The MBG also pointed out that although contracts are legal documents, communications providers are used to explaining their services in non-technical terms to their customers. Some mobile communications providers have high street shops where customers can make enquiries as well as online and telephone contact facilities.
- 3.16 KCOM suggested that Easy Read could be used for supplementary guidance rather than bills and contracts.

⁶ See <http://odi.dwp.gov.uk/inclusive-communications/alternative-formats/easy-read-and-makaton.php>

⁷ <http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/disabilities.pdf>

International and other evidence

- 3.17 We did not find any evidence of Easy Read bills, contracts or other correspondence being mandated by any other telecoms regulators in the EU or elsewhere or by the regulators of other regulated industries in the UK.

Analysis and conclusions

- 3.18 Ofcom accepts that it would not be straightforward to put contracts into easy read. We also note that about 40% of mobile customers are on prepay so do not receive bills. We take into account the lack of demand for easy read from existing customers. We similarly take into account the existing protections in other General Conditions that are relevant in this regard and, in particular, the protection designed to secure the fairness of contract terms in the Unfair Terms in Consumer Contracts Regulations 1999 (especially the requirements for plain, intelligible language in consumer contract terms).
- 3.19 In the light of these factors, we do not consider there is current evidence to justify the extension of GC15.9 in this way. We are not, therefore, proposing to mandate the provision of information in this format.
- 3.20 However, we recognise that people with learning disabilities may be at a disadvantage in the telecoms market. For example, Ofcom research showed that mobile customers with learning disabilities were often unclear about the cost of particular call, and those on PAYG had no way of seeing how much a particular call cost.⁸
- 3.21 We are therefore publishing our own easy read leaflet about telecoms, with a focus on mobile, and will be asking communications providers and organisations representing people with learning disabilities to help distribute this.

Extension of the obligation to broadband

- 3.22 In the light of the growing importance of broadband to consumers we also considered the case for extending General Condition 15.9 to require providers of fixed and mobile broadband services, as well as providers of fixed and mobile telephone services, to provide information in accessible formats.
- 3.23 We called for evidence on whether there was an unmet need for accessible bills and contracts in respect of broadband services and whether this was adversely affecting access by disabled people to these services.
- 3.24 We were also interested to know the extent to which relevant telecommunications providers make adjustments pursuant to the Equality Act. The Equality Act requires service providers in Britain to make 'reasonable adjustments' to ensure that people are not prevented from using their services because they have a disability. When deciding whether an adjustment is reasonable, a number of factors may be relevant, such as the cost of the adjustment, the practicality of making it, health and safety factors, the size of the organisation, and whether it will achieve the desired effect.
- 3.25 It is common for communications services to be purchased in 'bundles'. Twenty seven per cent of households now take fixed voice and broadband as a bundle, and 19% of UK homes have a triple-play bundle of fixed voice, broadband and

⁸ <http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/disabilities.pdf>

multichannel TV. Overall, take-up of bundled communication services continues to grow, with 57% of UK homes taking a bundle in Q1 2012, against 53% in 2011.

- 3.26 Where communications providers already give relevant users accessible contracts and bills covering voice services, or a single accessible contract or bill covering multiple services, the incremental costs of an obligation covering broadband may well be limited. On the other hand, if consumers are already receiving their broadband bills in accessible formats, the need for increased regulation may similarly be limited.

Responses

- 3.27 Extension of the obligation to broadband was supported by a number of disability groups, although no evidence was submitted of difficulties in obtaining broadband bills and correspondence in this format.
- 3.28 RNIB said that the government's Digital by Default policy made access to broadband increasingly important, and that many visually impaired people were on low incomes and should be able to benefit from cheaper online deals. The lack of bills and contracts in accessible formats may be a deterrent to take-up.
- 3.29 PhoneAbility however pointed out that the Equality Act already entitles people to alternative formats. It suggested that Ofcom's regulation should be replaced with guidance; however, but did not suggest what this guidance would cover. (The Equality Act is not enforced by Ofcom and we do not consider it appropriate to publish our own guidance on this Act.)
- 3.30 Communications providers argued generally that they already provided bills and contracts (as well as other literature) in accessible formats for their broadband customers. Some also referred to the Equality Act requirements. Details of the practices already adopted by communications providers are set out in paragraphs 3.36 to 3.42 below.
- 3.31 In terms of the question of extending the obligation to broadband services, Virgin and KCOM said that they would not resist an extension of the obligation to broadband as this would not be onerous given the measures they already have in place. TalkTalk said that the obligations in General Condition 15 already extend to broadband by default, because fixed voice and broadband services are bundled.
- 3.32 BT reported that their voice telephony customers who request bills and contracts in accessible formats also receive them for broadband service (see below) and opposed the extension to broadband. BT pointed out that online billing was accessible to many disabled customers.
- 3.33 The MBG said that online billing facilitates third party support as the customer can share the password, reducing data protection or security hurdles, and that online bills are generally accessible as the font size is adjustable and the customer can print their bills out at their own convenience, using their own printer. MBG said that accessibility is promoted as all online billing systems are W3C compliant.⁹ Telefónica O2 also said that online billing was very successful in accessibility terms -

⁹ The W3C's Web Accessibility Initiative, or WAI, includes the [Web Content Accessibility Guidelines \(WCAG\)](#). The WCAG provides three 'conformance levels'. These are known as Levels A, AA and AAA.

PDFs could be read with screen readers and customers could allow trusted third parties access online.

Ofcom complaints data

- 3.34 Ofcom complaints data showed that one complaint has been received in the last year from a consumer who wished to receive a paper bill from Plusnet for his stand-alone broadband service.¹⁰ Plusnet only offers online billing for stand-alone broadband, although where purchased in a bundle with voice telecoms, paper bills in accessible formats are provided.
- 3.35 Ofcom complaints data indicate that in some cases accessible format bills can arrive significantly later than the regular bill, including after payment is due or has been taken by direct debit in some cases. Bills in accessible formats should be issued in a timely way so that consumers can verify and control their spending and we will be reminding communications providers of their regulatory obligations to ensure that this happens.

Current practice

- 3.36 In their responses to the CFI, many communications providers provided examples of good practice.
- 3.37 **BT** offers audio, large print and braille bills on request, with no proof of disability required. BT also uses matt paper, takes account of colour blindness considerations and has Plain English accreditation. Accessible billing is done at account level, so if a customer takes both phone and broadband from BT and has requested accessible billing, this will also cover broadband. Service messages such as price changes and the BT Update magazine are also sent in accessible formats to customers who have requested this. Materials about services such as BT Basic, Protected Services Scheme, Network Controlled Calling and Priority Repair are produced in 12 or 13 point print. Accessible PDF versions are also produced. BT's Inclusive Communications website meets web accessibility guidelines and has been accredited by both the RNIB and AbilityNet.
- 3.38 **Virgin** provides the following formats for all services including broadband: information over the phone; braille; large print; CD including an HTML based menu, MP3 audio files and an RTF text file for customers with screen readers. If a Virgin installer considers that a customer requires an alternative format, the installer can ring a hotline and get the customer the alternative format document within 24 hours.
- 3.39 **Sky** customers can receive any communications from Sky (including relating to stand-alone broadband) in braille, large print and audio. There is detailed accessibility information at www.sky.com/accessibility and a dedicated Accessibility Team with published numbers and email addresses. Customers can enter into paperless contracts online with the support of a customer service agent, allowing the dedicated Accessibility Team to support those with learning disabilities or other cognitive impairments to interpret and understand their contracts and bills.
- 3.40 **TalkTalk** provides bills in large print, braille and audio on request. As TalkTalk sells broadband bundled with telephony, broadband bills are available in these formats.
- 3.41 **EE, Vodafone and Three** all supply bills in large print, braille or audio on request.

¹⁰ It is not clear from the complaint whether or not this customer is disabled

- 3.42 **Telefónica O2** offers braille, large print and audio bills for customers who request it, also online bills. Broadband is sold as part of a bundle so this provision applies to broadband.

Ofcom's analysis of responses and conclusions

- 3.43 Ofcom does not consider the case for extending the requirement in GC15 for accessible bills to broadband has been made at this time, given:

- the high and increasing take-up of bundle deals means that many fixed and mobile voice customers who are protected currently by General Condition 15 will in practice also be covered for their broadband services;
- the widespread provision of accessible formats for broadband customers already by communications providers;
- the existence of the Equality Act which requires service providers in Britain to make 'reasonable adjustments' to ensure that people are not prevented from using their services because they have a disability.

- 3.44 Although we are not proposing to extend the current requirements to include broadband services, we do not propose to amend the existing requirements. Comparisons with other UK regulated sectors and international comparisons show that sector specific-regulations requiring accessible billing are relatively common (see Annex 5) and there has been no evidence provided that the existing requirements are unduly onerous or inappropriate.

Other accessible billing issues

Responses

- 3.45 Sense said that where online billing is offered, this must be accessible to people with visual impairments. Sense also said that the availability of accessible formats must be well-publicised and it must be made clear that there is no additional charge for these formats.
- 3.46 One anonymous respondent said that additional charges for paper bills were discriminatory, although it was not clear if this was a reference to accessible or regular bills.

Ofcom analysis

- 3.47 In relation to the call for the availability of accessible formats to be well-publicised, there is an existing requirement in General Condition 15 for all the services it contains to be publicised. Ofcom has previously carried out mystery shopping designed to test compliance with this aspect of the General Condition.¹¹
- 3.48 The accessibility of online billing is a web accessibility matter. Ofcom does not have any formal remit in relation to this, but we nevertheless have an interest in ensuring that accessible billing formats are available where needed to users of services in the sectors we regulate. In this context, we note that online billing formats are generally

¹¹ <http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/783922/DisabilitiesMysteryShoppin.pdf>

adaptable to provide different fonts, sizes or colours which can enhance accessibility for users with impaired vision.

- 3.49 General Condition 15.9 states that where accessible bills have been requested by a disabled customer, these must be provided free of charge. For the avoidance of doubt, Ofcom considers this means that, even if a charge would normally be applied for paper bills, no charge can be made where an accessible paper bill (e.g. in large print or braille) is provided.

Section 4

Priority fault repair

Introduction

- 4.1 General Condition 15.6 currently requires providers of fixed and mobile telephony to provide a priority fault repair service as swiftly as practicable to any subscriber with disabilities who has a genuine need for an urgent repair (although in practice this issue only tends to arise in relation to fixed lines).¹² Charges for the priority fault repair service must not exceed the provider's standard charge for a regular fault repair service.
- 4.2 This requirement originally formed part of BT's and Kingston Communications' licence conditions and was transposed into the General Conditions in 2003.¹³
- 4.3 The reason for this obligation is because disabled people may find it harder to access an alternative service, for example a public call box or a telephone in someone else's home or business premises. A priority fault repair normally means a repair is carried out on the same or the next day (as opposed to a standard service repair of up to 'next day plus one day').
- 4.4 BT offers a priority fault repair service to its own customers who are registered for the service. BT Openreach also offers priority fault repair to other fixed line providers using its wholesale services. Virgin Media offers its own service to its cable customers. Priority fault repairs result in costs to communications providers. For example, Openreach charges up to £735 (excluding VAT) to carry out a priority fault repair.¹⁴
- 4.5 Although this priority fault repair is free at the point of use to the individual disabled customer, the cost of repairing the fault is met by their communications provider and will ultimately be passed on to the rest of the customer base.
- 4.6 Ofcom was asked by disability stakeholders to consider extending the requirement to offer a priority fault repair service to fixed broadband service providers, in addition to fixed voice telecoms providers. This would mirror the fixed telecoms offering, i.e. would be restricted to customers who were disabled and in genuine need of an urgent repair.
- 4.7 These stakeholders suggested that this measure would benefit disabled people who, because of the nature of their disability (for example, because they are deafblind) cannot make fixed or mobile voice calls, but depend on a broadband connection for communication.

