PhoneAbility response to BEREC consultation on equivalence and access.

Consultation Question 1:
Are there additional legal provisions, other than those listed in Section 2, currently in place in MS with respect to end-users with disabilities regarding electronic communications? If yes, please detail the provisions and the organisation responsible for implementing or monitoring these provisions.

Response: The Disability Discrimination Act (DDA) in the UK and its sequels do apply to some aspects of electronic communications, in particular access to the customer services and shop premises of service providers, formats for provision of information and billing, and acceptance of a third party in explaining and agreeing terms of contract. The 'reasonable adjustments' to business practice required by this legislation could potentially be extended to other aspects of service provision in the electronic communications sector. This legislation takes the form of civil law, in which the aggrieved person has to bring an action alleging unlawful discrimination, but there are various bodies (including the Equality Commission) which will help in that process. Once case law has been established, the principle is set and service providers will take note or risk incurring civil penalties.

Consultation Question 2:
Do you agree that the factors listed in sections 3.1.1 and 3.1.2 are important to consider when assessing equivalent access? Are there other factors which should be considered? Are some factors more important than others?

Response: PhoneAbility does agree that these factors are important. Functional equivalence, meaning that the disabled user is able to perform the same task as a non-disabled person but not necessarily in the same way, is crucial. The availability of suitable and affordable terminal equipment is a key to that objective in most cases but there will be instances where an alternative mode of service delivery is also required. A further factor is the provision of information – in appropriate formats – about the availability of equipment and alternative services. Provision of information is possibly the most important factor, for without this the potential users will not be aware of what is or might be available and disabled people will be unable to voice their consumers' concerns in any meaningful way.

Consultation Question 3:
Do you agree that the factors listed above (section 3.2.1 and 3.2.2) are important to consider when assessing equivalent choice? Are there other factors which should be considered? Are some factors more important than others?

Response: We agree that the factors listed in these sections are important, but we do not accept the implication that there is equivalence if disabled users have some choice of undertaking, although it might less than is available to other customers. Here it is important to distinguish between accessibility measures that could and should be offered by every service provider – such as user-friendly contract and billing formats – and those which require alternative models for delivering the service – which might mean the use of text and video relay operations. We believe that the target ought to be that disabled users have the same choice of undertakings as any other members of the public, using relay facilities if they need them in conjunction with each and every one of these undertakings. The matter of users' choice of relay service provider is in a rather different category and we will return to this point later.

It is appropriate to mention here that the effect of non-discrimination legislation, such as the DDA, is that all service providers in all sectors are required to make such adjustments as are necessary and reasonable to enable disabled people to use their services. This includes information about their services and prices, but we have made this point in our response to Question 2, because if potential users are not aware of the types of provision that might be available, they will not even start to make comparisons between suppliers.

There is a further point to make about availability of terminal equipment in the UK, because the DDA relates to the provision of goods and services, but not to the goods themselves. If, therefore, a service provider offers a telecommunications package that includes a terminal, he is under an obligation to ensure that a range of terminals is on offer that will enable a disabled customer to select one that meets his/her needs. While this obligation does not exist where terminals are sold separately, without specific linkage to a service, it does apply if the terminals are rented – because rental provision is regarded as a service. These requirements under non-discrimination legislation do seem to have a valuable impact upon the design of terminal equipment.

Consultation Question 4:
In your view, should the obligations currently in place under USO, for end-users with disabilities, be placed on all service providers? If no, what types of service providers, considering factors such as financial impact(cost), should the obligations be placed on? What is your view in relation to alternative mechanisms for funding

Response: We have reservations about applying all US obligations to all service providers, because some obligations – especially those measures for disabled users introduced under Article 7 – might prove highly expensive, leading the service providers to take steps to discourage take-up. PhoneAbility has produced a discussion paper on this topic, and it is attached to this submission. The paper also discusses various mechanisms for funding.

While we acknowledge that having some obligations (such as provision of relay services) that are not applied to all service providers will mean that users' choice is limited in these particular areas, we believe that choice of a few effective services is better than wider choice of poor ones. In any case, the wider obligation would not necessarily mean wider choice, for mainstream service providers might opt to contract out such provision to a few suppliers.

