



Sky's Response to Ofcom's Review of Relay Services

27 October 2011

Summary

1. Sky welcomes the opportunity to respond to Ofcom's consultation on Relay Services. As a responsible broadcaster and communications provider we have long had a commitment to helping and supporting all our disabled customers to make the most of their communications services with Sky. We support Ofcom's proposal to provide a next generation text relay service (NGTR) provided the service continues to be provided by BT or other centralised provider and is subject to a financial cap. However, given the current cost benefit analysis conducted by Ofcom, we do not consider that the provision of a costly video relay service (VRS), be it unrestricted or restricted, is a proportionate requirement to be imposed upon and funded by the communications industry alone and that any proposal to implement VRS requires broader business and Government engagement to determine how such a service would be funded. We note that at the DCMS Roundtable on 13 October 2011 some of those representing the deaf and hearing impaired community also expressed the view that there is a need to consider a funding method which looks beyond the communications industry. Sky supports that view.
2. Sky believes that "equivalence" can be achieved in a number of ways and by various services. This is particularly so given the advances in technology and the way in which different customers use different services. E-mail, texting, instant messaging, live chat and internet services are increasingly meeting customers' needs and reducing reliance on voice telephony. Ofcom highlights that the market research it commissioned concluded that *"There is no 'one size fits all' communications technology that would be suitable for all people who have hearing and/or speech impairments. Different technologies are perceived to have advantages and disadvantages for people depending on their needs and preferences"*¹. As such, Sky considers that mandating a VRS does not constitute a proportionate approach to regulation and as such Ofcom is failing to apply its responsibilities under section 3(3)² and section 6(1)(a)³ of the Communications Act 2003 or the principles of Better Regulation⁴.
3. Sky also considers that mandating a VRS does not satisfy the requirements in section 4(6)⁵ of

¹ Ofcom Relay Services Consultation paragraph 3.9 p9-10

² In performing their duties under subsection (1), OFCOM must have regard, in all cases, to—

(a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and

(b) any other principles appearing to OFCOM to represent the best regulatory practice.

³ Section 6(1) of the Communications Act 2003 states that:

"(1) OFCOM must keep the carrying out of their functions under review with a view to securing that regulation by OFCOM does not involve— (a) the imposition of burdens which are unnecessary;"

⁴ <http://www.bis.gov.uk/policies/better-regulation>

⁵ Section 4(6) The fourth Community requirement is a requirement to take account of the desirability of OFCOM's carrying out their functions in a manner which, so far as practicable, does not favour—

(a) one form of electronic communications network, electronic communications service or associated facility; or

the Communications Act which requires that Ofcom must carry out its functions in a manner which does not favour one form of electronic communications network, electronic communications service or associated facility. Ofcom acknowledges that VRS is generally accessed using a fixed broadband connection and not used with mobile broadband. Requiring fixed line providers to fund and provide a VRS discriminates against fixed line providers and places a disproportionate burden on one sector of the communications industry.

4. Sky notes that Ofcom intends to consult further on the costs and benefits of the options for restricted VRS next year. We would welcome a further consultation because Sky considers that, to date, the analysis of the demand for or benefits of a VRS does not support a mandated service be it restricted or unrestricted. We would be happy to engage further with Ofcom on VRS during the next consultation but prior to that we urge Ofcom to engage with DCMS and consider funding mechanisms before any implementation discussions are commenced.