¹² Defined as: "a service consisting of such repair, maintenance, adjustment or replacement of any part of the Communications Provider's Electronic Communications Network, or such repair or adjustment of any connected or connectable network, or such repair or replacement for any Apparatus for which the Communication Provider has undertaken the responsibility for repair and maintenance, as is necessary to restore and maintain a sufficient service." (General Condition 15.11(b))

¹³ http://www.ofcom.org.uk/static/archive/oftel/publications/1995_98/consumer/dis298.htm

¹⁴ www.openreach.co.uk/orpg/home/products/pricing/loadProductPriceDetails.do?data=o1GUUZA4oS GmoXU5lc%2BgZQD265lt6W32TNnfEUU7w1FZ6rNZujnCs99NbIKJZPD9hXYmijxH6wr%0ACQm97GZMyQ%3D%3D

- 4.8 In the Call for Inputs we asked for information about the number of people who rely on a broadband connection because of the nature of their disability. We also asked for evidence from interested parties on the possible costs and benefits of extending the priority fault repair obligation to broadband.
- 4.9 The questions asked in the Call for Inputs were:
- (i) Which groups of disabled people depend on a broadband connection in order to communicate?
 - (ii) How large are these groups?
 - (iii) In what ways do these groups depend on a fixed broadband service?
 - (iv) In practice, what faults occur with fixed broadband connections and are these typically related or unrelated to an underlying fault with the fixed telephone line and how frequently do they occur?
 - (v) What problems (if any) do disabled people face in the event of a fault with a fixed broadband connection and what alternative means of accessing broadband and other services are practicably accessible to them?
 - (vi) What measures do fixed broadband service providers take to repair faults identified with their service and is any priority currently accorded to certain classes of user?
 - (vii) What are the costs associated with repairing faults with fixed broadband connections? What additional costs would be associated with providing a priority repair service?
 - (viii) What are the financial and other benefits for disabled people associated with providing a priority repair service for faults with fixed broadband services?
 - (ix) Are there any specific issues that stakeholders think it would be helpful for us to consider in relation to mobile broadband connections?
- 4.10 We did not ask questions related to the eligibility criteria for the service that are currently required for PATS. However, given that several respondents covered this issue in their responses, we have analysed this information below.
- 4.11 We have also commissioned market research into the importance of broadband services for disabled consumers to help inform our assessment. Ways in which we have taken this research into account are described below and it is published alongside this document.

Extension to broadband

Responses

- 4.12 Extension of priority fault repair to broadband was supported by Action on Hearing Loss, which said that people with hearing impairments loss may use their internet connection as an alternative to a voice telephone to communicate with services, employers and other organisations, direct or via video relay.
- 4.13 The National Association of Deafened People supported the extension but did not submit any evidence.
- 4.14 Sense also supported the extension to broadband, saying that deafblind people were unlikely to be able to use a broadband connection elsewhere e.g. in a library.
- 4.15 RNIB said that blind and partially sighted people may not depend on broadband to communicate, but that like most people, they are increasingly using broadband and it is becoming ever more important in their lives.

- 4.16 Virgin also said that it could not comment on whether broadband was a lifeline for disabled consumers.
- 4.17 The Communications Consumer Panel considered that broadband priority fault repair would be of value to disabled people. The Panel said that disabled people may be especially reliant on broadband for a number of reasons, but that it was difficult to put a monetary value on such a service.
- 4.18 However, PhoneAbility and said that because of the because of the distinction in the Universal Service Directive between PATS and PECS, the Equality Act could be a better instrument than the Directives for achieving equivalence in this area.
- 4.19 Sky agreed that broadband was important to many customers. However, because it is not needed to contact the emergency services, Sky questioned whether it was necessary to extend the priority fault repair obligation to broadband providers.
- 4.20 Evidence submitted by communications providers suggested that it was unclear what might be the incidence of broadband-specific faults as opposed to faults that might also affect the voice service or may be an issue that is the responsibility of the consumer, such as internal wiring, a fault with a PC or a Wi-Fi connection that is briefly lost and is fixed by restarting the router.
- 4.21 Sky said that customers may experience a number of issues which do not necessarily mean that there is a broadband fault. These could include a reduction in broadband speed, issues with connecting to a specific website or issues connecting a particular computer to the router.
- 4.22 TalkTalk also said that it was not always easy to identify broadband faults or to define what a fault is in the context of broadband.
- 4.23 Telefónica O2 said that it often went beyond the requirements of General Condition15, and did not think that more formal regulation was necessarily the answer as the telecoms landscape continues to change, making it difficult to 'future proof' the General Condition.
- 4.24 In common with other communications providers, Telefónica O2 said that fixed broadband faults can be difficult to diagnose; for example there can be a problem with the router rather than the broadband connection itself.
- 4.25 Telefónica O2 also said that it would not be technically possible to offer priority fault repair for mobile broadband.
- 4.26 The only communications provider that supported extension of priority fault repair to broadband was KCOM, who argued that that broadband access is now vital for many consumers including those with disabilities. However, KCOM pointed out that in practice there are few broadband-only faults that are specific to one customer; the majority can be attributed to the fixed line and therefore are covered by the existing priority fault repair requirements. Broadband-only faults are generally at exchange level or caused by a customer's hardware. Exchange or core network faults are already a priority. For this reason additional priority fault repair requirements are unlikely to speed up resolution of these types of broadband faults should they occur.
- 4.27 Like KCOM, BT pointed out that broadband-only faults can be at exchange level, meaning that a number of consumers are affected and they will therefore be looking to resolve the issue for all affected consumers as quickly as possible. If one customer

in this situation were registered for priority fault repair, it would be unlikely to bring about a swifter resolution.

- 4.28 BT also said that the causes of a broadband fault were not always clear even when an engineer is sent out. Priority fault repair would mean a customer jumped the queue for response times, but this would not necessarily result in getting the problem fixed if it is on the customer domain or if additional resource were needed. If it was clear that the problem was with the customer equipment when the fault was reported, BT would not offer priority repair.

Current practice in the sector

- 4.29 No communications provider currently offers priority fault repair specifically for broadband, although in some cases repairing a fixed voice fault will also result in a repair to the broadband connection.

Other evidence

- 4.30 The market research commissioned by Ofcom to inform this project did not demonstrate that disabled people were significantly more dependent on broadband than the general population. For example, the researchers measured 20 activities often carried out on-line and looked at the impact on users of internet problems. There were no significant differences in the impacts identified amongst disabled people and those who are not disabled, indicating the problem is not exacerbated by a disability.
- 4.31 The research also looked at reasons why disabled people had not taken up broadband. The top three reasons (lack of interest, cost of the monthly rental and of the equipment and not knowing how to use the internet) were the same for disabled people and those who are not disabled. This suggests that lack of a priority fault repair, provided at price of the standard repair service, is not a significant barrier to take-up of broadband.

Analysis

- 4.32 The market research and the responses did not find evidence that disabled people are more dependent on broadband than the population in general. Although disability organisations supported the principle of extension of the obligation to provide priority fault repair to broadband, no specific evidence was provided.
- 4.33 Ofcom recognises that broadband faults can often be linked to faults on the voice line, where the protection afforded by General Condition¹⁵ also extends in practice to customers who take a voice and broadband service as a bundle. Moreover, we accept that what a customer may experience as a broadband fault may in fact be a problem with consumer equipment such as a router, or a connection that is briefly lost and is fixed by restarting the router.

Ofcom conclusion

- 4.34 Having considered all the evidence and taking into account the costs involved in a priority fault repair service for communications providers, we do not consider that the case for extending the obligation for priority fault repair to broadband has been made on the basis of the evidence currently available. We will not therefore be consulting on any proposal to amend the General Condition in this respect at this time.

Eligibility criteria

- 4.35 The Call for Inputs did not ask about eligibility criteria. However, several responses addressed this issue and we have analysed the material that was submitted.
- 4.36 General Condition 15 requires priority fault repair to be offered free of charge to “any Subscriber with disabilities who has a genuine need for an urgent repair”.¹⁵
- 4.37 BT’s published eligibility criteria, which have been used as a model by some other fixed line providers, offer priority fault repair to people who are:
- ‘registered as Chronically Sick & Disabled by [their] local authority social services under the Chronically Sick & Disabled Persons Act (CSDPA) 1970
- or
- ‘housebound and cannot leave the house without help because of a chronic long-term illness or disability’.¹⁶
- 4.38 BT requires a signature from a currently practising health professional to validate an application for priority fault repair.
- 4.39 It has previously been suggested to Ofcom by some stakeholders that all users of telecare should be eligible for priority fault repair.
- 4.40 The Department of Health defines telecare as:
- “.... personal and environmental sensors in the home that enable people to remain safe and independent in their own home for longer. 24 hour monitoring ensures that, should an event occur, the information is acted upon immediately and the most appropriate response put in train”.¹⁷
- 4.41 The most common form of telecare is a community alarm, usually consisting of a pendant or bracelet with a button that can be pressed in an emergency.¹⁸ This works over the elderly or disabled person’s fixed telephone line, although telecare services provided over broadband and mobile are beginning to be seen.
- 4.42 Analysis of Ofcom complaints data indicates that complaints have been received from people, usually family members of care alarm users, who consider that having a care alarm should make a customer eligible for priority fault repair.

Responses

- 4.43 There was no question in the Call for Inputs about eligibility for priority fault repair. However, set out below are the points made by the respondents who commented on this issue.
- 4.44 BT argued that it was important to ensure that priority fault repair was targeted at customers with a genuine need for an urgent repair. BT said that the pressures on

¹⁵ <http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/general-conditions22nov12.pdf>

¹⁶ www.bt.com/includingyou/redesign2012/assets/downloads/FreePriorityFaultRepair.pdf

¹⁷ www.gov.uk/government/uploads/system/uploads/attachment_data/file/215264/dh_131689.pdf

¹⁸ See for example <http://www.ageuk.org.uk/buy/help-at-home/age-uk-personal-alarms/>

the priority fault repair service will continue to increase as the population ages, and government initiatives are increasingly reliant on the telephone to support new services. For this reason, BT would not wish to see the eligibility criteria for priority repair extended.

- 4.45 In particular, BT said that it would not be appropriate for all care alarm users to be eligible, as care alarms are not solely used by disabled customers and are available commercially to anyone who is willing to pay for one.
- 4.46 Telefónica O2 suggested that it might be useful for Ofcom to consider an objective set of eligibility criteria for priority fault repair.
- 4.47 KCOM also argued that eligibility for priority fault repair should be clearly defined and said that allowing more people to register for priority fault repair would risk increasing call-out times for the most vulnerable consumers.

Current practice in the sector

- 4.48 BT Retail provides priority fault repair to 8,300 of its customers classed as chronically sick and disabled and 69,000 customers who cannot leave the house without help because of a chronic long-term illness or disability. As mentioned above, BT requires an application form with the counter-signature of a health practitioner before a customer is registered for priority fault repair.
- 4.49 Virgin has approximately 3,600 customers registered for priority fault repair.
- 4.50 Virgin said that priority fault repair for fixed line telecoms was in some circumstances offered immediately to its customers who are dependent on the phone, with the paperwork completed retrospectively. TalkTalk also reported that when a disabled customer requests priority fault repair, they are put on the register immediately and an application form is sent out by post. If this is received back correctly completed within thirty days, the customer remains on the register; if not, they are removed. Virgin argued that extending the scope of the obligation might lead to communications providers introducing more stringent vetting processes.

Analysis

- 4.51 The Universal Service Directive requires Member States to ensure equivalent access to communications services for disabled citizens. Ofcom also has a duty under the Communications Act to further the interests of older and disabled citizens.
- 4.52 Although having a care alarm could be seen as a proxy for being disabled or having a chronic long-term illness, in effect this would be likely to be imprecise since anyone can buy one without having to provide evidence of need.
- 4.53 In order to understand the issue of eligibility better, Ofcom consulted the Telecare Services Association (TSA), which is the industry body for telecare and telehealth. The TSA advised that there are currently 1.7 million users of telecare and telehealth in the UK and that, with an ageing population, this number is likely to increase.
- 4.54 The TSA did not consider that it was necessary for all care alarm users to be eligible for priority fault repair. Rather, the TSA considered that restricting this service to the most vulnerable consumers would protect the service for the people who need it most.

- 4.55 Given that there are 1.7 million users of telecare and telehealth, to expand eligibility to all users of telecare could potentially lead to a very large increase in the number of people registered for priority fault repair.
- 4.56 Although only around 3.6% of customers registered for priority fault repair use the service in a given year, the resource implications of such an increase would be significant.
- 4.57 As explained above, although priority fault repair is free at the point of use to the individual disabled customer, the cost of up to £735 of repairing the fault is met by their communications provider and will ultimately be passed on to the rest of the customer base.¹⁹
- 4.58 We do not consider that it would be proportionate to impose these costs on industry and ultimately on other consumers when there is no evidence that extending priority fault repair to all users of telecare would deliver significant consumer benefit.
- 4.59 Many people who use telecare will of course be eligible for priority fault repair because they are so disabled as to be in genuine need of an urgent repair. These people will continue to be eligible and to benefit from this service.

Ofcom conclusion

- 4.60 For the reasons set out above, Ofcom does not consider that it would be appropriate, on the basis of the currently available evidence, to consult on a proposal for all care alarm users to be eligible for priority fault repair.
- 4.61 However, we are working with the TSA to promote the services mandated in General Condition 15, particularly third party bill management, to eligible users of telecare.

