

# ***RNID (The Royal National Institute for Deaf People) response to Ofcom's consultation: "Mobile citizens, mobile consumers", dated 28 August 2008.***

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## **Summary Statement**

- RNID believes Ofcom should do more to ensure that the access requirements of people with disabilities in mobile markets are met.
- RNID agrees with Ofcom that device and service innovation offers great potential to address exclusion issues. However, there remain significant barriers that are preventing this potential from being realised.
- There is reluctance amongst operators and service providers to invest in more accessible and usable services often fuelled by the potential impact on SMS and other revenue streams. We believe this is easily addressed through alternative pricing models.
- Compared to other markets such as the USA, the UK has not set stringent requirements for provision of handsets suitable for people with hearing loss.
- It should be a basic right for deaf people to be able to exchange voice allowances for functionally equivalent SMS and/or data packages.
- Many networks are operated as "walled gardens" with only a fraction of the theoretical functionality available to developers. OFCOM can play a key role in unlocking this potential to address unmet niche market needs.

## **Introduction**

1. RNID welcomes the opportunity to submit comments to Ofcom regarding this consultation on the mobile sector. We are the largest charity representing the 9 million deaf and hard of hearing people in the UK. These comments address only the specific issues of particular relevance to deaf, hard of hearing, deaf-blind and speech-impaired people. The phrase "deaf and hard of hearing people" in this response is used to cover all people affected by hearing loss or permanent tinnitus.
2. Our vision is a world where deafness or hearing loss do not limit or determine opportunity, and where people value their hearing.

## **Question 1.2: How are citizens and consumers affected by developments in the mobile sector?**

3. The development of the Information Society has dramatically changed the way we live, educate, work, and also entertain ourselves. Mobile communications undoubtedly have become one of the main pillars of this new world. The impact of mobile services on citizenship and life chances for modern consumers can hardly be overstated.
4. It is true that in many respects the mobile sector has delivered great benefits to consumers. However, it is also true that significant minority groups, including deaf and hard of hearing people, have often found themselves increasingly disenfranchised as citizens in the modern world because the mobile sector is failing to meet their needs in full. It is essential that Ofcom recognises the plight of consumers with different profiles of abilities and preferences and uses both its formal and informal powers to address the various barriers to full participation that still exist in this market.
5. While it might be right to assume that universality of access in mobile has been (almost) reached from an economic perspective, in terms of accessibility and equal access to services this

is clearly not the case. There remains a digital divide in mobile markets and, critically, the reasons for it are not purely economical, nor has the gap significantly narrowed in the past few years, based on Ofcom's own statistics on the communications market.

### **Question 1.3: What are the purposes of mobile regulation, and where should its focus lie?**

6. The Communications Act 2003 states clearly that it is the responsibility of the Regulator to "further the interests of citizen-consumers through a regulatory regime which, where appropriate, encourages competition". RNID strongly supports this description but is concerned that Ofcom's attention is primarily directed towards the bulk consumer market and sometimes appears to prioritise deregulation over consumer protection.
7. The realities of a world where mobile services have dramatically changed our communication habits and where multiple operators compete in a much more liberalised environment should therefore also translate into suitable regulatory principles and inclusion policies.
8. Precisely because seamless and fully functional access to mobile communications is so essential to full citizenship and participation in the modern world, it is fundamental that Ofcom recognises that a regulatory approach based purely on competition in a free market will not address needs where there is no business case. Provisions must be made to ensure that such involuntarily excluded consumers are protected. Obligations to serve excluded audiences enshrined in general conditions of entitlement as well as stipulations to open up networks to third party developers of assistive technologies must be part of a balanced regulatory package.

### **Question 1.4: What is the scope for deregulation, competition and innovation in the mobile sector?**

9. A broadly de-regulated market must be backed by strong specific regulation addressing the needs of those consumers for whom mainstream and competitive markets do not deliver. The primacy of the principle of consumer protection over that of free, unregulated markets as expressed in the Communications Act 2003 is not a rhetorical point, but constitutes a prime directive for regulation of the communications market in the UK.
10. RNID agrees with Ofcom that device and service innovation offers great potential to address exclusion issues. However, there remain significant barriers that are preventing this potential from being realised.