Sky's Accessibility Programme

5. Sky has a dedicated team of over 100 customer service representatives who are highly trained and provide specific support for our disabled customers. We were the first broadcaster to go beyond Ofcom's Television Access Service Requirements by voluntarily delivering 20% audio description on our programming, which we regularly exceed, and was the first to provide products like Sky Talker, which vocalises parts of the Electronic Programme Guide for blind and partially sighted customers, and the easy grip remote control, for those with mobility impairments.
6. Our disabled customers are given the opportunity to receive any communications from Sky in formats of their choosing, including Braille, large print and audio, and we have built a dedicated website where information about all our products, services and support for disabled customers is provided in an accessible format (see www.sky.com/accessibility). We also enable our speech and hearing impaired customers to contact us through our direct, real-time service; TextPhone, whilst also supporting them in more traditional telephony channels by up-skilling all our customer-facing staff to ensure they know how to respond appropriately to these customers. However, we are finding that as technology has evolved, more of our disabled customers have moved to contacting us regularly by email and services like TextPhone, rather than by telephone. Indeed, across the wider customer base we are also seeing a decline in traditional telephony as the use of online services continues to grow.
7. Keeping in touch with the views of our customers is fundamental to our business and we use a variety of channels to garner feedback from our disabled customers. Likewise, we actively engage with the charities and non-governmental agencies that support disabled customers and we encourage these organisations to raise with us the specific needs of their members. This feedback is invaluable to our future product developments and we often ask disabled customers and interest groups to user-test new product developments before they are launched.
8. In order to formalise the feedback we receive from disabled customers, this year we have launched a significant piece of research to examine what aspects of our specialised products and services are most useful to different disability groups, and to examine how they would

(b) one means of providing or making available such a network, service or facility, over another.

like to see us develop them in the future. We always aim to invest in services in a manner that does not favour one particular disability group at the expense of another.

Consultation Questions

Question 1: Do you agree that NGTR would provide greater equivalence than the existing approved TR service? Do you agree that we have considered an appropriate range of improvements?

9. We acknowledge that a number of stakeholders in the deaf and hard of hearing community believe the current Text Relay service is no longer fit for purpose. Indeed, we are aware that it is not a service that is well publicised or well used by the individuals it seeks to support. We understand Ofcom's need to encourage equivalence as required by the EU Electronic Communications Framework and support the proposal to make improvements to the existing service in order to offer:
- The ability to have natural conversations that are interruptible by either user
 - The ability to use different equipment and devices to make a call
 - The ability to have private conversations

However, we consider that Ofcom's proposal for NGTR requires further clarification and consideration of a number of issues outlined in this response, in order for the service to be practically delivered, at a proportionate cost to Communications Providers (CPs).

Question 2: Do you agree with the proposal to implement NGTR through the amendment to GC15? Do you agree that the criteria we propose satisfactorily embody improvements we suggest for NGTR?

10. Sky considers that the removal of Universal Service Condition 4 (USC4) from BT and the implementation of a new GC 15.5 requires careful consideration and in particular, warrants clarification with regards to the distinction between **access** to services and the actual **provision** of those services themselves. Currently USC4 establishes a TR service to be **provided by BT** to its customers and to other CPs. In parallel, GC 15.3 provides that CPs "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".
11. The new GC 15.5 requires that "A Relay Service **provided by** the Communications Provider to its Subscribers pursuant to paragraph 15.3 must: (a) provide facilities for the receipt and translation of voice messages into text and the conveyance of that text to the terminal of End-Users of any provider of Publicly Available Telephone Services and vice versa...". The removal of USC4 will mean that there is a disconnect between 15.3 and 15.5 because there is no requirement to **provide a service**, just **access to** a service, and then various requirements as to what that service should entail.
12. Furthermore Article 23a of the Universal Service Directive provides that national authorities be enabled to specify requirements to be met by CPs to ensure that disabled end-users "have equivalent access to electronic communications services enjoyed by the majority of end-users". CPs already provide the means **to access** relay services. Mandating CPs to provide the actual relay services goes beyond the requirements of the Directive, whether it be for TR, NGTR or VRS.

