

## Communications Review – DCMS seminar paper Response from UKCoD/TAG

1. UKCoD/TAG welcomes the opportunity to respond to the DCMS seminar paper on the Communications Review. UKCoD is an umbrella organisation representing a broad spectrum of community and voluntary sector organisations working with deaf people. TAG is a consortium of national and regional organisations for deaf people in the UK and promotes equality of access to electronic communications, including telecommunications and broadcasting, for deaf, deafened, hard-of-hearing, deafblind people and sign language users. In this response the word “deaf” will be used to cover the complete range of hearing loss unless otherwise specified. As our response is limited to matters pertaining to access to electronic communications for deaf people we will not be specifically answering the questions in the paper.
2. We would first like to set out some general principles and then apply them to specific areas for review.
3. **A deregulatory environment does not benefit all users.** Deaf people often have access needs that are not readily met if only market forces prevail, as these are normally geared to the requirements of mainstream users and do not well serve smaller and less profitable markets with needs that are different from the norm. Deaf users are perceived as such a market by commercial providers and therefore deregulation is likely to result in deaf people being unable to benefit fully from modernised communication services. It is therefore imperative that any review retains appropriate regulation to ensure access for all sectors of society, and that this regulation should be strengthened and future proofed where appropriate
4. **Universal design.** Deaf people wish to be treated in an inclusive manner rather than treated as a special case so wherever possible legislation should ensure that their needs can be met by mainstream services. Legislation should aim to mandate the use of inclusive design principles in services, equipment and user interfaces so that the needs of deaf users are considered from the earliest stages of development of new services and products. Ease of use should apply to all aspects of equipment, including accessories and user manuals written in plain English. We would like to see the Section 10 duty in the current Communications Act to “encourage the availability of easily usable equipment” strengthened in any new legislative regime. This is particularly important for deafblind people, because without accessible and affordable equipment they will continue to be denied access to communication services. Requirements should also be future proof to ensure that accessibility is not lost as new products and services are developed.
5. **Accessibility duty.** The principles of Universal Service remain relevant in ensuring the inclusion of those sectors of the population who would not have an appropriate level of choice if only market forces are in operation.

In the case of deaf users legislation should require service providers to ensure that all platforms are appropriately accessible and that affordable equipment is available to support this. The regulator should be required to enforce an accessibility duty to ensure that any new service or platform does not create barriers to access for any citizens and consumers. Legislation which brings this about will help to stimulate investment, innovation and choice for deaf users.

6. **Functional equivalence.** Future legislation must allow the delivery of functionally equivalent access for deaf people. Legislation must ensure that new developments do not lead to exclusion of deaf users, which can then only be rectified by retrofitting. Functionally equivalent access to the telecommunications network is crucial for deaf people to improve social inclusion and to provide greater access to employment. Additionally, functional equivalence in services and content promotes and enhances wider use.
7. **Convergence.** We believe there needs to be greater regulatory convergence across different platforms, technologies and services, as only if this regulatory convergence takes place will deaf people have appropriate access and choice and providers have the clear framework they need to deliver appropriate services.
8. We would like to apply the principles above to the following range of services.
9. **Traditional broadcasting.** At the time the current Communications Act was created the main method of broadcasting was linear, with programmes broadcast according to a fixed schedule. Provisions in the current Act mandated access services for linear broadcasting, and this has resulted in the provision of subtitles and sign language interpretation. While there are still problems in the number of channels covered by the requirements, the quality of live subtitling provided and the provision of sign language interpretation, the current legislation has done a great deal to ensure deaf people have access to linear broadcast television services. We would like to see this continue and to be further developed so that targets and quotas increase. In addition, we believe that non-traditional media should also be included when assessing compliance with quotas (for example, on-demand broadcasting). We would also wish to ensure that when new platforms and services are launched the requirement to provide access services should be mandatory. For example, when HD channels were introduced they did not carry subtitles because of a failure to include these requirements in the initial design, leading to less choice for deaf users and the need to subsequently add the capability thus increasing the expense. Access services should also be extended to ensure their availability on channels not registered in the UK, such as ESPN, and also on pay channels. It is also unacceptable that Ofcom has no regulatory powers over the BBC, except for some matters of content, and therefore their provision of access services is not covered. There seems no good reason they should not be treated equally with all other

broadcasters in this matter. All electronic programme guides (EPGs) must remain accessible and should follow at least the Ofcom Code of Practice on Electronic Programme Guides. There should also be regular monitoring of access services to cover quality as well as quantity. We welcome Ofcom's recent announcement of research on the quality of live subtitling. There is also a need for the ability to customise access services to accommodate the varying needs of disabled people, for example the ability to change the size or format of subtitles to make them accessible to those with visual problems as well as hearing loss.