¹⁹ For example, BT has advised that the following service level agreements apply for its customers. All Retail Consumer customers receive Service Maintenance Level 1 repair. When a fault is raised, customers registered for priority fault repair are automatically expedited and escalated to a higher repair level. The cost of expedited repairs given in the Openreach price list is:

- Expedite repair from Service Maintenance Level 1 to Level 3: £585 (ex VAT)
- Expedite repair from Service Maintenance Level 1 to Level 4: £735 (ex VAT)

Section 5

Third party bill management

Introduction

- 5.1 General Condition 15.7 requires providers of fixed and mobile telephony to ensure that their customers who are so disabled that they are dependent on the telephone are able to participate in a scheme to safeguard telephone services. The scheme must enable such disabled subscribers to nominate a person to whom the provider should send the user's bills and direct enquires regarding bills. It must also allow the nominee to pay the disabled customer's bill on their behalf. The scheme requires that the nominee consents to this role and must not require the nominee to accept liability for the disabled customer's bills. The scheme must be provided to the disabled subscriber at no cost.
- 5.2 The benefit of this scheme is that the nominated third party can help to ensure that bills are paid on time, thus reducing the risk of disconnection for the disabled consumer. This safeguards the vulnerable consumer's communication service and helps to avoid additional charges for late payment or reconnection or potential problems with creditworthiness. It also enables the third party to deal with the communications provider in the event of a problem with the bill.
- 5.3 In each of these respects, the scheme provides a disabled person with assistance in matters with which they may otherwise struggle and which may restrict their access to relevant services. In this way, the scheme secures some level of equivalence of access to those services, in line with the Universal Service Directive.
- 5.4 We have considered the case for extension of this scheme in two areas:
- The disabled people who are entitled to benefit from it; and
 - Whether it would be appropriate to expand the obligation to broadband services.
- 5.5 The questions asked in the Call for Inputs were:
- i) Which groups of disabled people would benefit from the ability to nominate a third party to manage their bills?
 - ii) How large are these groups?
 - iii) In what ways do these groups depend on telephony and broadband services?
 - iv) What problems (if any) do disabled people face in managing their bills and with what consequences?
 - v) What measures do fixed and mobile voice and broadband providers currently provide to disabled customers in terms of enabling a third party nominee to manage their account?
 - vi) How many disabled people currently take advantage of this provision?
 - vii) What costs do fixed and mobile providers currently incur in providing access to disabled customers to a safeguard scheme?

- viii) What other barriers (if any) may exist to prevent the operation of such a scheme?
- ix) What would be the benefits to relevant disabled people of the possible changes to the scheme?
- x) How could such a scheme best be publicised?

Extension to other groups of disabled people

- 5.6 We have considered the case for amending General Condition 15.7 to say that the safeguard scheme must be offered to customers of the provider who would benefit from help with managing their bills by reason of their disability.
- 5.7 This change would be intended to extend the safeguard service beyond users whose disability means that they are dependent on the telephone, to include people who, by virtue of their disability, would benefit from the ability to nominate a third party to help manage their bills.

Responses

- 5.8 The Communications Consumer Panel supported people with mental health problems being able to benefit from third party bill management.
- 5.9 Citizens' Advice reported that advice centres often need to be able to speak to communications providers on behalf of customers to help them with a variety of issues but some communications providers refuse to accept written forms of authority from bureaux. Citizens' Advice suggested that Ofcom should consider amending General Condition 14 to require communications providers to specify in their complaints code of practice the process by which they will accept a form of authority and under what circumstances. (This suggestion will be considered separately as it is outside the scope of the review of General Condition 15.)
- 5.10 KCOM supported extending the definition of disability in relation to this requirement.

Current practice in the sector

- 5.11 BT does not have any restrictions on eligibility for third party bill management. There are currently 43,900 BT customers registered for this service.
- 5.12 KCOM offers third party bill management to any customer on request and for both voice and broadband.
- 5.13 All Sky customers (including but not limited to those who are disabled or vulnerable) can nominate a third party to manage all aspects of their account. Once this facility is put in place, the nominated third party can manage all aspects of the customer's account, including reviewing and paying bills on behalf of that customer. Sky confirmed that it has processes in place to ensure that it complies with applicable data protection requirements and to ensure that consent is always given by the account holder.
- 5.14 Everything Everywhere, Vodafone, Three and O2 all confirmed that third party bill management was in place.

Analysis

- 5.15 No communications provider reported that they asked for evidence of need before putting third party bill management in place, meaning that anyone who could benefit from it could access this service.

Conclusion

- 5.16 Ofcom does not propose at this time to consult on amending the regulation pertaining to eligibility for third party bill management. This is on the basis of the evidence submitted that communications providers are going beyond the requirements in the current obligations. This service is already widely available to anyone who needs it.

Extension to broadband

Introduction

- 5.17 General Condition 15 currently requires third party bill management for fixed and mobile voice telephony.
- 5.18 Ofcom has have been asked by disability stakeholders to consider extending the obligation to provide access to a safeguard scheme to providers of fixed and mobile broadband services.
- 5.19 We asked in the Call for Inputs whether the lack of a scheme of this kind was an inhibiting factor in the take-up of broadband services. We were also interested to find out the extent to which third party bill management for broadband is already available, for example for broadband purchased as part of a bundle.

Responses

- 5.20 Action on Hearing Loss said that some people with hearing loss, particularly those with additional impairments, may benefit from being able to nominate a third party to manage their bills. However, this should be because they wish to use the service, not as a substitute for making it accessible. Action on Hearing Loss also said that it should be easy to find information about third party bill management, to nominate someone, and to change the nominated person
- 5.21 The National Association of Deafened People said that the majority of deafened people are capable of living independently, so these proposals will in most cases be of less relevance to deafened users. However, NADP supported the extension of third party bill management to broadband.
- 5.22 Sense said that third party bill management may be beneficial to people who do not have the ability to manage their bills or would prefer to nominate a third party. However, there would be less need for this service if providers made sure all their processes were accessible.
- 5.23 The Alzheimer's Society supported the proposal but did not submit any evidence.
- 5.24 Virgin, TalkTalk and KCOM said that they would support expending third party bill management to broadband. Virgin said that this would deliver benefits without significant additional cost.

- 5.25 BT said that it considered that its current third party bill management scheme provided a good level of protection for customers. BT said that changes to the scheme might not benefit customers, as it might lead to tighter controls being imposed, for example obtaining proof of need.

Current practice in the sector

- 5.26 BT third party bill management is related to the customer's account and so extends to broadband for BT customers who take broadband bundled with voice. As mentioned above, there are no eligibility criteria for this.
- 5.27 TalkTalk's third party bill management operates at account level so extends to broadband for customers who take broadband bundled with voice. This is virtually all TalkTalk broadband customers.
- 5.28 Virgin said that third party bill management was available for all its services including stand-alone broadband.
- 5.29 Sky provides third party bill management to all its customers.

Other evidence

- 5.30 The market research showed that home internet access is lower amongst disabled people than people without disabilities. However, the evidence suggested that this was largely due to choice, rather than barriers connected with (a lack of) third party bill management or other barriers to access (with the exception of a lack of knowledge on how to use the Internet). There is no evidence that broadband third party bill management would address this.

Analysis

- 5.31 No significant new evidence was submitted to make the case for extending the obligation to broadband.
- 5.32 However, this is likely to be because, of the four fixed line providers with more than 5% of the market, two provide third party bill management for all customers and the other two provide third party bill management for customers who take broadband as part of a bundle with fixed line telecoms.

Conclusion

- 5.33 We do not consider that the currently available evidence supports an extension of the obligation to cover broadband services. We are not, therefore, consulting on such a change.

Section 6

Third party fault notification

Introduction

- 6.1 As noted in the previous section, General Condition 15.7 obliges providers of fixed and mobile telephony to establish a safeguard scheme for disabled subscribers which provides for third party bill management.
- 6.2 In the Call for Inputs, Ofcom asked for views and evidence about the case for introducing a new obligation for Communication Providers that would require them to allow their disabled customers to give prior notice of a nominee who can notify the Communications Provider of faults with the customer's service (this would not necessarily be the same person nominated for third party bill management purposes).
- 6.3 There is currently no requirement for Communications Providers to accept notification of faults from third parties and we had been informed that some Communications Providers were reluctant to do so for reasons relating to data protection.
- 6.4 We suggested that the kind of measure being considered could, for instance, enable reputable providers of community alarm or telecare services to notify and deal with the Communications Provider in circumstances where they are aware of, or suspect, a fault on the customer's line. Telecare and community alarm providers provide key services using the customer's telephone line and are therefore often able to see that a line is, or may be, faulty using their interfaces. They are therefore well-placed to notify Communications Providers of possible faults on their customers' lines.
- 6.5 The questions asked in the Call for Inputs were:
- i) What problems (if any) do disabled users face in personally notifying communications providers of faults in their services, and with what consequences?
 - ii) What would be the benefits to relevant disabled users of the possible changes to allow third-party fault notification?
 - iii) Do Communications Providers currently allow third parties to report faults with a disabled person's service? If so, on what terms? If not, are there any particular reasons why?
 - iv) What barriers (if any) are there to implementing such a system of third party fault notification?
 - v) What additional costs (if any) would Communications Providers incur to implement a third party fault notification system?

Responses

- 6.6 Action on Hearing Loss supported third party fault notification, and also pointed out that if communications providers had a range of contact methods, e.g. including SMS and/or email, it would make it easier for disabled customers to contact them.

- 6.7 Sense also pointed out that the need for third parties would be less if communications providers had effective and accessible systems to enable people with a dual sensory impairment to report faults. A broad contact strategy including SMS, accessible web pages and accessible web chat would enable many customers to report problems independently.
- 6.8 Sense said that people with dual sensory impairments may have difficulties locating and keying in reference and account numbers, using IVR systems and understanding call centre staff who have strong accents, speak quickly or use technical language. Sense suggested that communications providers could offer a designated telephone number for dual sensory impaired people to call where disability-aware staff answer the call and were able to provide a more tailored, customer-focused and appropriate service.
- 6.9 The National Association of Deafened People (NADP) supported the introduction of third party fault notification, pointing out that if a deafened customer's telephone line or broadband connection fails it may be much more difficult for them to contact providers to report this. NADP said that if a customer has only a textphone on their fixed line and that line fails they will have no means of contacting the provider at all. In such cases they would need to ask a third party to do this for them. NADP also said that in many cases providers will already accept notification from a third party, but there have been occasions when the Data Protection Act has been wrongly quoted as a reason for refusing calls from a third party.
- 6.10 Alzheimer's Society responded in detail on this issue, saying that research had showed that many people with dementia have difficulties using the telephone, although they may rely on the telephone line. Alzheimer's Society research also showed that the telephone is an important tool for overcoming feeling of social isolation and loneliness. Evidence from people with dementia suggests that they look forward to regular phone calls from family or friends.
- 6.11 However, due to the nature of dementia, some people with this condition may not understand that there is a fault or be able to report it. Furthermore, it could be difficult for a family member to establish the problem and visit the person with dementia in order to support them to report the fault. Alzheimer's Society therefore supported the introduction of third party fault notification.
- 6.12 In particular, Alzheimer's Society said that if there is a fault, the person with dementia may not be able to use or have access to another telephone in order to report a fault. This could be because they have difficulty in communicating or following conversations on the telephone, or the level of their cognitive impairment means that they cannot use a telephone or remember the telephone number. As a result, the person may not be able to report the fault. On the other hand, a person with dementia may attempt to report a faulty service, but because they forget personal details, the communications provider's staff may not have any understanding of dementia, which could complicate the process of reporting and the problem could be left unresolved. Alzheimer's Society recommended that communications providers strive to become more dementia-friendly.
- 6.13 BT said that any third party can report a fault on a customer's line by calling 151 or via the BT website under the "report a fault" link. The person reporting the fault must have the relevant telephone number. However, BT then needs to speak to the customer to arrange access to their premises. There is no process for allowing a third party to manage that fault on behalf of the customer.