13. Sky is concerned that removing USC4 from BT and placing the obligation to provide access to a NGTR service within General Condition 15 exposes all CPs to a significant potential cost, over and above what is outlined by Ofcom in its proposal. For instance, Ofcom's costing models for NGTR are based on the current annual costs to the industry for providing access to Text Relay (£4.4m) plus an additional incremental cost of £348,000 for upgrading the service. This cost might be accurate if BT is required to provide a centralised service that other CPs can access, but it is inaccurate if each CP is required to build and provide an individual service for its customers, as the overall costs would be significantly higher.
14. We are encouraged that Ofcom's cost estimates appear to assume that there will be a centralised NGTR provider as we consider this is the only way to efficiently deliver the service. However, we believe that Ofcom's estimates fail to represent the true cost to CPs of providing access to a NGTR services because they do not take into the account the cost to each CP of building the network infrastructure required to do so. For instance, the costs involved in introducing an Internet Protocol (IP) based overlay network to be used in conjunction with the PSTN connection, or whatever technical means of delivery the CP choses to provide the service.
15. Sky considers that increased visibility is required of the actual incremental costs that might be experienced by BT for implementing NGTR. Ofcom's assessment by InterConnect Communications suggests a 'Year 0' cost of £348,000 but it is possible that the new service might actually be more cost efficient to provide, given that it would not be based on a legacy PSTN system alone. Therefore the costs to BT may in fact be significantly smaller than currently estimated. Sky believes that greater visibility of these costs is required at this stage.
16. Sky considers that it should not just be assumed that BT will continue to provide the NGTR. CPs require some comfort that a wholesale service will be maintained by a centralised body if USC4 is withdrawn. There is also a need to establish a cap on the wholesale charges that the relay service operator is able to levy for providing access to the services and this cap should be a fundamental requirement of being an approved provider of NGTR, along with requirements around the reliability of the service.

Comments on drafting of the new GC15.5

17. GC 15.5 provides that a Relay Service provided by the Communications Provider to its Subscribers pursuant to paragraph 15.3 must:
 - (a) provide facilities for the receipt and translation of voice messages into text and the conveyance of that text to the terminal of End-Users of any provider of Publicly Available Telephone Services and vice versa,
 - (b) provide facilities for the receipt and transmission of voice communications simultaneously with text communications;
 - (c) provide facilities for access to Emergency Organisations;
 - (d) be available for use by End-Users at all times;
 - (e) be capable of being accessed by End-Users of the service from readily available terminal equipment, including textphones, personal computers and mobile telephones;
 - (f) not prevent End-Users from communicating with other End-users of other Relay Services;

- (g) not require the dialling of a prefix number for End-Users to access the service;
 - (h) insofar as reasonably practicable, allow for communication between End-Users of the service at speeds equivalent to voice communications;
 - (i) ensure the confidentiality of communications between End-users of the service;
 - (j) comply with any directions in respect of the service which Ofcom may make from time to time; and
- ⁶(j) be approved by Ofcom for the purposes of this Condition 15.5.”

18. Section 15.5 (e) states that a relay service provided by a CP must "be capable of being accessed by End Users of the Service from readily available terminal equipment, including textphones, personal computers and mobile telephones." Whether or not hardware is compatible with a relay service is not within the control of CPs. Ofcom acknowledges that "Some uses may depend on the availability of suitable software or applications – the provision of which is beyond the scope of Ofcom’s powers"⁷. Equally, such applications may not be within CPs’ power either. We are also unclear whether “readily available” means equipment available to the general public or equipment for those with hearing impairments. We consider that the drafting is far too broad and as drafted would require CPs to ensure that a relay service was compatible with any textphone, mobile, computer or tablet that was available in shops within the UK, via software or applications which are outside the control of CPs and Ofcom.
19. Section 15.5 (g) requires that the text relay service must not require the dialling of a prefix number for End Users to access the Service. Sky questions why the removal of a dialling prefix is a necessity? The Consultation does not address this issue at all. The InterConnect Report at Annex 6 of the Consultation provides no technical or costing information on this proposal. Sky would like to understand how Ofcom envisages that this proposal might work, what the potential costs might be and what the rationale is behind this requirement. It is our experience that the prefix is valued by our deaf and hearing impaired customers because it clearly signals that they are accessing a service specifically designed to meet their needs.
20. Section 15.5 (h) requires that the relay service should "insofar as reasonably practicable, allow for communication between End Users of the service at speeds equivalent to voice communications." Whilst we note the caveat “insofar as reasonably practicable” Sky considers that this is a challenging requirement because it is not entirely within the CPs control. The consultation document states that *“TR conversation speeds are around 30 words per minute (wpm) compared up to 170 wpm for speech. The slow TR speed is partly the result of the time taken to switch between send and receive – we understand relay assistants typically type at around 60 wpm. For users who use NGTR for speech with captions (i.e. caption telephony), on average we expect the spoken half of the conversation will progress at up to 170 wpm and the captioned half at around 60 wpm, potentially delivering conversation speeds of up to 110 wpm”*⁸ Sky considers that Ofcom should retain the caveat but also redraft the GC to reflect the expectations set out in the consultation.