10. **Streamed and on-demand broadcasting.** There is an increasing development of non-linear broadcasting using streamed and on-demand content via various delivery mechanisms, which the current legislation fails to cover appropriately. The revision of the Audiovisual Media Services Directive introduced requirements to encourage the provision of access services in non-linear formats, but this falls far short of the provisions required for linear broadcasting. Ofcom has delegated the responsibility for access to these services to ATVOD, which has led to some confusion and voluntary guidance. Whoever is responsible for regulation of these services needs appropriate regulatory mechanisms to ensure they are accessible to deaf users. For example, catch up services available on BT Vision or Virgin Media do not carry subtitles so are not accessible to deaf users. There is no real incentive for such services to be accessible since, at present, they are not considered when assessing compliance with Ofcom's access quotas. While the percentage of use of these services is still low it is likely to increase exponentially over the next few years and it is therefore essential that any new legislation is equipped to deal with it. Another anomaly is that when programmes which have previously been broadcast with subtitles are bought from abroad or by another company for showing on other platforms the contract sometimes does not include the right to include those subtitles. It is inconceivable that a programme would be bought without the sound track, and access services should be included in any transfer of rights in a similar way.
11. **Red button services.** There are other aspects of the increased use of streamed content that are not covered by current regulation. One is the provision of additional channels by means of what are usually called red button services, though we understand that changes in the way that these services are delivered are being proposed. The range of provision of these services varies between platforms, but none are currently mandated to provide access services. For example, when broadcasting the London Olympics, the BBC made up to 30 red button channels available, but the majority did not carry subtitles, so deaf viewers had far less choice. This needs to be addressed in any review.
12. **Internet delivery of services.** Electronic communications are increasingly being delivered via the Internet, which has until now proved difficult to regulate. Increasingly normal television receivers are capable of connection to the Internet, as well as programmes being delivered via the computer and the mobile phone. Requirements for the provision of access

services must apply to all these in any future framework. Now that tablets are becoming more common the fact that devices may be too small for subtitles or sign interpretation to be visible is no longer the case. Legislation needs to be future proof and to ensure that new developments do not lead to the exclusion of deaf users. For example, subtitles are currently provided on a voluntary basis on the BBC iPlayer, but only on some forms of delivery, so when it became possible to receive the iPlayer on equipment such as the Sony Playstation and Nintendo Wii subtitles were not available. Ensuring this is rectified will require regulation. Another is the use of video clips on websites, especially those showing news. None of this content is currently accessible to deaf people or covered by legislation. Similarly new services such as Netflix and LoveFilm do not provide access services. Regulation is needed to cover these on demand services and ensure that where access content already exists it is made available whatever platform is used for delivery. Appropriate broadband services should be available for deaf users anywhere in the UK, and should also be included in priority fault repair schemes for disabled customers.

13. **DVDs and cinema films.** A parallel cause for concern is the lack of requirement for the provision of access services on DVDs and BluRay discs which results in uneven and confusing provision. Packaging often fails to make it clear whether subtitles are provided or whether they are only provided for the main feature and not for extras and commentaries. Sometimes extras have foreign language subtitles but not English ones for deaf users. There are examples of Region 1 DVDs (for sale in the USA and Canada) having English subtitles whereas the same product formatted for Region 2 (UK and Europe) does not. And there is no provision of sign language access at all. We would welcome steps to improve this situation. It is worth noting that the provision of access services for cinema films is similarly unregulated, so that provision has developed on a voluntary basis. This has led to great variation in which films are shown with subtitles, the times at which they are shown and the proportion of films that each cinema makes accessible. Legislation to address this would be welcome.
14. **Modernised telephone relay services for deaf people.** Current legislation only mandates a text relay service and only mandates appropriate funding for that one service. This ignores the fact that fixed line telephony is no longer the only means of telephone communication and that text relay fails to provide access for all deaf users. Video relay services for sign language users and captioned relay services for those who wish to both hear the other person and receive text support are not mandated under the current legislation, even though both are essential to allow deaf people appropriate access to the telephone network. We know that Ofcom is currently consulting on Next Generation Text Relay and intends consulting on video relay, but progress is lamentably slow and there is still no real agreement on how these services will be funded or developed or how deaf users can be given choice rather than having to subscribe to a single mandated relay service. We believe one cause of

the slow progress is because the current legislation does not provide an adequate basis on which to move forward with certainty, since it is rooted in the historical emphasis on fixed line communication via the PSTN. It is unlikely that appropriate text, captioned and video relay services can be delivered without changes to the legislative framework and active government involvement. We would like to see this issue strongly addressed in the review.

15. **VoIP and mobile telephony.** The introduction of VoIP telephony resulted in deaf people being totally and summarily excluded from participation in this development because the regulatory structure did not cover it. It is therefore imperative that legislation is future proofed as far as possible so that provisions can be applied to new platforms and services as they develop. There are still problems with the accessibility of most forms of VoIP, and only some will become accessible if and when Next Generation Text Relay is introduced. This is not acceptable. The development of SMS texting and the provision of an SMS Emergency service is obviously welcome, as SMS is a mainstream service where deaf people are on an equal basis with everyone else. However, SMS is not a solution to every need because it is not immediate and cannot be seen as a replacement for real time telephone calls. There is still very little functionally equivalent access to real time mobile telephony for deaf people, as solutions have either been discontinued or require the use of unsuitable additional devices. The recent ITU report *Making mobile phones and services accessible for people with disabilities* illustrates the range of requirements that we would wish to see introduced and mandated.
16. **Spectrum.** Spectrum is a valuable resource and we are aware that the government wants to release spectrum to meet growing demand and for the 4G auction to proceed as soon as possible. It is also acknowledged that there are areas where the market does not deliver fully for all citizens and consumers. We would urge government to consider a framework where some of the value derived from the spectrum is used to support the areas where the market does not deliver, including access services.
17. UKCoD and TAG look forward to working with DCMS on these issues as the Communications Review is developed.

September 2012