- 6.14 BT said that, in accordance with Data Protection rules, it needs need to ensure that it is speaking to the customer, or someone acting with their authority, when discussing their account. If an engineer needs to visit the property it is necessary to check with the customer that someone will be available on the date of the visit.
- 6.15 To allow third party fault notification, BT said that it would be necessary to set up an application process whereby the customer gives the named contact and provides their consent. If the scheme was linked to certain disabilities then this would need a medical professional to certify the form. The third party's details would need to be logged on the account so that repair advisors had the right details.
- 6.16 BT also said that it would need to make the customer aware that they had a duty to keep the third party contact details up to date and inform BT about any changes, especially if mobile numbers were given. It could be difficult for a customer to say in advance who will be around to help at the time of any fault - a family member may be the contact but they could, for example, be on holiday at that time.
- 6.17 BT questioned why Ofcom had mentioned telecare providers as trusted third parties, as there were over 200 telecare providers and that they were commercial organisations. BT advised that telecare providers can contact BT now to advise if they thought there was a fault and that BT would then test the line, but if further information was needed it would be necessary to contact the customer.
- 6.18 TalkTalk advised that they accept a fault notification on a line without any further verification about who makes the notification. However, TalkTalk also pointed out that calling out an engineer can have cost implications and asked if the nominated third party would be authorised to incur these costs on the subscriber's account.
- 6.19 Virgin also reported that its standard process is that anyone can report a fault on a telephone line without any validation checks. There is no charge for fault repair unless the customer caused the damage themselves, in which case there can be a £99 charge. Provided the person at home is over the age of 18, Virgin does not stipulate whether it is the account holder or a third party who would need to wait in for the engineer.
- 6.20 KCOM reported that it currently allows credible third parties to report faults on behalf of customers that qualify for priority fault repair. It said this tends to be carers or relatives of customers at present. KCOM supported amending General Condition 15 to make this a minimum requirement.
- 6.21 Sky reported that the customer's nominated third party can notify a fault.

Analysis

- 6.22 There appears to be variation in the fixed line sector in how faults are notified and handled.
- 6.23 We accept that there are liable to be difficulties with (a) being able to incur costs on a subscriber's account and (b) ensuring that there is someone at the subscriber's home if an engineer needs to visit.
- 6.24 It is also necessary to know the name of the relevant communications provider in order to report a fault. Difficulties may also arise in this regard.

- 6.25 Against these points, we take due account that third party bill management is available on request. Likewise, that and evidence submitted in response to the Call for Inputs suggests that it is working well.

Conclusion

- 6.26 Our overall assessment, based on a careful consideration of all the above, is that for the time being, we will not be consulting on the introduction of a third party bill management scheme. We will, however, be working with the Telecare Services Association to promote the uptake of third party bill management to eligible telecare users.
- 6.27 In this regard, we note that nominated bill managing third parties will know the name of the communications provider. They will normally be well placed to report a fault and to help with arranging access to the relevant subscriber's home without the need formally to amend GC 15.

Section 7

Information about products and services that are accessible to disabled people

Introduction

- 7.1 General Condition 15.10 currently requires providers of fixed and mobile telephony to take steps to ensure that the services they provide in order to comply with General Condition 15.1 to General Condition 15.9 are widely publicised, taking account of the need for appropriate formats and appropriate channels of communication for disabled end-users.
- 7.2 As a minimum this is expected to involve publishing clear and easy to find information on the provider's website as well as accurate advice to customers on the phone and in high street shops. Other measures might include regular training for staff in high street shops and inclusion of information in printed materials such as catalogues.
- 7.3 Article 21(3)(f) of the revised Universal Service Directive provides that Member States shall '*ensure that national regulatory authorities are able to oblige undertakings providing public electronic communication services to...regularly inform disabled subscribers of details of products and services designed for them.*' In other words, this provision requires that national regulatory authorities like Ofcom be given a power to make a rule to the effect described. Whether we can exercise that power is then, principally, a matter of supporting evidence and proportionality.
- 7.4 In the Call for Inputs, we sought views and evidence on a proposal to add an obligation on communication providers to regularly inform disabled customers about products, as well as services, that are suitable for them (e.g. information about which telephone handsets are compatible with hearing aids).
- 7.5 We suggested that disabled people might derive considerable benefit from knowing which communication products and services are most suitable for them.
- 7.6 We posed a number of questions in the Call for Inputs about this.

What measures do fixed and mobile communication providers take at present to inform disabled customers of the products and services suitable for them?

Responses

- 7.7 Some providers did not provide specific details on this but many noted that they publish information on their websites and provided advice to consumers on request.
- 7.8 Amongst the fixed providers, Sky and BT noted some of the wider work in which they are involved, for example working with disability organisations to promote information more widely.

- 7.9 The MBG noted that they have been working with mobile manufacturers to promote the Global Accessibility Reporting Initiative (GARI) database²⁰ which contains detailed information on mobile devices. O2 also flagged some additional work that it has done with disability organisations and to try and promote the development of new accessible products/services.

What barriers if any do disabled people currently face when trying to purchase communication products and services and with what effects?

Responses

- 7.10 No information was provided beyond supporting what had been set out in the Call for Inputs.

What additional costs would fixed and mobile communication providers anticipate incurring in order to comply with such a provision?

Responses

- 7.11 Only BT provided any cost data, but a couple of the providers suggested that the costs of introducing additional requirements in this area would be likely to outweigh the benefits.

What would be the qualitative and quantitative benefits of such a provision for disabled people?

Responses

- 7.12 No respondent provided any data to help us quantify the benefits.
- 7.13 Very little information was provided to feed into a qualitative assessment of the benefits. Some references were made to disabled consumers being able to make informed decisions about the products and services that suit their needs.

Are there other organisations that could usefully play a role in providing disabled people with information on the products and services suitable for them? How might such organisations and communications providers work together to ensure disabled people have access to this information?

Responses

- 7.14 Some support was expressed for better information-sharing across different organisations and with the advice sector/specialist disability organisations to allow those organisations to disseminate information through their established channels.

Current practice

- 7.15 A number of communications providers reported that they publicise the Global Accessibility Reporting Initiative (GARI) database, which is an initiative of the Mobile Manufacturers' Forum. The database can be accessed at www.mobileaccessibility.info.

²⁰ <http://www.mobileaccessibility.info/>

- 7.16 The GARI database will shortly be re-launched with information on tablets and applications (apps) as well as handsets. There was a presentation about this at a recent Ofcom event about accessible apps.²¹
- 7.17 BT publicises products and services for disabled people in targeted publications such as *Including You: BT's guide to help you communicate*, at events and exhibitions and at Try Before you Buy centres. There is also an accessibility section on www.bt.com which contains information that can help customers with a range of disabilities.
- 7.18 Three publishes information at http://www.three.co.uk/Privacy_Cookies/Accessibility and Telefonica O2 publishes information at: www.o2.co.uk/accessforall

Other evidence

- 7.19 We asked other EU regulators what if any measures they intended to take in relation to Article 21(3)(f) of the revised Universal Service Directive
- 7.20 Across the EU, only Slovakia appears to have a requirement that communications providers inform disabled customers about products that are designed for them, although a number of NRAs reported that they were considering whether or not to take measures under Article 21(3)(f) of the Directive.

Analysis and conclusions

- 7.21 The Call for Inputs did not produce significant evidence to consider mandating new rules relating to provision and promotion of information relating to products.
- 7.22 Some evidence was submitted of existing good practice.
- 7.23 There may also be scope to use existing advice channels better to promote information to disabled consumers. For example, better information sharing between the communications providers and organisations representing disabled end-users on products and services that might be suitable for disabled consumers and/or research around specific issues.
- 7.24 However, given the lack of current evidence, we will not at this time be consulting on a proposal to require CPs to publish information about accessible products. Instead, we will continue to work with communications providers to publicise GARI.

²¹ <http://stakeholders.ofcom.org.uk/market-data-research/other/policy-related-research/usability-research/accessible-apps/>

Section 8

Amendment to General Condition 15

Introduction

8.1 Article 7 of the Universal Service Directive ('the Directive') obliges Member States to take specific measures to ensure that access to and affordability of services identified in Articles 4(3) and 5 of the Directive for disabled end-users is equivalent to the level enjoyed by other end-users.²² Article 4(3) relates to the provision of publicly available telephone services (PATS) for the originating and receiving of national and international calls. Article 5 relates to the provision of directory enquiry services and directories.

8.2 Article 23a of the Directive, meanwhile, provides, as set out in section 2 of this document, that:

“Member States shall enable relevant national authorities to specify, where appropriate, requirements to be met by undertakings providing publicly available electronic communication services to ensure that disabled end-users: (a) have access to electronic communications services equivalent to that enjoyed by the majority of end-users; and (b) benefit from the choice of undertakings and services available to the majority of end-users...”

8.3 The UK domestic Universal Service Order 2003,²³ transposing provisions of the Directive, requires measures to be taken to ensure access to and affordability of PATS for end-users with a disability equivalent to those enjoyed by other end-users including the provision of, and the provision of access to, text relay services.²⁴

8.4 Ofcom has implemented requirements relating to text relay services through General Condition 15:

15.3 Subject to paragraph 15.10, the Communications Provider shall ensure that such of its Subscribers who, because of their disabilities, need to make calls in which some or all of the call is made or received in text format, are able to access a Relay Service. Such Subscribers shall be charged for the conveyance of messages to which a Relay Service applies at no more than the equivalent price as if that conveyance had been made directly between the caller and the called person without use of a Relay Service:

(a) except that the calling person may be charged standard local prices for the call made to a Relay Service provider in order to make a call irrespective of whether the call is successful; and

(b) applying a special tariff scheme designed to compensate Subscribers who need to make calls to which a Relay Service applies for the additional time to make telephone calls using a Relay Service.

²² http://europa.eu/legislation_summaries/information_society/legislative_framework/l24108h_en.htm

²³ www.legislation.gov.uk/uksi/2003/1904/pdfs/ukxi_20031904_en.pdf

²⁴ www.legislation.gov.uk/uksi/2003/1904/pdfs/ukxi_20031904_en.pdf

What issues are we looking to address?

- 8.5 We are looking at two issues. First, we have been asked by stakeholders to provide clarity that General Condition 15.3 is intended to ensure that consumers who are disabled can receive calls through the text relay service.
- 8.6 Second, we are considering whether sub-paragraph General Condition 15.3(a) remains appropriate taking into account, amongst other things, current tariffs and the requirement for equivalence. In this connection, as set out above, General Condition 15.3 currently requires communications providers to charge users of the text relay service no more than the equivalent price of the call as if it had been made without use of the relay service. However, in addition to this requirement for equivalence, General Condition 15.3(a) refers to a communications provider charging the cost of a local call for the element of the call made to the relay provider irrespective of whether the call to the called party is successful.

Issue 1: Access to the relay service for consumers calling consumers with disabilities

- 8.7 On its face, the obligation on communications providers is to provide a relay service to “such of its Subscribers” who, because of a disability, need to make calls in which some or all of the call is made or received in text format. General Condition 15.3 as currently worded does not make it explicitly clear that there is an obligation on communications providers to provide access to a relay service for subscribers without a disability who wish to call a disabled user of the text relay service.
- 8.8 The obligation also specifies that disabled subscribers using the service must be charged an equivalent price for the call as if they had not used a relay service. Again, General Condition 15.3 does not currently make it explicitly clear that subscribers without a disability accessing a relay service in order to call a disabled user must be given this facility at an equivalent price as if they had not used a relay service for the call.

Current practice

- 8.9 Although, as noted above, the General Condition does not currently explicitly mandate the ability of consumers who are not disabled to access a relay service at no additional cost, our understanding is that this does currently happen in practice. We have no evidence that any communications provider is currently charging higher rates for these calls than for calls on which a relay service was not needed, in line with the requirements and intention of the Universal Service Directive.

Analysis

- 8.10 Ofcom considers that the General Condition as currently worded may not have fully and effectively implemented the Universal Service Directive.
- Article 7 USD obliges Member States to take specific measures to ensure that access to, and affordability of, the services identified in Article 4(3) (publicly available telephone services) and Article 5 (directory enquiry services) for disabled end-users is equivalent to the level enjoyed by other end-users.
 - Article 2(c) USD defines PATS as “*a service made available to the public for originating and receiving, directly or indirectly, [calls]*”.

- The broader provisions of Article 23a treats equivalence in a similar way to Article 7, referring to ensuring that disabled end-users have access to electronic communications services “equivalent to that enjoyed by the majority of end-users.”

8.11 It is clear from these provisions, taken together, that the equivalent service to be secured for disabled end-users must include their ability to receive calls as well as originate them. That is not surprising. Telephone services enable the making and receiving of calls. Access to both functions is enjoyed by non-disabled end-users. Access equivalent to that is accordingly required for disabled end-users. Access only to the ability to make calls would not achieve that equivalence. Ofcom considers that there can be little reasonable objection to that proper construction of the relevant concept.

8.12 Moreover, the Universal Service Order 2003 says:

“6.—(1) Special measures shall be taken to ensure access to and affordability of publicly available telephone services for end-users with a disability equivalent to those enjoyed by other end-users.

