

# **PhoneAbility**

**Universal Service Seminar – 9<sup>th</sup> September 2009**

## **SUMMARY OF PROCEEDINGS**

PhoneAbility wishes to acknowledge the support of Ofcom and the Department for Business, Innovation and Skills in providing the facilities for this Seminar.

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# *PhoneAbility*

## **Seminar/Workshop – ‘New Approaches to Universal Service’**

Wednesday 9<sup>th</sup> September 2009

at Ofcom, Riverside House, London SE1

### Programme

- 10.00 Registration & Coffee
- 10.30 Chairman’s Welcome & Introduction, Dr John Gill
- 10.35 *An Opportunity to be seized*, Tony Shipley, PhoneAbility
- 10.45 *The Present State of the Framework Review*, Rick Holyomes, BIS
- 11.00 *The Regulator’s View*, James Bullock, Ofcom
- 11.15 Break
- 11.25 *Is Universal Service still the best tool for the job?* Guido Gybels, RNIC
- 11.40 *Accessible ICT: can EU policy fill the gaps?*, Carine Marzin, RNIB
- 11.55 Open Workshop  
(There will be a 10 minute break at 12.10)
- 13.00 Lunch
- 13.45 Open Workshop (continued)
- 14.15 Summing-up
- 14.30 Close

All participants are invited to contribute to the Open Workshop. A summary of the proceedings will be available in November.

## Summary of Proceedings

Dr John Gill opened the Seminar with a welcome to all participants. The aim was to establish which aspects of universal service should form the essential basis of a revised Directive suited to an age of broadband digital communication. The outcome of the Seminar should inform the UK's negotiators in this area.

The first speaker, Tony Shipley (PhoneAbility) defined universal service as a set of socially necessary facilities that should be available to everyone, but are not always commercially viable. If the free market does not deliver them, some element of compulsion may be necessary. Legislation is needed for two reasons: to provide a legal basis for that compulsion, and to allow for service subsidy which might otherwise run against competition rules. These two principles constitute 'regulatory intervention' which can be triggered by market failure, when national Regulators can be required or allowed to intervene in the EU Single Market. Two separate mechanisms have been used so far. Designation places a requirement on particular operators to deliver the service, with the possibility of subsidy to cover any net financial loss. General Conditions has the effect of making every operator in the sector offer the service, with no external subsidy. The present arrangement in the UK combined elements of both mechanisms, with BT and Kingston obliged to offer universal service without external subsidy, and so the UK has no Universal Service Fund (USF).

A vital part of universal service is that it covers both the availability and the affordability of services. Another factor is that it is not necessarily uniform across the whole of the EU, and there has to be a decision over which elements are to be set by mandate over the whole of the Community, and which are to be left to national discretion. Many disability organisations have argued for maximum national freedom of decision, to provide for flexibility. One further issue concerns terminal equipment, and the question of whether a USF could be used to underwrite both availability and affordability.

Rick Holyomes (BIS) spoke about the role of his Department in the expected EU Review of universal service, with a team that is new to the topic and has no hard and fast views but a willingness to listen. He provided an update on the progress of the Framework Review, with one part of the package now in conciliation procedures due to a failure to agree over the use of disconnection from the Internet as a sanction against misuse. The Parliament wished to see this sanction made conditional upon there being a prior judicial hearing, while several Administrations considered this disproportionate and an obstacle to effective law enforcement. Objections from some Member States, including the UK, were strong and for differing reasons linked to national legislation. There was some expectation that the differences could be resolved in the coming weeks.

In reply to questions, Rick Holyomes said that the outcome would be settled by qualified majority voting in Council, so no Member State had a veto. The effect upon universal service was that provisions in Article 15 of the Universal Service Directive could not be acted upon until the package was in place.

Also, work on the review of universal service, and resumption of the review of the RTTE Directive, were waiting upon the completion of the Framework package.

James Bullock (Ofcom) spoke about the role of Ofcom in universal service and went on to give his personal analysis of how the subject might develop. There are many elements to universal service, and many different stated requirements. Uniform pricing, meeting reasonable requests for connection, providing functional Internet access, offering Social Tariffs and equivalence of access for disabled people are the main current obligations. There is a chain of responsibility, from EU Directives through BIS – which puts together the Universal Service Order – to Ofcom, which has to implement it. So BIS has to decide what is in or out of universal service, and Ofcom has to make it work with the providers. So, taking the requirement for reasonable access to pay phones, Ofcom's discretion lies in deciding what that means, while the requirement for uniform pricing is in black and white and Ofcom has no discretion there.