⁶ Typing error – should be (k).

⁷ Ofcom Relay Services Consultation paragraph 4.23 p14

⁸ Ofcom Relay Services Consultation paragraph 4.23 p14

21. Sky fully supports the requirement that NGTR communications should be confidential but we request clarification on the extent to which CPs are responsible for ensuring the confidentiality for NGTR communications. Given that NGTR is reliant on relay assistants passing through messages, there is a human link in the communications chain which is not under the control of the CP and confidentiality would need to be addressed contractually with the relay assistant. With regard to the security of communications over an IP overlay network this becomes an issue of network security and Sky considers that this issue requires further investigation. Whether a broadband connection is secure is not entirely within the control of CPs, users also have a responsibility to ensure that they are satisfied that their connection protects the confidentiality of their communications.

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

22. The timeframe for implementation of NGTR will depend on a number of factors and clearly if BT continues to provide the centralised relay service, implementation will be quicker. Even so, Sky considers that 18 months is a challenging timescale in which develop, test and rollout a new system, particularly given that it will be essential for customers to continue to rely on the existing service with uninterrupted access to emergency calls until the NGTR is fully functional. Sky suggests that a 24 month timeframe would be more realistic.

Question 4: Do you consider that the requirement to ensure equivalent services for disabled end-users would require a mandated VR service in some form for BSL users? Please indicate the basis of your response.

23. Sky acknowledges that VRS provides additional benefits over and above a TR or NGTR to BSL users, especially those with limited English literacy. We note that those consumers who took part in Ofcom's research also highlighted a number of potential concerns with a VRS, including the high cost of calls and equipment, poor image quality, confidentiality issues due to the limited number of BSL interpreters available and variability of BSL interpreters' skills.

Funding

24. Sky's overriding concern with the proposal to provide VRS on a restricted or unrestricted basis is whether Ofcom's initial cost benefit analysis supports such a significant investment and whether mandating VRS is proportionate given the relatively small number of users. If Ofcom decides to mandate VRS, Sky expects consideration to be given to funding options. Whilst acknowledging that there will be a further consultation on VRS next year, Sky considers it unusual that Ofcom would be stating a preference for a restricted VRS without any discussion as to how such a service would be funded.
25. Sky considers it helpful to consider what other countries have done in this area, but we do suggest that that such a discussion should be also be accompanied by detailed consideration of the different funding options that are available. Sky notes that Sorenson, a company providing telecommunications technology for deaf and hearing impaired users and the market leader in the United States, has provided input to Ofcom through its Europe Economics report referred to in Annex 9 of the Consultation and has also been present at the recent DCMS Roundtable meetings to discuss future Relay Services. We also note that Sorenson is funding the VRS Today!⁹ campaign which is working with the deaf community in the UK "to educate

⁹ <http://www.vrstoday.com/faqs/>

people about VRS and what we can all do to place pressure on Government to make this service universally available".¹⁰ Ofcom acknowledges that the universal VRS system that is available in the United States would not be appropriate for the UK, and instead is proposing a restricted VRS. Ofcom notes in its comparison chart¹¹ that in the United States the unrestricted VRS service is funded by industry (by Government mandate). That is not Sky's understanding. Whilst we appreciate that all providers of interstate telecommunications services contribute to the TRS Fund administered by the National Exchange Carrier Association (NECA), we also understand that the cost of intrastate TRS services is recovered by the states, either through rate adjustments or surcharges on local telephone bills. In the United States, consumers have a separate line item on their telephone bills charging them for a contribution for TRS specifically¹².