(2) The measures to be taken for the purposes of sub-paragraph (1) shall include...

(c) provision of, and the provision of access to, relay services for end-users with a disability where required to ensure access to publicly available telephone services by such end-users...”

8.13 In its reference to equivalent access to PATS, the Order reflects the Directive. Again, it appears to Ofcom difficult to take any view other than that the equivalence of access referred to is the ability to make and receive calls. Without that, disabled end-users do not have proper equivalence of access to publicly available telephone services.

8.14 We take due account of each of these points. Likewise that, in practice, CPs treat the rules as applying to both the making and receiving of calls by disabled subscribers (including where the calling party is not disabled). In those lights, our view is that it is appropriate that these important rules properly reflect both the intended requirements of the underlying legal provisions and current understanding and practice. This is to ensure that disabled subscribers’ rights are unambiguously protected.

8.15 Accordingly, we think it appropriate to consider (below) options to amend the wording of the General Condition to provide clarification to communications providers and to users of the text relay service. This is particularly appropriate in advance of the improvements to the text relay service that have been mandated by Ofcom and which must be provided by 18 April 2014, as there is a possibility that these improvements will lead to an increase in take-up of the text relay service by people without a disability, who will be able to make calls to disabled people more easily.

Option 1.1 – do nothing (the ‘status quo’)

8.16 Under this option the wording of GC15.3 would remain unchanged.

Impact on consumers

- 8.17 Although all communications providers currently provide access to the text relay service to non-disabled subscribers calling disabled subscribers, the risk with this option is that the ambiguity in the General Condition would remain. In consequence, one or more communications providers could begin to pass on some or all of the cost of relay calls made by non-disabled subscribers, i.e. to charge these calls at higher rates than calls made without a relay service. If calls to a relay service user were to be charged at higher rates than regular calls, this is liable to deter prospective non-disabled callers from using the service.
- 8.18 In principle, such a step would deny disabled subscribers the equivalence required by the provisions described above. This could cause harm to both prospective caller and called party. For example, if a relay user received fewer calls as a result of prospective calling parties having to pay higher charges for relay calls than for other calls, this could lead to loneliness, isolation, and disconnection from society.
- 8.19 There is also a risk that one or more communications providers could seek to block relay calls from callers to relay users altogether. In the worst case scenario, this could lead to disabled relay users not being able to receive inbound calls which might include urgent communications. Although the risk of such calls being barred is likely to be small, the harm to disabled citizens in such a situation would be serious.

Impact on communications providers and on competition

- 8.20 There is no current impact on communication providers in maintaining the status quo, as long as all communication providers would continue to comply with the requirements and intention of the Universal Service Directive.
- 8.21 However, if the ambiguity in General Condition 15 meant that some communications providers sought to start charging callers to relay users at rates which are not those that would prevail if they were not using a relay service, or to block such calls, while other communication providers would not do so (i.e. they continue to comply with the requirements and intention of the Universal Service Directive), this is one way a potential distortion of competition could occur. The latter communication providers would in effect suffer a disadvantage compared to the former. Such potential distortion may, however, be mitigated by the limited extent to which subscribers choose providers, and therefore providers compete on the basis, of their relay charges.

Option 1.2 – Amend General Condition 15.3 expressly to confirm that relay calls made by consumers without a disability would be charged no more than rates if relay service had not been used

- 8.22 Under this option, we would consult on amending General Condition 15 expressly to confirm that it requires that all subscribers be given access to a text relay service, and that calls made by all subscribers must be charged at rates no higher than if a relay service had not been used.

Impact on consumers

- 8.23 As explained above, there is no evidence of a current lack of equivalence or other current consumer harm. Potential future harm would be on the basis of non-compliance with the requirements and intention of the Universal Service Directive to

ensure that disabled subscribers can make and receive calls on an equivalent basis to those who are not disabled.

- 8.24 Quantifying such harm is challenging (requiring, among other things, making some assumptions on the extent of potential non-compliance), but it could be serious if disabled relay users were unable to receive urgent or important calls. There would also be a risk of social exclusion if disabled users of the relay service were less able, or unable, to receive calls from with friends and family. In any event, Ofcom attributes considerable weight to the principle of equivalence as reflected in the legislative provisions described above.

Impact on communications providers and competition

- 8.25 Quantification of this aspect of the impact of this option is similarly difficult. Communications providers are currently operating in practice as if this option already applied.
- 8.26 Any additional costs to communications providers would, therefore, be on the basis that, were the status quo to remain, they may have sought to exploit GC15.3's ambiguity, changing their behaviour and either withdrawing access to the text relay service for subscribers who are not disabled or charging such subscribers some or all of the wholesale costs of the service charged by the provider of the text relay service (currently BT). Adopting option 1.2 would expressly preclude those possibilities. In that sense it might be characterised as adding a cost for communications providers.
- 8.27 On this basis, we set out in Annex 6 an analysis of potential costs and benefits of this option. In our view, the potential cost saving across the industry if all communications providers changed their behaviour by blocking access to the service for subscribers who are not disabled, or by passing on 100% of the cost of the relay service to these subscribers, would be £1.07-£1.31 million/year, but less than this if they chose to pass on only part of the cost. We would, however, regard this as a purely notional cost on the basis that no communications provider currently operates in this way and that doing so would be contrary to the requirements of the relevant legislation and the proper meaning and intention of the, albeit ambiguous, provisions of GC15.3.
- 8.28 Option 1.2 would eliminate the competitive distortion that could arise under Option 1 (discussed above). Option 2 would ensure that *all* communications providers would charge calls to relay services based on the principle that such calls must incur the same rate as non-relay calls.
- 8.29 One way Option 1.2 could create an alternative competitive distortion would be if communications providers incurred significant fixed costs for providing relay services. This could imply that communications providers with a small customer base would have less potential to recover these costs than communications providers with a large customer base. However, as this is not the case (i.e. there are no significant fixed costs associated with providing a relay service) and, given that all communications providers are likely to have the same likelihood that one of their customers makes or receives a call that requires a relay service, such distortion is unlikely to materialise.

Ofcom's proposal

- 8.30 Taking careful account of all the above, Ofcom believes that the intention of the Universal Service Directive is that disabled subscribers using the text relay service should be able to make or receive calls on an equivalent basis to non-disabled

subscribers. This requires non-disabled subscribers to have access to a relay service so that they are not deterred from making calls to disabled end-users.

- 8.31 Our understanding is that communications providers currently provide access to the text relay service in this way. However, now the ambiguity in the General Condition has been brought to our attention, we consider it is right to consult on amending it, under Option 1.2, to make the position expressly clear. This would protect the interests of disabled consumers and ensure there is the required and intended equivalence of access.
- 8.32 Our provisional view is that this approach reflects the requirements of the important principle of equivalence. We consider this is especially important given the potentially serious consequences if disabled consumers were unable to receive important or urgent calls. Likewise in the future, given that improvements to the text relay service are to be introduced by April 2104, as a result of which demand for text relay services from all users may increase.
- 8.33 Proposed amendments to General Condition 15.3 are set out in Annex 7.

Do you agree with Ofcom's analysis and proposal to adopt Option 2 in Issue 1? Please support your response with reasons and evidence.

Issue 2: General Condition 15.3(a) provision on standard local prices

- 8.34 General Condition 15.3(a) refers to communications providers charging callers making relay calls '*standard local prices*' irrespective of whether the call is successful. An underlying rationale for such a provision would be as follows.
- 8.35 Equivalence of access and affordability requires that users do not incur additional charges in respect of calls made (or sought to be made) via a relay service. General Condition 15.3(a) could be seen as having been a partial exception, not causing undue offence, to this idea.
- 8.36 That is, it would have recognised that, in the past at least, relay calls could be characterised as comprising two elements: the call from the caller to the relay service and the call from the relay service to the called party. The first element would have involved a service and a cost which the rule recognised as recoverable even where the second part of a call was unsuccessful. The restriction of the recoverable amount to a "local rate" reflected communications providers' charging practices at the relevant time, with some calls charged at a local rate, some at a higher "national" one. It reflected that, in so far as a charge was justified at all, it should be limited (the location of the relevant relay provider would have meant that most users would otherwise have faced "national" rate charges).
- 8.37 Ofcom's provisional view is that a rule to this effect is now both anachronistic and unduly offends to the requirement of equivalence. Dealing first with the anachronisms, these arise in two main respects.
- 8.38 First, Ofcom understands, the current approved text relay service provided by BT is less susceptible to characterisation as having the two elements described above. That is, the relay assistants are only brought into a call once it is answered at the called party's end. No call charges are incurred unless and until that point occurs.

There is little or no scope for a service to be provided and a cost incurred (and charge made) where a call is unanswered by the called party (or the line is engaged or out of order). The same will also apply, Ofcom understands, in respect of the Next Generation Text Relay service for which BT is currently seeking Ofcom's approval.

- 8.39 Second, as noted above, when General Condition 15 was introduced in 2003, calls were generally charged on a pence per minute basis and comprised local and national rate tariffs. Since 2003 there has been widespread availability and take-up of all inclusive packages, such as unlimited weekday or weekend calls.²⁵ In addition, there has been an adoption of single rates covering all geographic calls, instead of separate local and national rates.²⁶ In consequence of these developments, it appears to Ofcom that the need to limit a calling party's liability to pay particular call charges in relevant circumstances is much diminished, if not removed.
- 8.40 As to the requirement of equivalence, the provision in General Condition 15.3(a) is, it appears to us, vulnerable in principle to an argument that it offends that requirement in any event (and all the more so given the anachronisms outlined above). The first paragraph of the Condition already provides for calls made using the relay service to be charged at an equivalent price as if the relay service had not been used; that is, on a pence per minute or an inclusive package basis, depending on how the relevant subscriber is charged for such calls. That is all the notion of equivalence requires in the present context, especially given the way the relay service works and is charged for, and given the way communications providers charge for calls generally.
- 8.41 Any other charge apparently permitted by the rules, or any rule containing at least an ambiguity or uncertainty that might suggest any other charge may be made, is, in the circumstances as they now are, liable to offend the requirement for equivalence in at least these ways:
- in so far as it might suggest a communications provider can charge a subscriber at its standard pence per minute rate for all or part of a relay call even where an equivalent call made without the relay service would be within an inclusive package; and/or
 - in any event, in so far as it might suggest a communications provider can charge a calling party for a call made via the relay service where the call is not answered, when a charge would not apply to a similarly unsuccessful call made without the relay service.
- 8.42 Ofcom is therefore concerned that there may be a case for reviewing General Condition 15.3(a) in light of the changed circumstances and the potential for conflict between that part of the Condition and the legislative requirements for equivalence.

²⁵ Market research for Ofcom published in 2012 found that, 87% of residential consumers with a landline had a bundled call deal of some sort included in their landline package and 85% had some kind of unlimited calls package to UK landlines. Narrowband Market Review Research Report (page 20 of this annex: <http://stakeholders.ofcom.org.uk/binaries/consultations/nmr-2013/annexes/JR-report.pdf>)

²⁶ The Pure Pricing briefing published in August 2013 briefing only identified one UK tariff that included fixed voice services that did not have at least some inclusive calls (see http://www.purepricing.com/uk_broadband_pricing_factbook.html). Data from the Communications Market Report also shows that average monthly revenue per line from calls to UK geographic numbers and 'other' calls are in decline, while line rental revenues have been increasing since 2009 as these increasingly include a bundled call allowance or 'bolt-on' (see <http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/cmr13/>).

In particular, the requirement for calls using the relay service to be priced in way that is equivalent with calls on which the relay service was not used.

- 8.43 In this connection, we understand that one communications provider is currently charging relay users on the basis of General Condition 15.3(a) its standard pence per minute rate (which has replaced its local and national rates) for calls using the relay service, whether or not equivalent non-relay calls are within the subscriber's inclusive package. Although ambiguity in General Condition 15.3(a) might suggest this may be allowed, the effect is that customers of this provider making relay calls are liable to be charged by the minute for calls that would have otherwise be included in their call packages. In those circumstances they are not being charged the equivalent price for calls where a relay service is not used.
- 8.44 The communications provider referred to in the preceding paragraph has now signalled its intention to cease charging in the way described on the basis of General Condition 15.3(a). Nevertheless, its practice suggests uncertainty in the provisions of the Condition that risk offending the requirement for equivalence.
- 8.45 We therefore consider below whether it is appropriate to maintain or remove subparagraph General Condition 15.3(a) in light of all the above.

Option 2.1 - do nothing

- 8.46 Under this option 15.3 (a) and (b) would remain unchanged.