Ofcom is commencing a new Review of Universal Service Obligations now, and would be consulting on aspects such as the net cost assessments, the value of USO to the wider society, and the options for funding and procurement. Net cost assessment looks at whether the obligations on the providers present an undue burden for them and Ofcom will be looking at whether these costs have changed over time. The societal value provided by USO will be looked at more closely in the review, by examining the broader benefits USO brings to those who do not use it, as well as to those who do. The options for funding and procurement will be assessed, as the market has moved on since BT was in a monopoly position, and the review will look at what this means in terms of an industry fund. Initially, the review will look at this sort of broad framework and go on to apply the methodology in a further review next year.

James Bullock emphasised that the remainder of his contribution would consist of his own personal views on the subject and these were not to be taken as representing Ofcom's official position. Some of the issues would not be within Ofcom's gift, and those that were needed further examination before policy decisions were taken. USO is a useful regulatory tool but it should not be over-used. It is not fit for absolutely every purpose. It is open to question whether the telecommunications industry should take financial responsibility for issues that affect society as a whole. Advanced services for disabled people also benefit commercial organisations who need to contact disabled customers, so why should they not pay part of the bill? Secondly, USO does box us in, because our thinking starts with the existing platform and ways of making it work better. It's more exciting to think of alternative multi-use platforms; text relay is a valuable service but should we keep building on that platform or look instead at something on broadband that may deliver a very good service more cost-effectively?

The EU approach is puzzling, because USO is still grounded in fixed telecoms, looking at legacies from the past. If USO was designed today,

mobile would certainly be in. The EU is saying that mobile penetration is so high there is no need for mobile USO, and before they were saying that penetration isn't high enough for mobiles to be covered. USO is about the tail end of distributions, so it is no good looking at averages. Again with bills, the benchmark comparison should be with the social tariff on fixed and not the average bill on mobile.

Then there is Internet access. The legal texts were written when 28k was lightning speed and it shows the danger of being too specific. There is scope for broadening USO and bringing in new services, but we have to be clear about why we are doing it.

Claire Milne commented that there is a widely held argument in the EU that the market is providing, and agreed with the criticism of the Communication. There is a third provision mechanism, which is to say that the market is doing the job and we don't need anything different. That is important because it has a lot of powerful advocacy, but we can say that we will have whatever the market can provide, but let's have a safety net as well. Rick Holyomes agreed but said we miss a trick; we tend not to seek out the people that are not provided for and those are precisely the ones we should be targeting.

Guido Gybels (RNID) wanted to give a different perspective of the role of universal service. We should not get rid of it, but are we using all of the alternatives at our disposal? Access to key information technologies is essential for citizenship and life chances, for the individual to participate in the activities of society. Free markets do not cater for all users, as they are driven by the need of business to make a profit. Those who are not catered for will be the socio-economically disadvantaged, who are excluded because the right products and services for them are absent. This creates a digital divide which is costly to society as a whole. The costs of universal service and of other inclusion initiatives have to be weighed against the costs of exclusion. That is often overlooked. Universal service is a model to address exclusion, but is it the only one, or even the best? It is just one instrument in the toolkit.

Universal service as we know it in the UK and in the EU is reactive; you have to see a problem and then define a solution. When that is put into legislation, its scope and provisions are out of date before it is even published. The fact that fixed line telephony is fundamental to much of today's universal service has a lot to do with historic approach. The importance in today's world of things like VoIP or mobile services shows up the discrepancy in universal service resulting from its historic fixed line context, and that is a direct consequence of its very nature. It is constrained in its scope because we are trying to create exceptions to the rule of the free market, and as we all have to live by that rule we are dealing with exceptions, with special cases. It is also constrained by its place in legislation, deriving from the Statutory Instrument (the Universal Service Order) which comes from the Communications Act which comes from EU Directives. That narrowing of scope prevents us from saying that VoIP or IP text relay would make a great difference to people and would be a much better way of providing real time text or access to other services for deaf and hard of hearing people, and so we will do it that way.