Consumer Demand

26. Sky accepts that for deaf and hearing impaired users whose first language is BSL and who are not fully fluent in written English, VRS would have advantages over NGTR. However, we note that Ofcom estimates that even in a high demand scenario only 30,000 users would access VRS for 100 minutes per month. In order to ensure that any proposal to mandate a VRS is proportionate, Sky would expect to see further analysis quantifying how many of those users are unable to use the alternative NGTR because they are not fully fluent in written English. Whilst Sky wishes to support those customers who are not fully fluent, we do see this as a broader literacy issue that goes beyond CPs' remit and would be better addressed by Government within the educational sphere rather than by imposing a General Condition on the communications industry. This is a view that was echoed by some of those representing the deaf and hearing impaired community at the DCMS Roundtable on 13 October 2011.
27. Whilst Sky acknowledges that VRS may also have benefits for deaf or hearing impaired users who do have high English literacy, we consider that further analysis is required to assess whether a mandated VRS is necessary in order to ensure equivalence of access to services for BSL users. We believe a great deal more work needs to be done to explore other methods to deliver equivalence to this user group, in a way that is not disproportionate to the industry and other disabled user-groups.
28. We note that in its response to correspondence received by the Merits Committee from Sorenson raising concerns about the UK's implementation of Article 23(a) of the revised Universal Services Directive, the DCMS stated:

"Sorensons VRS have stated the DCMS implementation of the European Framework on Electronic Communication does not provide for a functionally equivalent telecommunications service. DCMS disagrees fundamentally with this view."

The DCMS added that:

"It should be noted that both Government and regulator share the view that equivalence is a

¹⁰ <http://www.vrstoday.com/faqs/>

¹¹ Ofcom Relay Services Consultation paragraph 5.13 p36

¹² An example US bill showing the TRS line item can be found at:
<http://transition.fcc.gov/cgb/phonebills/samplePhonebill.html>

*broad concept and not tied to any particular service.*¹³

29. We welcome DCMS' acknowledgment that equivalence is a broad concept and should not be tied to any particular service. Revisions to the EU Electronic Communications Framework relating to equivalence of access for disabled end-users (Article 23a) make it clear that decisions regarding such services, including the provision of VRS, can only be made by Ofcom, after a process of review, consultation, cost benefit analysis and a proportionality test.¹⁴
30. Ofcom's high demand estimate for an unrestricted VRS suggest that the costs to industry could be in the region of £113.4 million per year; i.e. £3780 per user at a £3.15 per minute rate whilst estimates from Sorenson claim the funding requirements for VRS are closer to £118million per annum (around £4 per minute).¹⁵ We note that Ofcom cites a report by NECA on the compensation fund in the United States where the current compensation rate is between \$6.2372 and \$6.7025 per minute, currently equivalent to between £3.87 and £4.16. Ofcom notes that the NECA has raised concerns about anomalies in the data for recent years of operators' cost submissions and the report reveals that there has been a considerable increase in stated costs in recent years; it notes that the weighted average per-minute costs was previously around \$4-\$4.20 per minute, equivalent to approximately £2.50 to £2.60 per minute. In contrast Ofcom states that discussion with UK commercial VR providers suggested that costs are likely to be between £2.40 and £3 per minute¹⁶.
31. Sky suggests that given the high level of costs and the disparity between cost estimates together with the Ofcom's acknowledged uncertainty around the potential benefits of this service, any proposed VRS service will require further investigation. Therefore we welcome a further consultation but would reiterate that the consultation should address the funding options as a priority.
32. Sky is concerned that mandating VRS would require an investment by industry that is not only disproportionate given the current cost benefit analysis but also discriminates between disability groups. An overly onerous General Condition requiring a CP to provide access to a VRS would likely jeopardise its ability to provide a comparable service to its customers with other disabilities.
33. Sky also considers that to mandate that fixed line providers should provide VRS with no comparable obligations on mobile providers, does not constitute technology neutral regulation, discriminates against fixed line CPs and does not satisfy the requirements in section 4(6)¹⁷ of the Communications Act which requires that Ofcom must carry out its

