



Attention: Ofcom
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**TELEFÓNICA UK LIMITED RESPONSE TO
OFCOM'S REVIEW OF RELAY SERVICES**

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A *Telefónica* company



INTRODUCTION

1. Telefónica UK Limited ('O2') welcomes the opportunity to respond to Ofcom's Review of Relay Services ('the Consultation').
2. O2 believes that communication technologies can make a positive contribution to an inclusive society. We want to enhance people's lives, the performance of businesses and the progress of the communities where we operate by delivering accessible, innovative and valued services.
3. It is vital to make new technologies and systems available to all and apply technology to the task of genuinely empowering all citizens to play a full role in society. O2 is committed to eliminating communication barriers and improving social integration for people with disabilities.
4. O2 belongs to the Employers Forum on Disability¹ and the 'Two Ticks' scheme² which raises disability awareness amongst employers. We also undertake stakeholder engagement with Non Governmental Organisations ('NGOs') representing disabled groups to better understand our customer's needs.
5. O2 has worked with Ofcom and specialist disability consultants to improve the quality and quantity of information we provide to consumers. Our Access for All website³ provides extensive information for people with disabilities and can be accessed from the front page of our main website. It includes useful information and advice on mobile devices and features to make communication easier for users with a range of disabilities including those who have hearing and/or speech impairments.

¹ <http://www.efd.org.uk>

² http://www.direct.gov.uk/en/DisabledPeople/EmploymentSupport/LookingForWork/DG_4000314

³ <http://www.o2.co.uk/accessforall>



6. O2 provides a dedicated text-only Pay & Go tariff as part of our Simplicity⁴ range of products which can be utilised by customers with hearing and/or speech impairments.
7. We have also recently opened a major retail store in Tottenham Court Road⁵ which offers a variety of services and information for users with disabilities including those with hearing and/or speech impairments. This includes advice on handset choice and use, dedicated accessibility workshops, one-on-one training sessions and staff who are trained in British Sign Language ('BSL').
8. O2 is committed to both communicating with our customers who have hearing and/or speech impairments, and also helping them to communicate more easily with others.
9. Finally, we support the comments made in response to the Consultation by the Mobile Broadband Group ('MBG') of which, O2 are members.

⁴ <http://www.o2.co.uk/tariffs/simplicity>

⁵ <http://www.o2.co.uk/business/tottenhamcourtroad>



EXECUTIVE SUMMARY

10. Technology is advancing at a rapid pace and new developments such as video calling and Instant Messaging ('IM') provide useful and enhanced capabilities for users with hearing and/or speech impairments.
11. Ofcom's research shows that such users express a clear preference for communicating without the presence of a third party due to concerns over privacy and the desire to communicate directly and freely.
12. Ofcom has failed to provide sufficient evidence to demonstrate the demand for relay services over other means of communication and we are concerned that Ofcom is moving ahead at pace toward implementation of proposals for services that do not meet the core needs of its intended users. This will result in services that are costly, under-utilised and do not provide significant benefits.
13. We urge Ofcom to undertake greater discussion and research in order to fully understand the needs and preferences of users with hearing and/or speech impairments and apply these findings appropriately to ensure the provision of services that are valued and provide a positive user experience.
14. We also urge Ofcom to give greater consideration to the need for businesses and public bodies to make a wider range of channels of communication available to assist users with hearing and/or speech impairments and contribute equally towards the funding of any agreed solution.
15. Decisions that may arise from this review must rest on solid foundations such that they can withstand any legal test or challenge. To do so requires profound and rigorous analysis at these early stages. We feel that the present Consultation falls some way short of that.



OFCOM'S APPROACH AND DUTIES

16. Ofcom's approach to identifying the needs of users with hearing and/or speech impairments has not been thorough enough and does not provide the robust evidence based case that is required to justify the formal regulatory intervention proposed.
17. Ofcom is moving toward implementation of proposals in an effort to interpret the EU equivalence obligation without first properly considering whether they will align with the core needs of its intended users.
18. We are concerned that should Ofcom continue along its current path, it will be unable to demonstrate that it has met its duties under the Communications Act to have regard to the principles of transparency, accountability, proportionality and consistency and of ensuring that actions are targeted only at cases in which action is needed⁶
19. In considering what measures may be appropriate to ensure equivalent services; Ofcom must have regard to a number of duties set out in the Communications Act and Article 8 of the Framework Directive⁷. In particular, under Article 8 of the Framework Directive and sections 3 and 4 of the Communications Act⁸ Ofcom must ensure that any measures taken are objective, transparent, non-discriminatory, and proportionate.
20. Those principles are further enshrined in the Communications Act⁹ with regard to the setting or amending of General Conditions and Universal Service Conditions which provides that Ofcom may not impose such a condition unless satisfied that those tests are met.

⁶ Section 3(3) Communications Act 2003

⁷ Directive 2002/21/EC of 7 March 2002

⁸ Section 3 & 4 Communications Act 2003

⁹ Section 47 Communications Act 2003



RESEARCH AND EVIDENCE

21. It is vital that Ofcom establishes a firm foundation upon which to understand not only the needs of people with hearing and/or speech impairments, but also the demand for any proposed services which are intended to benefit them.
22. The market research conducted by Ofcom shows that people who have hearing and/or speech impairments express a clear preference for communicating without the presence of a third party relay assistant due to concerns over privacy and the desire to communicate directly and independently.
23. The research also clearly shows that people who have hearing and/or speech impairments make use of, and largely favour, a variety of widely available communications services such as SMS, e-mail and instant messaging.
24. Ofcom has not provided sufficient evidence to demonstrate a significant demand for enhanced relay services over other more widely-used communication methods and applications that deliver a better user experience. We urge Ofcom to take stock and consider the need to ensure that any proposed services will serve the needs of users, be properly utilised and deliver clear benefits.
25. MNOs have invested a significant amount of time and money in systems development in order to comply with the General Condition for mobile text relay. This has proved to be a misuse of valuable resource as the service is used by a tiny minority of customers, regardless of its promotion. There is no evidence to suggest that enhancements to the existing service will not result in the same mistake being made a second time.
26. It is important that any solution that is put in place is not rendered obsolete in the short to medium term. Further research and investigation is required to understand and quantify how any proposed service will be technically delivered and ensure it results in a positive user experience free from frustration and restrictions.