We cannot do that because it is outside the scope of universal service, the Communications Act and even the European Framework. This basis of all this legislation is in EU law. The debates are often highly politicised and we tend to see a lowest common denominator effect. Universal service came about in the telecoms Framework to reflect what some Member States were already doing, and to make sure that those provisions would not be lost in the telecoms single market. Instead of a dramatic new instrument that would bring the whole of the EU to a new level, the concept of universal service reflects historic practice in a few States and the lowest common denominator acceptable to the others. This disempowers Member States and their national Regulators when they want to move ahead of the game because, as in the UK, they are held back.

So we cannot go to Ofcom and say that it is important for sign language users to have access to a video relay service, because a relay service is defined in the Universal Service Order as a text relay in the form that we know it. Could that definition be changed? Yes, it could, but could it be changed so as to be fundamentally different? Probably not, because of the restrictions of scope as you go along the chain of legislation. I think it is important to understand this.

So, what about alternatives. Ultimately it is a question of money. This could come from general or specific taxation, from independent trusts or from the service users themselves. There is also the possibility of horizontal legislation linked to human rights, something like the DDA, which is not to be overlooked but is perhaps too far from the scope of this meeting. The Scandinavian countries subsidise services they consider to be important from general taxation, and to do the same in the UK would mean asking the Treasury for more funding. Is that realistic in today's context? Specific taxation, meaning a levy on phone bills, is used in the USA to fund much of their universal service. Government and Ofcom have tended to dismiss this in the past on the grounds that it would conflict with EU market rules so, when the Digital Britain Report introduced that concept as a way of paying for broadband, it was an exciting time for us as users. For such a suggestion to be in such a high profile report, it must surely be possible, feasible and legal. I am standing here as a user organisation, saying let's talk about this model as it has interesting prospects. Independent funding, such as the rich uncle, seems to be to be very unlikely and unrealistic in the light of the sheer amount of money that will be needed. The 'customer can pay' model is not realistic either, because it cannot address the exclusion of people who cannot afford the costs. That leaves the models of general or specific taxation, and we need to have a political debate about that.

Universal Service obligations are restricted in scope and do not provide any incentive for businesses to go beyond the minimum investment, but by using a combination of various funding models you could create intrinsic motivation to provide innovative and better customer services. One of the most crucial shortcomings of USO today is that an organisation such as BT is required to fund it as well as delivering it, so it also defines what the service looks like. A broader model without these restrictions in scope would allow for a more proactive approach that addressed the changes in the world, instead of

keeping to PSTN text relay when most of us have moved on from that type of technology. These are shortcomings which result in real consumer harm, as sticking to the PSTN prevents access to other services and has a real impact upon real people in the real world. The EU Review exercise is welcome and we should engage in it, but there is limited room for manoeuvre there and we should not confine ourselves to that. The political will is important. Ofcom is really there to implement Government policy; so if we want to see real change we have to address the Government as well.

Carine Marzin (RNIB) pointed to the fact that EU policies and the current EU legal framework had not provided accessible and affordable ICT for blind and partially sighted people. The RNIB could ask if the EU really has a policy on eAccessibility, and notes that the numbers are huge. 30 million people in the EU have sight problems, so the market is huge as well. Despite this, products are becoming less accessible. White goods use touch screens, digital TVs and radios use on-screen navigation, and blind people cannot access these. Digital switchover of TV broadcasts will be switch-off for blind people. Despite the DDA, banking services are not properly accessible and there is no law to require ATMs to be usable by blind people. The number of websites, both Government and commercial, that are accessible to people using screen readers amounts to about 5% as an EU average. The technology to remedy this exists but it is not applied in mainstream products that you can buy everywhere. Mobiles phones can be bought for about £15, but blind people cannot access these. A package of a smart phone and the access technology that is needed will cost about £500, just to get a phone that a blind person can work with. If you take the example of Internet access through a PC, someone with a sight problem will have to spend £1500 just to get started. The RNIB wants to see this problem addressed through EU legislation in a number of ways.

Wider scope for Universal Service should extend to mobiles and broadband, because affordability can then be considered. USO is a safety net, but it is not enough. We need stronger vertical legislation. Networks and services in the Telecoms Package, content in AVMS and some aspects of terminals in the RTTE Directive give patchy coverage with many gaps. The accessibility provision in RTTE is not being used by the Commission; and affordability is not addressed at all. So we want to look at equal treatment. The proposed Equal Treatment Directive currently under discussion could take the scope beyond service provision and into manufactured goods, and this is very important for us. It is very complicated, and it has to be dealt with at EU level because it involves Single Market issues. The RNIB has been campaigning for binding horizontal legislation on eAccessibility which would cover the gaps between the various sector Directives. The UN Convention on the rights of people with disabilities points precisely to the rights to information access and communication, and we have to make sure that we achieve this.