### **Question 4.1: What is your experience, as an individual consumer or an organisation that uses mobile services?**

11. In some respects, deaf and hard of hearing people have benefited from aspects of mobile communications. Use of SMS to contact other people in text is a widely available and mainstream service that does not carry the stigma often associated with more specialised forms of text communication. Access to email on the move has also become a mainstream service that maps well to the profile of abilities and preferences of many deaf and hard of hearing people.
12. However, many significant problems remain and in some respects barriers to full citizenship are higher for certain categories of deaf and hard of hearing people than they were before mobile communications became so dominant in daily life.
13. Awareness of the issues for deaf and hard of hearing people is not sufficiently prevalent in the sector. There is reluctance amongst operators and service providers to invest in more accessible and usable services, as well as the fear that some alternative types of text communications, like real-time texting over a flat-fee data bearer, could potentially impact on SMS and other revenue streams.
14. RNID's experience of interacting with mobile operators is not entirely positive. Our impression is that the sector will often only act when obliged to do so. A good example is the difference

between the US and the UK when it comes to provision of handsets suitable for hearing aid users and the labelling of handsets based on the level of immunity to interference. In the US, there are specific obligations to provide a proportion of handsets with specific accessibility features such as built-in induction coils, good electro-magnetic immunity for use with hearing aids and for providing clear labelling on packaging about the performance of the handset in terms of interference with hearing aids. However, when the same handsets are sold in Europe, they often lack these features and the packaging does not carry the same information about interference. It is hard to explain this different strategy for the same devices other than by assuming that it is a deliberate policy to do no more than strictly required.

15. Many of our members and other deaf and hard of hearing people report that pricing structures are too complex and often too hard for consumers to understand. In addition, deaf and hard of hearing people continue to face discrimination in the way tariffs are being designed. Voice allowances remain a key part of the tariff structure, but many deaf and hard of hearing people cannot use voice. It should be a basic right for deaf people to be able to exchange voice allowances for functionally equivalent SMS and/or data packages. While this is sometimes possible for some users on some contracts, it is by no means an accepted and established principle. If the industry continues to fail to address this important rights issue in a way that meets fully users needs, Ofcom should use its powers to establish a formal obligation.
16. Many of our members and other deaf and hard of hearing people also report dissatisfaction with customer support of mobile network operators. They depict a lack of deaf awareness amongst customer facing staff in sales and support departments. Overall, many of the customer interactions are described as not very accessible to deaf and hard of hearing people and our constituents often feel that they are not treated with enough respect.
17. There have also been complaints that some automated functions for account management are not usable for people who cannot use voice. In light of the ubiquity of SMS, it should never be the case that consumers cannot manage their accounts or other aspects of the service without having to use voice for interactions or transactions.

#### **Question 4.2: How should regulators and policy-makers respond to signs of rising consumer concern?**

18. A fundamental problem with the evidence base currently used is that it is often based on general consumer market statistics and profiles, averaging out the different needs of specific user groups. Ofcom's remit is not restricted to mainstream users, but encompasses a duty of care for *all* citizen-consumers. Absolute quantities do not always reflect impact. For instance, users that have to use the RNID Typetalk relay service to communicate in real time with hearing people over the phone while on the move will always be a minority in terms of numbers. Use of general public statistics on barriers encountered, user satisfaction with operators, levels of switching, etc will therefore never reflect the real problems that more specific minority groups face in using mobile services.
19. It is often asserted by the industry that requirements around inclusion and accessibility should not apply to innovative new services as this would stifle innovation and that therefore there should not be any such requirements in the early stages of new service development – where there is not yet a mainstream impact. This is, however, flawed reasoning. When the needs of all users are taken into account from the earliest stages of design and implementation, the overall cost and effort to achieve broader inclusion is negligible. However, if such requirements are not taken into account when developing new technologies, there is considerable danger that by the time this technology reaches maturity and becomes a mainstream service with significant impact on life chances and citizenship, many users with different abilities and preferences will find themselves wholly or partly excluded and the costs of retrofitting additional functionality might at that point have become crippling. It is therefore essential that regulators take a more long-term view on the inclusion aspects of innovation and development.

### **Question 5.1: How does the use of mobile services affect our participation as citizens in society?**

20. Mobile networks and devices are no longer luxury gadgets for the affluent few. They have become vital assets to modern citizens. As a result, the needs of consumers and the challenges around economic and functional inclusion have changed too. It is no longer feasible to be a fully participating citizen unless full access to communication services and products at reasonable cost is obtainable.