We do accept that some aspects of USO should be made mandatory for all service providers, on the basis that these aspects would be seen as reasonable adjustments, and only the very smallest of SMEs would be exempted. There might also be exemptions for highly specialised operators who do not offer services to the general public.

Consultation Question 5:
In what form should the information provided by service providers to inform end-users with disabilities of details of products and services designed for them and information regarding pricing and contracts be provided in?

Response: This information should be available in large-print, Braille, audio and on-line formats, at the customer's request, in addition to conventional ink-print.

Consultation Question 6:
Do you consider it appropriate that NRAs have a role in encouraging the availability of terminal equipment, in accordance with Article 23 (a) (ii)? If yes, what do you consider that NRAs could do to achieve this?

Response: Yes, in our view it is appropriate for NRAs to encourage the availability of terminal equipment that is both accessible and affordable for people with various forms of disability. The most direct way in which they can do this is to use US Fund revenue to subsidise the more expensive types of terminal, especially those intended for deaf-blind users. Use might also be made of public procurement contracts to ensure availability of terminals with specified accessibility features, at affordable prices. Apart from direct measures, NRAs have an important role in raising awareness and encouraging equipment manufacturers to produce suitable terminals.

Consultation Question 7:
In addition to the services, features and types of terminal equipment listed are there any others which you consider necessary to ensure equivalent access.

Response: Captioned telephony is a potentially valuable service, particularly for hard-of-hearing people who have good speech and would not derive any benefit from text relay. There may be similarities with Real Time Text, but Captioned Telephony is not delivered on a character-by-character basis (and the captions are not typed). A relay service is used in which spoken words are re-voiced for conversion into text by a high accuracy speech recognition system, so that the captions can be displayed almost simultaneously with the incoming speech; outgoing speech is not captioned.

It is to be expected that other types of relay or interpretation service will be called for in future, for example to provide for the needs of those with intellectual impairments. Also, it may be noted that the delivery of text relay and captioned telephony will become less costly over time, as machine conversion of speech into text becomes more accurate, even with 'untrained' speakers.

The matter of types of terminal equipment is a much more complex question than the consultation paper implies, and we will comment on this in later responses.

Consultation Question 8:
Where services, features or terminal equipment suitable for end-users with disabilities have been provided voluntarily, has there been encouragement from NRAs Government or other parties, or does it appear that the market is delivering and will continue to deliver of its own accord?

Response: The market is not delivering and will not deliver without specific legal or supportive measures. Incorporation of more accessibility features in mainstream offerings will come about as the principles of inclusive design are more widely applied, but even this will require some urging. The pressure on providers to deliver more accessible services has come largely from third-sector organisations, with some instances of voluntary collaboration from large enterprises, but we would not regard this as a model that is sustainable in the long term. Encouragement from official bodies has been, and is, evident but the most tangible evidence of formal support has been through the mechanisms of Universal Service.

Even there, it must be noted that progress has been slow – and certainly not assisted by the very narrow scope of Universal Service as defined in the earlier Directives.

Consultation Question 9:
What consideration should be given to NRAs mandating undertakings to provide services, features or terminal equipment for end-users with disabilities as part of the standard services and packages they offer?

Response: These concepts certainly call for consideration, but we believe that mandatory requirements without the opportunity to off-set net financial losses will result in some cases in business models which are to no-one's advantage. This point is discussed – in relation to relay services – in the PhoneAbility paper.

As far as terminal equipment is concerned, it is our understanding that NRAs have no powers to mandate such provision, and the separation in the EU Single Market of networks and terminal equipment makes this an unlikely prospect. We consider that the most that can be achieved is through the use of non-discrimination legislation, where the supply of equipment is inherently linked to a service package. Article 3.3f of the RTTE Directive could be used at a European level to impose certain types of accessibility requirement, but having studied the workings of this Directive over more than ten years, we are of the view that the only practical possibility would be to demand product labelling to show which accessibility features are present.

Consultation Question 10:
What is the role for public procurement of accessible terminal equipment, as it is likely that NRAs may have no powers with respect to design or supply?

Response: The role, which we believe would be a vital one, is to invite tenders for the supply of equipment to certain specifications, so that the resulting contracts ensure availability of this equipment at the best possible prices. The equipment would then be supplied to disabled users at subsidised rates, so that the charges to the individual would be on a par with those for terminals used by non-disabled people to access the intended services. The deficit would be recovered from a Universal Service Fund. We would expect that this mechanism would be applied to types of terminal which would be unlikely to figure in a commercially competitive market, and terminals for deaf-blind people would be a particular but not exclusive example.