Claire Milne asked if the previous speakers had any estimates of numbers. What size of fund might be needed, and what would it achieve?

Guido Gybels suggested something in the region of £20M, based upon present net burden assessments for the disability sectors of Universal Service. It would allow for a big step forward, but there would be a whole string of people making claims upon whatever fund might be set up. So we should not try to put numbers on it right now, but note that the sums were not impossible whatever the funding model. Real changes in society could be brought about for fairly limited sums of money.

John Gill then opened the Workshop session of the meeting, by asking Tony Shipley to introduce it.

Tony Shipley: There seems to be uniform agreement that we are looking for a multiple model of service provision with certainty of funding. No single previous model is able to deliver and the current UK model, which requires the designated providers to fund it themselves, will probably be rejected. The Digital Britain Report raises a new area of Universal Service for broadband and that approach has now been endorsed by Viviane Reding, who is the EU Commissioner for Information Society and Media. We have to find modes of funding and this might be a mix of general taxpayer funding and an industry levy. 'Digital Britain' has proposed a tax upon fixed line subscribers but a wider base is needed to raise the amounts needed. However, a user tax is a valuable spearhead to change the shape of Universal Service funding. On the issues of the Commission's Communication, we need to challenge this because they are concentrating wholly on the matter of service availability and ignoring the exclusion of minority groups, which is a vital aspect of Universal Service.

Guido Gybels: The crux of the matter is that future models must embody some form of cost sharing, and not just in the sense that the designated providers can recover some costs through connection charges. Another fundamental issue is to create a separation between those who contribute to the funding and those who set the definition of how the funds are to be used. The present combination of the funding obligation with the ultimate management of the service is stifling the current text relay service and is disenfranchising its users.

David Myers: Why not have a fund in which every company contributed 0.50% of its business turnover, but could claim money back if it provided equivalent services for disabled people? There would be no problem, as the contributing companies would have every incentive to get their money back.

Ross Trotter: How far do we want to go with a radical approach? Claire Milne has provided a most interesting paper on this. Any approach to Universal Service is bound to be reactive, so even if the scope were to be extended we would still be tinkering on the margins. Should we say that the USO as we know it is finished and we need a completely radical fresh approach to ensure that we get communications for all? If the USO is made too specific, it becomes outdated too fast, but if it is left too general there is a danger of widely differing interpretations. We should perhaps take an approach in which

we set out the functional needs we want to meet and then consider how to meet them.

Tony Shipley: I agree with Ross Trotter but we have to bear in mind that a vital role of the Universal Service Directive is to allow Member States to distort the EU competition rules. We want a Directive which allows Member States to make their own decisions when there is market failure, meaning that the market has failed to deliver. The regulator will ensure that interpretation is consistent within each Member State.

John Gill: Who decides that the market has failed?

Tony Shipley: There would need to be a set procedure, but if a sizeable minority of the population is being denied service that means the market has failed.

Claire Milne: This consensus that we would benefit from more leeway in the EU rules is to be expected in one of the more advanced EU countries. It is the people at the bottom who benefit from the lowest common denominator approach, as they get raised up. If we want to get this through we have to ask how the less well-off countries will see it. We are asking for freedom for the richer countries to go their own way.

Rick Holyomes: I want to run through some of the changes that the new Citizen's Rights Directive will bring to the Universal Service Obligation. The scope is fundamentally unchanged, but we are now speaking of equivalence of level of service, rather than comparable levels, and that is an indication of a sea change in EU thinking. Also the 'publicly available telephone service' now becomes the 'publicly available electronic communications service', so there is leeway for individual Member States in taking a wider view of what can be included. We have had limits on broadband speed excluded from the new Directive, so we can make our own interpretations of the meaning of 'functional Internet access'. The actual changes are minimal but their impact is wide-ranging.

Tony Shipley: Does the removal of the upper limit mean that broadband can now be included in the scope of USO, by the back door?

Rick Holyomes: Arguably, yes. The newer EU States are struggling to meet a 28kb/s speed, but in the UK the use of dial-up is negligible. It is not a bad thing if we can now argue that broadband is within the scope of USO in the UK. I look to James and our Ofcom colleagues to see if they are of the same view.