Impact on consumers

- 8.47 Under this option, subscribers using the relay service may incur call charges in addition to the charge that is equivalent to costs that would have been incurred if the call had been made without the relay service. That is, this option at best maintains an anachronism or an ambiguity as a result of which subscribers may be charged (or communications providers may seek to charge them) a local call rate for all or part of a relay call even where their call package includes inclusive call minutes. This would mean that they could effectively pay twice for all or part of the call: through the "local" call charge under General Condition 15.3(a) and through the call package included as part of their line rental charge.
- 8.48 Subscribers using the service could also, on the face of the rule in GC15.3(a) at least, be liable to charges even where a call is not connected to the called party. This would be different from the experience of subscribers making a call without the relay service; such subscribers are not charged for calls which are not connected to the called party.
- 8.49 Each of these points would appear to conflict with the requirement in the Directive that access to and affordability of publicly available telephone services for disabled end-users is equivalent to the level enjoyed by other end-users. In other words, there appears to be an additional undue cost to users seeking to make calls via a relay service.
- 8.50 As explained above, Ofcom understands that only one communications provider currently charges consumers its standard pence per minute rate (in place of its local and national rates) for all relay calls, and has indicated that it intends to cease this practice. If the others maintained their current approach, maintaining the status quo would have no impact on subscribers.

- 8.51 However, if other providers were to adopt the same approach as the first mentioned communications provider, this would result in more subscribers who use the relay service facing charges which are not equivalent to that levied if the call was made without use of the relay service. Indeed, on the assessment set out in Annex 6, these costs could be up to £666,000 (less amounts consumers already pay and those resulting from the rebate scheme referred to in General Condition 15.3(b)).
- 8.52 We also take account in this context that, although use of the text relay service has been falling over recent years, from April 2014 all communications providers must give access to an enhanced Next Generation Text Relay (NGTR) service. This may lead to increased use of the service. If communications providers sought to apply tariffs in accordance with General Condition 15.3(a), the costs to their subscribers would also increase.

Impact on communications providers

- 8.53 Under this option, there would be no current impact on communications providers. They could continue to charge for relay calls as they do now. They could also, like the provider described above, seek to charge users of the relay service a pence per minute (“local”) call rate instead or in addition to the equivalent charge of a call made without the relay service, even where consumers have an inclusive calls package included with their line rental.

Impact on competition

- 8.54 Under this option some (or all) communications providers could seek to apply the additional pence per minute rate charge in the way described above. Subscribers using the relay service may, as a result, choose a communications provider who does not make this additional charge. As with option 1.1, this could have a distorting effect on competition.

Option 2.2 - delete General Condition 15.3 (a)

- 8.55 Under this option General Condition 15.3(a) would be deleted. The other provisions on the pricing of calls using the relay service would remain.

Impact on consumers

- 8.56 Subscribers using the relay service would not be charged an additional amount for calls irrespective of whether the call is connected to the called party or whether the consumer’s call, had it been made without use of the relay service, would have been part of an inclusive tariff package (where calls would not incur additional charges).
- 8.57 Instead, consumers would just pay the same rate for successful relay calls as would apply to a successful call made without the relay service. That is, as part of an inclusive package where applicable or at a pence per minute rate, depending on how the relevant subscriber is charged for calls. This would remove any possibility of providers seeking to impose undue additional charges on subscribers using a relay service, eliminating the risk of inconsistency with the requirements of equivalence.
- 8.58 In practice, the option will not result in significant change to subscribers’ current experience as we are aware of only one communications provider that makes charges on the basis of General Condition 15.3(a) (and, as explained above, has indicated that it intends to cease this charge). However, the deletion would ensure that subscribers do not face this charge in future.

Impact on communications providers

- 8.59 This option would make clear that communications providers would not be able to make charges additional to those that are equivalent to calls made without use of the relay service.
- 8.60 As noted above, as far as Ofcom is aware, such charges currently apply only in respect of one communications provider. We estimate that in the year to 31 March 2013 this communications provider recouped around £47,000 per annum from such charges.²⁷ These revenues would be lost if this option were adopted.
- 8.61 As explained above, we understand that the communications provider intends to cease levying these charges. However, in the event that they decided to continue or that other communications providers sought to introduce them, they would have to cease this charge if General Condition 15.3(a) were deleted. On the basis of the assessment set out in Annex 6, these revenues could be up to £666,000, which would represent at least a notional cost of this option.²⁸
- 8.62 That cost is, however, likely to be limited. Communications providers could still charge the relay user for the call to the extent that it represents the charge that would have applied if the call had been made without use of the relay service, as set out above. In some, perhaps many, cases, the relevant subscribers would have inclusive call packages, so that communications providers would still receive revenue from calls by that means without General Condition 15.3(a). The potential cost of this option is, therefore, limited by the revenues that providers would recover in any event, and likewise by the rebate scheme they would be obliged under General Condition 15.3(b) to operate.

Impact on competition

- 8.63 To the extent that communications providers could compete for users of the relay service by choosing to not apply charges allowed, or seemingly allowed for, under General Condition 15.3(a), its deletion under this option may reduce such competition. However, as noted in paragraph 8.55 above, the level of competition for users of the relay service on this basis is unlikely to be significant and communications providers can always compete in other ways.

Ofcom's proposal

- 8.64 The Directive requires that Member States ensure that access to and the affordability of PATS for disabled end-users is equivalent to that experienced by other end-users. In respect of relay services this principle is implemented in the main body of General Condition 15.3. Sub-paragraph General Condition 15.3 (a) effectively creates a partial exception to this requirement, a rationale for which exception is described in paragraphs 8.35 and 8.36 above.

²⁷ In the year ended 31 March 2013 there were 6,289,700 relay call minutes in the UK (source: BT). This communications provider's share of the relay minutes was around 8.9 per cent or 559,783 minutes. The communications provider's charge was 8.4 pence per minute, resulting in estimated revenues of £47,078 pa.

²⁸ The £666,000 amount would be the cost of the option if all consumers who made relay calls had a package for which they would not have to pay a per-usage charge for a non-relay call at the time the relay call was made. Providers who were charging a standard rate for relay calls despite the consumer having an inclusive package at the time of the call would no longer be able to levy this charge under Option 2.2.

- 8.65 This provision, and the rationale posited, are now, in our provisional view, anachronistic because of the ways the relevant relay service operates (and is likely to operate in future) and communications providers charge for calls, and unduly offend the requirement of equivalence. Many subscribers now have packages with inclusive calls paid for through their fixed voice subscriptions. There is a risk that subscribers may effectively pay twice for all or part of the calls made using the relay service, through their fixed voice subscription and also through the local call charge allowed for under General Condition 15.3(a). In any event, the main body of General Condition 15.3 enables equivalent charging for relay calls.
- 8.66 Set against this potential harm to subscribers using the relay service, our provisional view is that the impact on communications providers is likely to be small. As far as Ofcom is aware, most communications providers do not currently charge on the basis of General Condition 15.3(a) so will in practice be unaffected by this change. The one communications provider that Ofcom is aware does charge using General Condition 15.3 (a) has signalled its intention to cease doing so. The deletion of the sub-paragraph will remove the possibility of other communications providers charging on this basis in the future.
- 8.67 The potential impact of this removal should be limited, nonetheless, as communications providers will be still recovering the equivalent cost of calls made using the relay service (some of which, it is likely, would have been paid for as part of a bundle purchased through consumers' fixed voice subscriptions). In addition, the removal of sub-paragraph General Condition 15.3(a) is in reality unlikely to create costs because the number of relay calls is small in relation to the total call volume and communications providers are able to spread the costs of making relay calls across all callers.
- 8.68 Ofcom is therefore proposing to adopt Option 2 and delete sub-paragraph 15.3(a).

Do you agree with Ofcom's analysis and proposal to adopt Option 2 in Issue 2? Please support your response with reasons and evidence.

- 8.69 The formal notifications with our proposed amendments to General Condition 15.3 are at Annex 7.

Tests under the Communications Act 2003

- 8.70 Section 47(2) of the Act requires, in relation to the modification of a General Condition, that the modification is objectively justified, non-discriminatory, proportionate and transparent. This legal test is supplemented by the duties to which Ofcom is subject under sections 3 and 4 of the Act (including our principal duty of furthering the interests of consumers and citizens).
- 8.71 We consider that our proposed modifications to General Condition 15 meet the criteria set out in section 47(2) of the Act, firstly in that they are not unduly discriminatory. The requirement to provide access to a relay service meeting in accordance with General Condition 15.3 will apply to all communications providers, which provide fixed and mobile PATS, for the reasons set out in this consultation.
- 8.72 We also consider that our proposals are a proportionate means of securing the objective of equivalence for users with hearing and/or speech impairments, imposing no more burden than is necessary, to secure the objective of equivalence of access and affordability as set out in this consultation. As to objective justification, we

consider that requirement is met since, as we also set out, the existing regulatory requirements do not expressly and unambiguously secure the objective of equivalence of access and affordability. The requirements we are now imposing will ensure this objective is met, but do no more than that.

8.73 We are satisfied that our decision is transparent, insofar as the nature and reasons for our proposals are clearly set out in this consultation.

8.74 Ofcom is further satisfied that the measure we have decided to take satisfy the duties set out in section 3 and 4 of the Act. The analysis set out above goes to the meeting of those duties. In particular, we have assessed the impact of our proposals on citizens, consumers and competition.

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 17 January 2014**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/access-disabled/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email disabled.people@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Katie Hanson
Consumer Affairs
Ofcom Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7981 3333
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Confidentiality

- A1.7 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.
- A1.8 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish

all responses, including those that are marked as confidential, in order to meet legal obligations.

- A1.9 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.10 Following the end of the consultation period, Ofcom intends to publish a statement.
- A1.11 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.12 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.13 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk. We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.14 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email Graham.Howell@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 This consultation is a category three consultation meaning we will consult for one month. However, we are extending the consultation period by two weeks as the consultation period falls over the Christmas and New Year holiday period. For more information on consultation lengths, please see: <http://stakeholders.ofcom.org.uk/consultations/how-will-ofcom-consult>

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Consultation questions

1. *Do you agree with Ofcom's analysis and proposal to adopt Option 2 in Issue 1? Please support your response with reasons and evidence.*
2. *Do you agree with Ofcom's analysis and proposal to adopt Option 2 in Issue 2? Please support your response with reasons and evidence.*

Annex 5

Comparisons with other regulators & regulated industries

A5.1 We requested information from other UK regulators including Ofwat and Ofgem and from other regulators in the EU and elsewhere about the requirements they place on providers and services in respect of disabled consumers. This is a summary of the information they provided.²⁹

EU regulators

A5.2 In **The Netherlands, Greece, Serbia and Hungary** there are no requirements for accessible bills, third party bill management, priority fault repair or information about products.

A5.3 In **Italy**, there are currently no requirements for accessible bills, third party bill management, priority fault repair or information about products. However, the regulator is considering regulation to require accessible formats and priority fault repair.

A5.4 In **Cyprus**, only the Universal Service Provider is obliged to send bills in accessible formats on request. Priority fault repair and third party bill management are available.

A5.5 In **Poland**, only the Universal Service provider is obliged to send bills in accessible formats on request. A price list and other information in accessible formats must also be available for inspection at the premises of the designated undertaking. Priority fault repair is not available and third party bill management is only available via power of attorney.

A5.6 In **Lithuania** there is no priority fault repair and third party bill management can only be obtained via power of attorney. Communications providers must, on request by a disabled consumer, regularly provide information on products and services intended for disabled people in a format suitable for that consumer.

A5.7 In **Malta**, there is no regulation or legislation requiring accessible formats. Priority fault repair is not available. Third party bill management is only available via power of attorney. The Maltese regulator reports that it is currently looking at the provisions relating to the rights of disabled end-users to establish what, if any, measures are required to fulfil its obligations at law.

A5.8 In **Ireland**, priority fault repair is available for all end-users who wish to pay for it. It is not unique to end-users with disabilities and is not regulated. The Universal Service provider, Eircom, is required to provide braille billing free of charge. The regulator will soon publish a consultation with respect to ensuring equivalence in access and choice for Disabled End-Users. This will discuss accessibility measures in the provision of information and bills. It will also discuss third party bill management, which is not currently mandated, although anecdotal evidence suggests that service providers currently allow this for practical reasons. In general law, the Equal Status Act refers to the provision of 'reasonable accommodation'. A

²⁹ Not the product of Ofcom's own assessment or independent research.

person selling goods or providing services must do all that is reasonable to accommodate the needs of a person with a disability by providing special treatment or facilities in circumstances where without these, it would be impossible or difficult to avail of the goods and services.