Consultation Question 11:
Where a subsidy is available for services, features or terminal equipment needed for disabled end-users is the up-take as expected and are there any barriers to take-up? If yes, what are the barriers?

Response: We find this difficult to answer, as the terms on which the subsidy is offered are themselves barriers to take-up. For example, the UK's Access-to-Work scheme provides subsidies to disabled people to help them in employment, and this mechanism has been used to pay for video relay service. However, the criteria for such support are tight and the funding may only be used for work purposes, so social calls are not supported. If the support was open to more people, take-up would be very much greater.

Provision of terminal equipment by Local Authorities is enabled in the UK, but it is discretionary and subject to pressures on local funding. As a result, it is more likely to provide a visual signal (as an alternative to a bell for a deaf person) than a text terminal.

Even the text relay service, which is subsidised under the Universal Service obligations, is claimed by some to be less well used than it ought to be because it uses out-dated legacy equipment and protocols. We believe that subsidised services need to be mandated in such a way that their providers have positive incentives for making improvements to their offerings and attracting more customers. Many types of subsidised service act in precisely the opposite manner and this, in our view, is a serious obstacle to providing equivalence.

Consultation Question 12:
If funding is provided to facilitate equivalent access for disabled people, is it best targeted at purchase of equipment, discounts on tariffs, by subsidising special services such as relay services or by direct payment to the user?

Response: Direct payment to the user is attractive as a means of enabling disabled people to select the services they need and to exercise choice. However, it is not in our view an appropriate method for delivering equivalence in telecommunication services. In a specific sector, it would seem more effective to ensure that services are equivalent in terms of usability and cost to the user, rather than attempt to remove deprivation by means of personal payments. Direct payment would require a massive administrative system with demonstrated accountability; it would inevitably be costly and there are indications that it would not be popular with users.

Consultation Question 13:
Are there any details available on the cost per user of implementing any of the measures mentioned in the report?

Response: We believe that the UK NRA (Ofcom) has conducted extensive research on this topic. A number of other studies have concentrated upon likely take-up, but there is always the problem that take-up will depend upon the attractiveness of the service as actually delivered. As cost per user is related to a significant extent to the size of the operation, costing data are subject to many uncertainties.

Consultation Question 14:
Are you in agreement that the steps, as proposed above, are appropriate for NRAs to consider when preparing to implement Article 23a? Are there any additional factors that should be considered?

Response: PhoneAbility is broadly in agreement with the proposed measures, but subject to the reservations expressed in the responses to the previous questions.

We also wish to emphasise that the questions of accessibility of terminal equipment are far more complex than this consultation would appear to suggest.

To enlarge upon this particular point, it has for long been our experience that accessibility of terminals is not determined by the availability of particular single features from a list, but is directly linked to the ability to find particular combinations of these features in a single device. The industry has for a long time been able to deliver terminal equipment with some of the features needed, but the problem for disabled users is still that of finding terminals with the feature **sets** that they need.

Since the make-up of each required feature set will depend upon the type and degree of disability – or of the combination of disabilities – experienced by the user, it follows that considerable market analysis is needed to identify real requirements. We believe that it is the lack of this analysis that has caused manufacturers to comment that they have made certain accessibility features available, often at great expense, only to find that take-up is disappointing. Industry may consider that market analysis in this degree of detail is not proportionate to the benefits to suppliers or to users, in which case funding might be needed (in the technology transfer domain) to support some studies. It is not an answer to design terminals with as many accessibility features as possible, in the hope that a range of market sectors will then be covered, unless this approach can genuinely be handled within mainstream design.

It has to be noted that some types of accessibility feature are mutually incompatible, while others may impose cost, size, weight and power supply considerations that would be hard to sustain in a viable single product. We believe that identification of accessibility features is an essential starting point, but the more crucial task of looking at desired combinations of these features then has to follow.

PhoneAbility produced a report on accessibility of telephone terminals in 1999 (ISBN 1 86048 020 9) which is available on the PhoneAbility website as the 'Telephones Report'. While this now needs updating to take account of requirements in newer mobile terminals, the principle and comments remain valid.

Dated 25th November 2010

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