¹³ <http://www.parliament.uk/pagefiles/50988/DCMS%20response%20on%20SI%201209.pdf>

¹⁴ This was echoed by DCMS in its response to Sorenson's Merits Committee correspondence: "The Framework also makes clear that decisions regarding such services, including the provision of video relay services, is a decision that can only be made by the independent regulator, Ofcom, after a process of review, consultation, cost benefit analysis and a proportionality test.

<http://www.parliament.uk/pagefiles/50988/DCMS%20response%20on%20SI%201209.pdf>

¹⁵ Europe Economics Report prepared for Sorensons paragraph 2.16 p6 <http://www.vrstoday.com/wp-content/uploads/Revised-Final-Europe-Economics-Report.pdf>

¹⁶ Ofcom Relay Services Consultation paragraph 5.33 p41

¹⁷ Section 4(6)The fourth Community requirement is a requirement to take account of the desirability of OFCOM's carrying out their functions in a manner which, so far as practicable, does not favour—

(a) one form of electronic communications network, electronic communications service or associated facility; or

(b) one means of providing or making available such a network, service or facility, over another.

functions in a manner which does not favour one form of electronic communications network, electronic communications service or associated facility. This also contradicts DCMS' assertion that equivalence is a broad concept and should not be tied to any particular service and it ignores the developments in technology and how customers are increasingly using e-mail, text, instant messaging, live chat and internet services to service their communications needs thereby reducing reliance on voice telephony.

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

34. Notwithstanding our contention that unless an equitable funding mechanism is established, any mandated VRS is a disproportionate requirement to place on CPs, clearly a restricted service would be more proportionate in providing equivalence for BSL users.
35. However, as already articulated, there needs to be significant further assessment done to quantify the explicit benefits of a restricted VRS. To date Ofcom has been unable to identify commensurate benefits to match the high costs to industry of providing the service, especially in the higher demand scenarios. It also remains unclear how:
- (a) costs will be prevented from escalating within the restricted-use model;
 - (b) costs might be recovered from other businesses using the services as a means to fulfil a 'reasonable adjustment' to provide service to their deaf and hearing impaired customers as required under the Equality Act 2010;
 - (c) the service will be practically delivered, given the scarcity of BSL interpreters (also taking into account concerns about confidentiality of the service given the small community of BSL interpreters);
 - (d) 24/7 emergency calls would be facilitated if a VRS service was restricted to day time hours;
 - (e) access to a VRS can be mandated when the underlying technology used to support it (i.e. broadband) is not a mandatory service offering.
36. We look forward to further dialogue with Ofcom on this issue in the first half of 2012 once Ofcom has a more informed understanding of the impacts of proposing a VRS.

Question 6: Please provide your views on Methods 1 – 5 for a restricted VR service discussed above. Are there any other methods that are not mentioned that we should consider? In making your response, please provide any information on implementation costs for these solutions which you believe is relevant.

37. Sky does not consider that it is in a position to comment on which restrictions would better suit the needs of deaf and hearing impaired consumers and suggests that this is a question for the deaf community to provide input on. However, we would reiterate that VRS will be commonly used to make calls to businesses and Government agencies and at a potential per minute rate of £3.15 to service those calls, Sky considers that any funding arrangements should be spread more widely across Government and businesses and any proposed restrictions should take those uses into account. It would be inequitable to require the communications industry to fund a means of communication for correspondence with business and Government. For example, the Royal Mail is not required to subsidise postage fees for all disabled customers' correspondence with businesses and Government.

Question 7: Do you agree that a monthly allocation of minutes combined with a weekday/business hours service would be the most appropriate means to restricting the service?

38. Please see our response to question 6.