- A5.9 In **Sweden**, the Post and Telecom Authority (PTS) is working on a secondary regulation requiring voice telecoms or broadband providers to offer contract content and other consumer information in PDF readable format. PTS is also considering what action to take in relation to Article 21(3)(f) of the Universal Service Directive
- A5.10 In **Slovenia**, the recently adopted Electronic Communications Act states that Government defines the measures for disabled end-users that are put in place to ensure that access to communications services equivalent to that enjoyed by other end-users, including access to emergency services.
- A5.11 In **Slovakia**, undertakings providing a public network or public service are obliged to publish information for consumers with disabilities, regarding details of products and services designed for them and on measures adopted for ensuring equal access to services for end users with disabilities. Information on cost control must be provided to a user with disabilities in the form of an SMS and voice message or e-mail in the case of an Internet connection service. Further regulation on disability issues is expected to be issued by the communications minister in due course.
- A5.12 In **Portugal**, communications providers must provide information about their services for consumers to access in writing free of charge at stores and on their websites. It is recommended that websites meet the Web Content Accessibility Guidelines (www.w3.org). Universal Service providers have a number of specific obligations including the provision of braille bills.
- A5.13 The Portuguese NRA is required to determine compliance on equivalent access to public communications networks and publicly available electronic communications services. There is general disability discrimination legislation, including a ban on refusal to supply or provide any goods or services based on any user's disability and the adoption of measures to limit access to new technologies. Third party bill management is not required but not prohibited. Article 21 (3)(f) has been transposed but no specific action has been taken yet in this area.
- A5.14 Although a number of NRAs reported that they were considering taking action under Article 21(3)(f), only one Member State appears to have done so to date.

Outside the EU

- A5.15 In **Turkey**, the regulator ICTA requires bills and contracts to be sent to visually impaired consumers in accessible formats upon request. There are some general law provisions relating to accessibility. Priority fault repair is not available. ICTA has required that a 25% discount be given on broadband packages for disabled persons, and disabled persons can nominate a close relative to become the subscriber.
- A5.16 In **Switzerland**, there are no requirements for accessible bills, third party bill management or priority fault repair. However, the Universal Service Licensee must provide services for the hearing impaired: provision of a transcription service including emergency calls as well as an SMS relay service which are available round the clock; directory and operator service for the visually impaired and people with limited mobility: access to directory data of the customers of all providers of

services forming part of the universal service in Switzerland, via a speech-based information service in the three official languages and provision of an operator service around the clock.

- A5.17 In **Australia** the Telecommunications Consumer Protections Code is a single industry code of practice developed by industry representatives and consumer organisations that deals with issues which affect consumers such as billing, credit management, complaints handling, customer transfers and the information service providers must give customers about their prices, terms and conditions. It applies to all service providers who supply telecommunications products to customers in Australia, and should be read in conjunction with related legislation, including the Disability Discrimination Act 1992.
- A5.18 Clause 3.3.1 of the relevant Code states “A supplier must communicate with a Consumer in a way that is appropriate to the Consumer’s communications needs including those with special needs.” The Code also states that states that suppliers must have regard to ACIF G586:2006 Disability Matters: Access to Communications Technologies for People with Disabilities and Older Australians Industry Guideline when providing information to consumers with disabilities. Clause 4.1.4 states that where a consumer identifies a particular need to a supplier, the supplier must indicate if it has a telecommunications offer that may suit the consumer’s identified need.
- A5.19 On accessible formats, the Code is not prescriptive, recognising suppliers may satisfy the obligations in different ways. As well as the general rule about communicating with a consumer appropriately, clause 5.2.5 states “A Supplier must lay out and format bills so that a Customer may easily read and understand its bill”. Suppliers and customers may reach agreement for provision of a customised bill. Consumers may be charged a fee for receiving paper bills depending on what the customer and supplier have agreed and the means by which the customer will be making a payment.
- A5.20 Clause 5 of the Code states a supplier must offer its customers the ability to receive a bill in a medium that the customer is able to store and reproduce, which could include (but is not limited to) a paper form, email, or online. Clause 5.2.9 states that if a supplier is making information from, or about, a bill, available in an electronic form, it must offer at least one method of accessing that information that does not involve charges being imposed by that supplier. Clause 5.2.4 indicates (among other things) that prior to levying any charge for the issue of a bill in a form that is different from the supplier’s usual bill media, the supplier must inform the customer of the amount of the charge and its calculation. Clause 5.2.6 states that a supplier, on request, must make available in a format that is able to be read and understood, all billing information for a customer’s telecommunications service for up to 6 years prior to the date the information is requested.
- A5.21 The Communications Alliance Code on Information on Accessibility Features for Telephone Equipment requires providers to give consumers a list of key features that may enhance accessibility for people with a disability.
http://www.acma.gov.au/scripts/nc.dii?WEB/STANDARD/1001/pc=PC_100841
- A5.22 Under that Code, a customer may nominate an Authorised Representative to act on their behalf. Suppliers are required not to make the process of appointment of an Authorised Representative difficult to complete.

- A5.23 The primary universal service provider (Telstra) is the only carrier required to provide priority assistance services [priority fault repair] to its customers as a condition of its licence. Under its licence conditions, Telstra is required to have an effective policy for offering PA services to persons with a life-threatening medical condition. Telstra's arrangements for PA services are set out in its Priority Assistance for Individuals Policy at <http://telstra.com.au/abouttelstra/commitments/uso/#/!ts=1368411151307>
- A5.24 As outlined in Telstra's Priority Assistance for Individuals Policy, to qualify as a Priority Customer an individual must be diagnosed as having a life threatening medical condition: with a significantly increased possibility of a rapid deterioration in the individual's condition to the point that they may die; and where prompt attendance by an ambulance, or prompt provision of telephone advice by a doctor or health professional could avert the death. Telstra publishes a non-exhaustive list of eligible medical conditions in this regard.
- A5.25 Priority assistance for residential customers with a diagnosed life-threatening medical condition is available for "the supply of a first standard telephone service (where no other standard telephone service exists, whether provided by Telstra or another provider). The fault repair of an existing standard telephone service (where all other standard telephone services at the place of residence are inoperative, whether provided by Telstra or another provider)." A Standard Telephone Service means the standard telephone service supplied by Telstra in fulfilment of its universal service obligation under Part 2 of the Telecommunications (Consumer Protection & Service Standards) Act 1999. This includes an equivalent service where voice telephony is not practical for people with a disability (such as National Relay Service for the hearing and/or speech impaired). PA services are also available for Voice over Internet Protocol (VoIP) services.
- A5.26 Other carriage service providers/providers may provide priority assistance services to their customers. Currently, iPrimus offers priority assistance services to its customers under the ACIF code C609:2007 Priority Assistance for life-threatening medical conditions. This code establishes consistent, industry-wide arrangements for carriage service providers which choose to offer priority assistance to residential customers with life-threatening medical conditions.
- A5.27 Optus does not offer Priority Assistance but does offer its customers the Optus Special Assistance Service – Standard (OSAS Standard) and Optus Special Assistance Service – Premium (OSAS Premium). This service is not a licence condition.
- A5.28 A recent amendment to the Telecommunications Act 1997 requires a carriage service provider or carrier to either offer a priority assistance service or to inform customers of the names of carriage service providers or carriers that do offer priority assistance services.
- A5.29 ACMA has not carried out any research country about the value of broadband to disabled citizens and consumers. It has published a number of relevant consumer fact sheets, including: telecommunications equipment for people with a disability; Your rights to a telephone service – the universal service obligation; and Priority assistance for life threatening medical conditions.

Other regulated industries in the UK

A5.30 The water regulator Ofwat publishes detailed guidelines at www.ofwat.gov.uk/consumerissues/rightsresponsibilities/specialassistance/gud_pro_specialassistsept08.pdf

A5.31 Under these, companies must have accessibility as a principle to follow when publishing information. In order to remain up to date, water companies need to engage with groups representing customers with particular needs to check that their information is in a usable format for their customers.

A5.32 Most water companies offer options for customers to register online for paperless billing, but no discounts are currently offered. Across the water sector, only one company has introduced a charge for debit card payments and has since been persuaded to reverse the charge.

A5.33 In energy, the following condition relates to blind, partially sighted, deaf or hearing impaired customers and is included in all suppliers' Electricity Supply Licences.

26.2 When asked to do so by, or by someone acting on behalf of, a blind or partially sighted Domestic Customer, the licensee must, by means that are readily accessible to such customers, provide information free of charge about any Bill or statement of account relating to the supply of electricity or any other service provided to the customer by the licensee.

26.3 The licensee must provide facilities, free of charge, which enable any Domestic Customer who:

(a) is blind or partially sighted; or

(b) is deaf or hearing-impaired and in possession of appropriate equipment, to ask or complain about any Bill or statement of account relating to the supply of electricity or any other service provided to that customer by the licensee.

A5.34 There are no sector-specific rules on the accessible formats/facilities to be used but Ofgem monitors the numbers of customers registered for Braille/large print, talking bills, textphone calls.

A5.35 In addition, energy suppliers are required to keep a register of customers that are of pensionable age, chronically sick, or have a disability (customers have to ask to be included). Customers on this register can opt for correspondence to be sent to a nominated representative.

Annex 6

Costs & benefits of changes to General Condition 15.3

Introduction

- A6.1 In Section 8 we set out that all or most communications providers are currently operating on the basis of our preferred options. We referred to the difficulties of quantifying impacts of our proposed changes to General Condition 15.3 in that context.
- A6.2 Any additional costs to communications providers would be on the basis that they changed their behaviour. In respect of Issue 1, that would be that, in light of the possible ambiguity in General Condition 15.3, they either withdrew access to the text relay service for non-disabled subscribers or charged them the wholesale costs of the service that the communications provider pays the provider of the text relay service (currently BT). In respect of Issue 2, that would be that they sought to make additional charges on the basis of General Condition 15.3(a).
- A6.3 We have analysed the likely costs and benefits below in the light of the information available to us.

Relay service usage

- A6.4 Ofcom has obtained the following information about usage of the relay service
- A6.5 Approximately 12,000 textphone Calling Line Identifications ('CLIs') were used in the year ended March 2012 to make relay calls (corresponding to 0.03% of all lines in the UK), although some users could have more than one CLI (e.g. home/work) and some CLIs could be used by more than one person (e.g. where two or more text relay users live in one household). As registration is not required, the precise number of disabled text relay users is not known. Neither do we know the split between business and residential CLIs.
- A6.6 The only approved text relay service in the UK is the one provided by BT, and all other communications providers currently discharge their obligations by giving their customers access to BT Text Relay.
- A6.7 In the year ended March 2013 there were 6,289,700 relay call minutes (or 0.0006% of all call minutes in the UK).
- A6.8 On 12 April 2013 BT announced a wholesale price increase for Text Relay, from 89.43p/minute to £1.42 per minute, or £1.16 per minute for communications providers who have entered into a three-year contract. This came into force on 13 May 2013.
- A6.9 We understand from BT that around 12.5% of relay calls are currently initiated by end-users who are not disabled.

- A6.10 We are not aware of any communications provider currently charging anything other than the price of a regular call to subscribers who are not disabled, or blocking calls from consumers who are not disabled.
- A6.11 As set out in the main body of this statement, it is possible that take-up of text relay by consumers who are not disabled may increase after 18 April 2014 because of the removal of the need to dial a prefix (our research shows that the need for a prefix is a barrier to calls from businesses and services in particular, because some switchboards bar indirect access codes). After April 2014 all UK communications providers must give access to an enhanced Next Generation Text Relay (NGTR) service. In our 2011 Statement on NGTR we estimated figures for low, medium and high take-up scenarios thus:
- In the low demand scenario, we assume no impact on the number of users or average usage. We assume that 11,000 users take up the service and that average usage per user is approximately 56 minutes per month, which implies 7.4 million call minutes.
 - In the medium demand scenario, we assume that take-up increases by 25% over 5 years whilst average usage per user per month increases by 75% over the same period.
 - In the high demand scenario, we assume that both take up and the average usage per month double over 5 years. This would result in 22,000 users, each making 112 minutes of calls per month.
- A6.12 We do not distinguish between calls from disabled and non-disabled subscribers in these scenarios, but the mandated improvements would be expected to make it easier for calls to be made by the latter, which could lead to an increase in take-up by this group.