Tony Shipley: It would be a very good thing because it would mean that services like video relay which need broadband connections can be included in the USO umbrella and therefore funded.

Bob Warner: This points up the need to look at the whole of the funding arrangements. An obligation for a 2Mb/s broadband service won't be funded

by the telecoms providers; it will be funded from a surplus from the BBC's digital switchover programme. If a higher speed broadband service is to be an obligation, it won't be funded by BT as in the classic sense of USO but by a much wider range of people. I think Lord Carter was being pragmatic, as you can't work out how to charge it across the whole industry, but that would be a much better solution. We need to look at all the funding models and to note that there is a permissiveness coming from the EU that will open this up.

Ross Trotter: Most broadband connections have a faster download speed than for upload, and for video relay the upload speed is also important. We do need to make sure that these connections can support video relay in both directions.

Katie Hanson: The A in ADSL means asymmetric, with download speeds faster than upload. For most purposes that is what you want, when using Video on Demand for example. The needs of particular groups will need to be addressed in some way. But I wanted to make a point about funding models, as no single one is the panacea. It was suggested that the USA funding model is working well, so let me give you the figures. The levy on phone bills produces a funding pot; for the current year the bill is \$890M and that includes only 1 in 6 of captioned telephony calls. The other five-sixths are made within individual States and are funded by those States. If you scale the Federal fund to the UK population and translate dollars to pounds at today's exchange rate, that equates to £118M just for relay services, not for the whole of the USO. And only 16% of captioned telephony minutes are included in that figure. The USA model has its merits but it's an awful lot more expensive than the sums mentioned earlier today, and it's a model where the services are effectively free at the point of use and with no limit to the amount they can be used.

Guido Gybels: We have to be careful with the comparison. The service provided in the USA is significantly above that in the UK. It includes the provision of terminals for relay users and all the support and outreach that goes with it. We have to say, let's make some compromises about what we are trying to achieve in order to make a big step forward from where we are now. We can do that with a fraction of the costs that are being mentioned. On the point of broadband up and downstream speeds for sign language users, I have to say that is not the asymmetry of the connection that is problematic, but the latency. When users are sharing circuit pathways there is contention for use of the network. A lot of capital investment is needed to make broadband truly universal, and there is the question of where to focus it, so again the political debate must come in and compromises will be reached.

Claire Milne: It has been said that no one funding model will work. Can we use some of the savings from Government? There is stress on moving towards eGovernment and the savings it will bring. Quite huge sums can be saved by delivering more on-line. Is there scope for using some of the savings to fund access for disadvantaged households, who are more likely to be users of a lot of Government services?

Rick Holyomes: The eGovernment agenda is not about saving money overall but it is about diverting savings on back room procedures into the front-line services. If there is any overall saving, it is likely to be applied in reducing the Government expenditure bill, in current economic circumstances, rather than releasing funds for other purposes.

## *LUNCH*

John Gill: I hope you have returned with ideas of how to solve this Universal Service problem and can agree what we need to buy and what is reasonable.

Roy Staines: It was mentioned that the fund in the USA is used to provide terminal equipment. Deaf-blind people there do not have the appropriate equipment yet the service has been going for many years. Why isn't it working? We need to have a robust USO, so that every category of disabled people can have accessibility, and that means refreshable Braille for deaf-blind people.

Katie Hanson: In the USA funding model, the private sector companies that deliver relay services and captioned telephony claim on the fund for each minute of usage. As I understand it, the fund does not cover provision of terminal equipment but these companies give it to their customers because it stimulates service demand. Terminals such as videophones are basically given away and the costs are recovered through the usage charges. I would imagine that the equipment that Roy is talking about is used by such a small number of people that the companies don't see it as being in their interests to provide it.

John Gill: How does this cover other impairments, cognitive for example?

Katie Hanson: There is no mandate for it. A company like Sorensen, who are the largest provider of video relay services in the USA, gives the equipment away because they see it as good business practice. They tell us that for every minute of video relay that these extra customers then use, they can claim money back from the fund.

Bill Pechey: The funding mechanism needs to have built in to it some means of encouraging innovation. Our current system does not do that because it's only applied to designated operators, in effect only one. In the USA, the service operators have to re-bid every 3 years and they have to make their services better each time to ensure that they keep their contracts. They do this by giving away terminals or all sorts of things that are beneficial to the end-user. Can we make sure that this kind of incentive is built into a UK or European system?