27. Ofcom’s research suggests that take up of enhanced text relay services would not increase significantly over the take up of the current text relay service.¹⁰ In fact, we agree with Ofcom that it is likely that as a result of these preferences expressed by users who have hearing and/or speech impairments, further downward pressure on the demand for these services is likely to persist in the future¹¹.
28. We are concerned that Ofcom has not carried out sufficient analysis or provided satisfactory evidence to support the proposals as they stand. This is highlighted in the Consultation where Ofcom state *“We attempted to quantify the consumer benefits that a NGTR service would deliver through the market research. However, the results of the research provide indicative data only in this respect and do not appear to be reliable enough to estimate the benefits of relay services robustly in quantitative terms”*.¹²
29. This is similarly evidenced in relation to the proposals on Video Relay (‘VR’), where Ofcom state *“But, consistent with our assessment of the EE report in Annex 9, we have not been able to identify benefits on a sufficient scale that we are confident they would match or exceed the relatively large costs of the VR service especially in the medium and high demand scenarios”*.¹³
30. To establish if the proposals are proportionate Ofcom is required to conduct an appropriate assessment as to whether the benefits will exceed the costs, at present this has not been established and as a result the proposals are not proportionate. There is considerable incremental cost in implementing the VR proposals as they stand, and the significant associated benefits that need to exist in order for an intervention to be proportionate have not been demonstrated.

¹⁰ Paragraph 4.43, The Consultation

¹¹ Paragraph 4.44, The Consultation

¹² Paragraph 4.76, The Consultation

¹³ Paragraph 5.78, The Consultation



BSL INTERPRETERS

31. Notwithstanding the clear preference to have a non-intermediated service, the shortage of BSL interpreters in the UK itself creates a significant problem in the medium term which is likely to negatively impact the availability of existing face to face interpreters who would be required in order to ensure the operation of the VR service, thus leaving a gap in the provision of this long established service.
32. Ofcom's research also found that participants expressed concern around users being less comfortable in discussing personal or confidential issues as the limited number of interpreters meant they were likely to be known in the community and by the end user¹⁴.

THE ROLE OF BUSINESSES & FUNDING MODELS

33. Ofcom's research highlights the fact that those with hearing and/or speech impairments experience considerable difficulties contacting businesses and public bodies. We agree with Ofcom that *"significant benefits could arise if organisations made improvements to their communications services for disabled people, particularly through the use of mainstream services such as mobile text messaging, instant messenger and email..."*¹⁵
34. There is a clear need for such organisations to make a wider range of channels of communication available to assist users with hearing and/or speech impairments. However, Ofcom's proposal for CPs to pay for relay services acts as a disincentive to other large businesses and public bodies that serve large volumes of the population to providing greater accessibility through direct non-intermediated services which are likely to have a greater chance of success than relay services.

¹⁴ Paragraph 5.10, The Consultation

¹⁵ Paragraph 1.19, The Consultation



35. This important issue needs greater focus and must be addressed with engagement from the relevant stakeholders. We believe it is vital to involve such organisations in any proposals and ensure they are properly incentivised in addition to playing an equal part in funding any agreed solution.
36. It is disproportionate to mandate CPs to fund such proposals in isolation, this view is not just held by CPs themselves, but also a broad range of stakeholders who appreciate that it is not right for all the costs to be met by CPs alone and that businesses should also contribute towards the costs. We therefore urge Ofcom to investigate and explore alternative funding models which are more likely to meet the test of proportionality.

TIMETABLE FOR IMPLEMENTATION

37. Notwithstanding the need to ensure that any proposed service meets the needs of users with hearing and/or speech impairments and is proportionate, should Ofcom decide to proceed with implementation of the current proposals it is highly unlikely that a period of 18 months would provide sufficient time within which to agree network and technical design, make changes to billing systems and complete the required integration. There are far too many unknowns at the present time for this to be realistic and further work is required on the fundamentals of design and operation before such a timetable could be realised.

WHOLESALE PRICE CONTROL

38. We are concerned that the lack of any proposed price control on the platform provider at the wholesale level will result in excessive and exploitative pricing due to the fact that CP's will be forced to pay the rate in order to comply with the General Condition. This situation will be damaging to CP's businesses and is likely to result in commercial disputes which Ofcom will ultimately be called upon to formally investigate and determine.



CONCLUSION

39. Further development of relay services is not justified if there is little chance that it will meet the needs of its intended users. Research and experience has shown that the vast majority of users prefer non intermediates services which provide better user experience and greater independence. This is highlighted by the failure of the existing mobile text relay service.
40. It is important that Ofcom and industry work together to come up with a solution but care must be taken to ensure that it meets the needs of users and does not quickly become obsolete or under utilised due to poor design or technical limitations.
41. Greater consideration needs to be given to the requirement for businesses and public bodies to make a wider range of communication channels available and contribute equally towards the funding of any agreed solution.
42. In order to ensure success Ofcom must undertake further research, conduct robust analysis and apply these findings appropriately to ensure the provision of services that are proportionate, valued and provide a positive user experience.

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