The costs and benefits of the proposed changes

Issue 1 Option 2

- A6.13 As we understand that all communications providers are currently providing access to the relay service for non-disabled subscribers at no higher cost than if relay service had not been used, there is arguably no higher cost for them under option 2 if they continue with their current practices. However, this assumes that no communications provider would change its practice in future under the status quo (e.g. as a result of BT's recent price change and/or the potential increase in take-up after April 2014).
- A6.14 In the event that a communications provider had intended to pass on some or all of the cost of the text relay service charges to non-disabled subscribers making relay calls (which they might seek to do under the status quo, given General Condition 15.3's ambiguity), the communications provider would incur some cost as a result of Option 2 being implemented. This is because Option 2 would not allow a communications provider to charge such calls at a higher rate than a regular call. Therefore, unless the price of regular calls increases (we discuss this possibility below), communications providers would have to continue to absorb the relay charges under Option 2.
- A6.15 Following BT's price increase, if (some) communications providers were to decide not to absorb the costs of relay charges, we consider that the most plausible ways

in which they could reflect these charges in the price to non-disabled subscribers, if General Condition 15 is not modified, are:

- they could pass on the incremental wholesale charge increase from BT;
- they could reflect the whole BT charge on the price of relay call for non-disabled subscribers (rather than charge the price of a regular call); or
- they could charge anything in between.

A6.16 Table 1 below summarises the cost of implementing Option 2, given communications providers' hypothetical intentions (we assume all communications providers would have the same intention):

Table 1: cost to communications providers of Option 2 (in £million)

	<u>BT price = £1.16</u>	<u>BT price = £1.42</u>
<u>Pass incremental charge</u> ³⁰	<u>0.25</u>	<u>0.5</u>
<u>Pass all charge</u> ³¹	<u>1.1</u>	<u>1.3</u>

A6.17 The impacts estimated above are based on the low demand scenario of 7.4 million text relay call minutes per year. Given that the actual 2013 volumes are just below those estimated under the low demand scenario, we consider it is sensible to use the latter to estimate the possible impact.

A6.18 Therefore, assuming all communications providers intended to pass the costs of text relay calls onto non-disabled subscribers making these calls, the (notional) cost of implementing Option 2 for all communications providers could range from £0.25m (if all communications providers take a 3-year contract with BT and pass only the incremental change in the wholesale charge) to £1.3m (if all communications providers take a one-year contract and intended to pass the whole charge), offset by the revenues the providers would derive from call charges.

A6.19 The same cost range could also be ascribed to the scenario where, instead of seeking to pass on the wholesale costs, communications providers sought to block access to the relay service for non-disabled subscribers wishing to make relay calls. Removing the ambiguity from the Condition, that they might otherwise seek to exploit to enable them to act in this way, would result in the same (notional) cost.

³⁰ Based on the estimated usage under the low demand scenario and the BT wholesale prices, the value of the relay call 'market' would, following BT's price change, increase from £ 6.61 million to £8.575 million if all communications providers were paying the lower rate or £10.5 million if all communication providers were paying the higher rate. This corresponds to an incremental increase of £1.97-3.89 million overall, or £0.25-£0.49 million for the segment of calls made by consumers who are not disabled (12.5% of all relay call minutes).

³¹ The actual cost is slightly lower than this as one needs to deduct the revenues communications providers make by charging the 7.4 million minutes at the wholesale price of a regular call. However, as discussed above, the wholesale charge of a regular call is likely to be below 9ppm, which is quite negligible compared with the charge for relay calls.

- A6.20 Given the above, while not negligible, the impact of implementing Option 2 if communications providers had intended to pass on the cost of relay calls to non-disabled subscribers, or to block their access to the relay service completely, is overall not significantly onerous. In the first place, it is a notional cost in the following senses. No CPs operate in this way and that doing so would be contrary to the requirements of the relevant legislation and the proper meaning and intention of the, albeit ambiguous, provisions of GC15.3.
- A6.21 Furthermore, it is highly likely that the net impact on communications providers would be much lower than the above estimates. One way for communications providers to pass the increased wholesale charges onto retail customers under Option 2 is through the retail prices of regular calls. Where communications providers incur significant costs in relation to text relay calls and the likelihood of these calls being made by a customer is the same for all communications providers, there is no reason a priori why communications providers cannot recover the costs of these calls from regular calls across their entire customer base. In other words, there is a priori no reason why the cost of relay calls cannot be included within the costs of making calls in general, if all communications providers face the same likelihood of a call being made by or to their disabled customers.
- A6.22 In connection with that hypothesis, there are 33.2m exchange lines in the UK. If the impact of Option 2 is spread across all fixed voice users, this would amount to an incremental charge ranging from 0.75 pence to 4 pence per fixed line subscriber per year, compared to average annual revenue spend of £268 per fixed line. While this would impact all fixed line users, the impact per user across all fixed line consumers would be negligible compared to the impact on those non-disabled subscribers calling disabled end-users under the status quo if operators were to pass the costs of making these calls onto them. In this connection, it is also worth noting that Ofcom would expect that communications providers would spread the costs of relay calls among all callers even under the status quo.

Issue 2 Option 2

- A6.23 A similar analysis can be applied to Option 2 on Issue 2. In the year ended March 2013 there were 6,289,700 relay call minutes according to BT. In our forward looking low demand scenario we assume there would be 7.4 million relay call minutes, which figure we again use in the following assessment.
- A6.24 Taking this figure, and as local and national rates no longer exist, we could apply BT's per-minute price for non-inclusive calls to fixed line numbers on its lowest priced tariff (9 pence/minute). We use this as a proxy rate because:
- the majority of text relay users are currently BT subscribers; and
 - the majority of relay calls are to fixed line numbers.
- A6.25 If all communications providers were to seek to apply this rate to all the relevant relay calls this would result in charges of £666,000. Subject to a netting off of any rebate that is applied, and of the amount providers already recover in charges currently levied for calls (for example, in inclusive subscription prices), this is an indication of the (notional at least) cost of making changes to General Condition 15.3 so as to make clear providers may not charge on this basis.
- A6.26 We note again that, as well as being notional, such a cost is also in any event limited. Similarly, it is another cost which we might plausibly expect to be spread

amongst the costs of all calls made by all subscribers. On that basis, even the gross amount of £666,000, spread over the UK's 33.2m exchange lines in the UK, would amount only to an incremental charge of around two pence per fixed line subscriber per year.

Benefits

- A6.27 It is very difficult to assign a cash value to disabled relay users' ability to continue to be able to make and, in particular, to receive calls from friends, family, businesses and public services. One quantification of the benefit would be to say that if our proposed options would impose on providers notional costs of between £0.25m and £1.3m and some proportion of £666,000, respectively, the benefit to subscribers making relay calls is of corresponding amounts. That is, those subscribers benefit from costs of such amounts not being passed on to them and instead being spread over all calls and subscribers.
- A6.28 A number of other points are also relevant in the assessment of benefit. One is that equivalence of access and affordability requires both the ability to make and *receive* calls, and to be able to do so at an equivalent cost to non-relay calls (and, self-evidently, without paying duplicate charges). Those carry very substantial value as aspects of a society which seeks to give citizens equality in, and/or remove discriminatory effects on, their ability to use services that are an important part of social participation.
- A6.29 Moreover, it is self-evident that there would be significant harm caused to disabled citizens and consumers who, for example, were unable to receive, or found it more difficult to afford to make, an urgent or financially important call, and the consequences could be serious. If the relay service was not available at all to non-disabled subscribers (even at cost) – which the current ambiguous terms of General Condition 15.3 suggest might be possible – then, although the caller might be willing to pay the relay charge, the call to the disabled end-user could not be made. Similarly, where subscribers are required to pay duplicative charges, this may inhibit their use of a relay service, either as a matter of inclination or affordability. This could adversely affect disabled subscribers' abilities both to make and receive calls, including urgent and financially important ones. In each aspect, there would also be an increased risk of social isolation for disabled subscribers.
- A6.30 Ofcom does not have sufficiently detailed information to assess exactly how frequently calls about life-or-death matters, or where there could be serious financial consequences as a result of non-receipt of a particular call, are made by non-disabled subscribers to disabled people. However, given that there are 33,000 relay calls a week, including around 12.5% of them from non-disabled subscribers, it is likely that at least some of these will be sufficiently urgent and/or important that harm would occur if they could not be made.
- A6.31 We consider that, given the potential for significant harm that could be suffered by disabled people under the current General Condition 15, the benefits of our proposed options are likely significantly to outweigh their limited costs. As we have discussed above, those options are in reality unlikely to create costs, not least because communications providers are able to spread the incremental costs of making relay calls to all callers even under the status quo.
- A6.32 Putting all this another way, there is a plausible explanation that the (in any event notional) costs of both Ofcom's proposed options are limited and, to the extent they exist at all, liable to be spread so as to be negligible. Moreover, each proposal

would remove ambiguities and/or possibilities that communications providers could make charges of relevant subscribers that would be inimical to the requirements of equivalence. For example, by making charges of non-disabled subscribers that are liable to inhibit their calling deaf end-users. Our proposals would help secure the important and intrinsically valuable benefit of equivalence at limited cost.

- A6.33 It would be possible for Ofcom to wait and see if consumer harm happens before changing the General Condition as proposed. However, preventing potential harm to disabled users of the relay services is in line with our duty under the Communications Act to have regard to the needs of older and disabled people when carrying out our work. The proposed change to the General Condition would also make it better reflect the Universal Service Directive from which it ultimately derives.

Annex 7

Notification of proposed modifications to General Condition 15

PROPOSAL FOR MODIFICATIONS OF CONDITION 15 OF PART 2 OF THE GENERAL CONDITIONS UNDER SECTION 48A(3) OF THE COMMUNICATIONS ACT 2003

BACKGROUND

- A. The Director General of Telecommunications published on 22 July 2003 a notification setting the General Conditions. Since July 2003, the General Conditions have been modified on several occasions and Ofcom has set new General Conditions.
- B. Articles 7 and 23a of the Universal Service Directive require Member States to ensure that access to, and affordability of, certain communications services for disabled end users is equivalent to the level enjoyed by other end-users. General Condition 15 contains a number of provisions designed to secure this equivalence.
- C. Ofcom has considered the extent to which General Condition 15 might be modified so as appropriately to secure such equivalence for disabled end users. In particular, Ofcom has reviewed the extent to which General Condition 15 gives clear and express effect to requirements that secure such equivalence.

PROPOSAL

- D. In light of the above mentioned review, Ofcom proposes to modify General Condition 15. The draft modifications are set out in Schedule 1 to this Notification
- E. Ofcom's reasons for making these proposals, and the effect of the proposed modifications, are set out in the accompanying consultation document.
- F. Ofcom considers that the proposals comply with the requirements of sections 45 to 49C of the Act, insofar as they are applicable. Ofcom considers that the proposals are not of EU significance pursuant to section 150A(2) of the Act.
- G. In making these proposals, Ofcom has, so far as relevant, considered and acted in accordance with its general duties under section 3 of the Act, the six Community requirements set out in section 4 of the Act and its duty to take account of European Commission recommendations for harmonisation under section 4A of the Act.
- H. Any representations about the proposals should be made to Ofcom by 17 January 2014.
- I. If implemented, the modifications shall enter into force on a date to be specified in Ofcom's final statement in relation to these proposals.
- J. A copy of this Notification is being sent to the Secretary of State.

INTERPRETATION

- K. In this Notification:
- a. “the Act” means the Communications Act 2003;
 - b. “the General Conditions” means the General Conditions of Entitlement made under section 45 of the Act which took effect on 25 July 2003;
 - c. “Ofcom” means the Office of Communications; and
 - d. “the Universal Service Directive” means Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services.
- L. Words or expressions shall have the meaning assigned to them in this Notification, and otherwise any word or expression shall have the same meaning as it has in the Act.
- M. For the purposes of interpreting this Notification:
- a. headings and titles shall be disregarded; and
 - b. the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
- N. The Schedules to this Notification shall form part of this Notification.

Signed by Chris Taylor

Chris Taylor

Director, Consumer Policy, OFCOM

2 December 2013

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002

Schedule 1

Proposed modifications to General Condition 15 of Part 2 of the General Conditions

1. The opening paragraph to General Condition 15.3 shall be amended so that it reads:

“The Communications Provider shall ensure that such of its Subscribers who, because of their disabilities, need to make or receive calls in which some or all of the call is made or received in text format, are able to access and use a Relay Service, including the receiving of calls made by End-Users irrespective of whether such End-Users have a disability. Such Subscribers and End-Users, as the case may be, shall be charged for the conveyance of messages to which a Relay Service applies at no more than the equivalent price as if that conveyance had been made directly between the caller and the called person without use of a Relay Service. In making such charges, the Communications Provider shall apply a special tariff scheme designed to compensate Subscribers who need to make calls to which a Relay Service applies for the additional time to make telephone calls using a Relay Service.”

2. Sub-paragraphs (a) and (b) of General Condition 15.3 shall be deleted.