### **Question 5.2: What factors should we take into account in thinking about access and inclusion issues in mobile markets?**

21. RNID strongly believes that the cost of ensuring equality of access for disabled people can be trivial if built in from the design stage and that Ofcom should more rigorously lay down requirements for equivalency of access. The technological solutions need not be defined, but such requirements would focus on aspects of functionality, availability and choice. This would ensure relevance and allow competition. The current investigation of the mobile market provides an opportunity to reinforce the message and ensure that rhetoric is equalled by practice.
22. The lack of awareness about specific needs of deaf and hard of hearing people, such as hearing aid compatibility, handset and network aspects of encoding standards and voice quality, additional tone and volume control and the need for real-time text functionality have resulted in significant access and usability barriers for people with hearing loss. The cost of retrofitting some of this functionality significantly exceeds what it would have been if this had been built in at the outset when standards and implementations were developed.
23. Non-mainstream consumers are often not catered for by free market regimes because the economic principles that govern such markets, not least the principle of scale, do not apply to them. The current regulatory structure provides a safety net. But, it is important to realise this is not the same as ensuring equivalence of access. The latter, which should be at the centre of regulatory thinking, requires a pro-active policy of equal access wherever practical rather than a minimum set of requirements which are arbitrarily deemed as “acceptable” at a given point in time and with regard to a specific technology implementation.

### **Question 8.3: What role can competition play in ensuring that future development of the mobile internet provides an open and flexible environment for a wide range of services? Should Ofcom explore open access requirements to ensure opportunities for innovation? What role might ‘net neutrality’ play in the mobile sector?**

24. Whilst competition can often deliver the best results in mainstream markets, such market mechanisms do not produce equality of access for significant numbers of citizen-consumers in minority groups.
25. Mobile networks are by no means as open to third party application and service developers as they could be, or indeed sometimes purport to be. In fact, many networks are operated as walled gardens with only a fraction of the theoretical functionality available to developers. This has a major impact on organisations that are developing specialised applications for niche groups. For example, when developing a mobile textphone (because the mainstream market is not delivering real-time text solutions and is thereby excluding many deaf and hard of hearing people), RNID found that all mobile networks fail to properly support fundamental real-time IP protocols, including UDP, for the purpose of real-time IP communications as used in a textphone application. Similarly, access to elementary parts of the control and signalling, and to key databases for matching IP addresses to telephone numbers (necessary for making incoming IP

textphone calls function properly) was not available to us, despite years of interaction with the sector.

26. If the promised potential of mobile networks in terms of inclusion is to be realised, then significant progress must be made in opening up the networks (and to some extent handsets) for those, like RNID, who seek to meet the otherwise unmet need of consumers who have different needs and abilities.
27. There is therefore a case for formal obligations in this area, although some of them might be achievable on a voluntary basis. Ofcom is well placed to catalyse such voluntary change through strong leadership and guidance to the sector. The importance of such non-statutory influence should not be underestimated and Ofcom should bring it to bear in full.

**Question 8.8: How might universal service and universal access need to adapt in a world where we increasingly rely on mobile services? What role might mobile play in universal access delivery in future?**

28. The primary observation has to be that despite the existence of the present Universal Service framework, many deaf people continue to suffer unnecessary restrictions to full access.
29. There are therefore significant challenges in modernising important aspects of Universal Service in the UK. The current funding arrangements for Universal Service, which tie funding obligations to management oversight and service definition in a way that strongly disenfranchises end-users, must urgently be reviewed to bring the mobile sector into the fold.
30. While RNID recognises that the scope of Universal Service cannot be extended to include mobile services under the current legal framework, it is possible to require the mobile sector to contribute to the *funding* of Universal Service. Such an arrangement would untangle many of the present operational difficulties and would allow for innovation and further service delivery in the arena of relay services.

**Question 8.10: How might access for particular groups (such as the elderly and disabled users) need to evolve in future? What role can competition play in addressing these questions?**

31. For many of the existing barriers there are already solutions that are technically feasible and sustainable. Yet, free market mechanisms have failed to deliver these solutions. For such niche markets, regulatory intervention is essential to realise the benefits technology offers.
32. Many new innovative services as developed by third party organisations, including RNID, rely on functional Internet access and the ability to interact with databases and other components on the network. There is no business incentive for operators to enable these types of solutions. There is therefore a clear need for the Regulator to act in order to make the market work in this respect.

*RNID - The Royal National Institute for Deaf People  
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RNID is the largest charity working to change the world for the UK's 9 million deaf and hard of hearing people. Our vision is a world where deafness or hearing loss do not limit or determine opportunity, and where people value their hearing.

We aim to achieve this vision by:

- being a powerful force for change in government and public and private sector organisations.
- changing radically the attitudes and behaviour of individuals towards deaf and hard of hearing people.
- providing services and support directly to deaf and hard of hearing people and their families to improve their everyday lives.
- being a catalyst for social, medical and technical research to improve the lives of people with a hearing loss and those with tinnitus.

We seek to work in partnership with those who share our vision and mission.