Carine Marzin: It would be possible to do this through EU stimulus packages to foster innovation. That is how audio description came to life.

Guido Gybels: The key part is to separate the funding mechanism from the operational side of the service. There are ways to create cost-sharing mechanisms in the present Universal Service framework as well as in the alternative models we have looked at, so that both allow for systems where there is a description of service requirements and user needs that is made independent of the provider. Those who bid for the money would then be competing to deliver a service that met these needs and had some level of innovation. By the way, innovation can be a double-edged sword, in that a desperate search for new things could prevent a steady expansion of the services that are available now. The challenge is to break through the situation where you get just the cheapest possible way of delivering the legal obligation, which is what we get now.

On Roy's point about terminals, it is inevitable that small user groups with very specific needs are not going to be catered for by the market. It would take a relatively small amount of money from a fund to deal with this. It would not be a booming requirement. Part of the problem in the USA right now is that the uptake of services is shooting through the roof because of the way they are provided, all free of charge. That is something they might need to look at.

Tony Shipley: To follow on from that. One of the EU Commission's current obsessions is with public procurement as a means of improving accessibility in ICT equipment, by writing in access requirements in contract specifications for the public sector. That may work up to a point, but it can never address the case of terminal equipment for deaf-blind people: the public sector does not buy enough of it to influence the market. If you take it under the Universal Service umbrella, then it can be done through specialist purchasing and supply arrangements. I know of no other mechanism that could work in these cases where the demand is so small.

John Gill: Any other comments? Rick, where do you see this leading? If this room was full of industry people, they would tell us that the market is already delivering everything that is needed, but that is not the consensus of the group here. You will have the task of pulling this together, so can you tell us how you plan to do that?

Rick Holyomes: It's fair to say that I and my team have no plans at the moment. We have come to this issue with no baggage, and the one thing that strikes me about this discussion is not how we achieve the end but in a way why we do. In the consultation meeting last year I introduced the model of the three overlapping circles, as in a Venn diagram. The circles represent the interests of the regulators, the users and the manufacturers. The area in the middle, the 'sweet spot', is where all of us have a complete understanding of the issues and can develop common pragmatic solutions. There is no-one here today from the manufacturers, or from the content and service providers. Perhaps the question that should be asked is 'how can we all end up in that sweet spot? Given that we are not even too sure about what the USO may look like, I am keen to hear from you and from industry about how we get there.

David Myers: How do we decide where the funding is to come from? Should there be a turnover charge or a levy on every customer? We should agree on the best approach about funding.

Tony Shipley: There was a pretty clear consensus here before lunch that it would have to come from more than one source. The obvious ones are from general taxation and some sort of sector levy on the industry. There are social arguments for taxpayer funding for some aspects of the USO, but not for all of it, and we can produce our own ideas about the likelihood of this happening. A sector levy will need a lot of work to set it up and Ofcom have obviously been thinking about this for a while. The big issue is who will pay, who amongst the users and the service providers. Digital Britain proposes a tax upon users of fixed lines. That's a bit of a nonsense because it leaves out the whole of the mobile sector, where there is big money, but how do you tax a pre-pay mobile phone user? If you raise the money from the commercial operators rather than the users, how do you decide who they are because we are not just talking about the telcos? There is money to be had but someone has to find a way of extracting it.

James Bullock: It's something Ofcom will set out in the consultation. We will set out what the options are. It's a general industry fund, not so much a levy on lines or individual customers. One possibility might be a tax on turnover, or on some measure of profit. A levy on turnover tends to be the cleanest way of doing it. Ofcom already collects its own fees in that way, so there is a definition of company turnover relevant to telecoms. Which companies do you apply it to? Just to fixed line providers, to all telecoms providers, to ISPs? There is no hard and fast rule. There will have to be a debate with industry and at the end Ofcom will decide. In Europe, some countries tax ISPs, others don't. In Italy, Vodafone pays about 25% of the Fund, so mobile there plays a very significant part. We will put forward proposals next year if we decide to move to an industry fund, but it will be controversial. You could say that we have an industry fund now; it is known as BT.

Guido Gybels: I think it is essential that we as user organisations do not try to lecture the regulator or the Government about how they should go about their business. We should be explaining what is not working now, what user needs are not met. We get bogged down in details of funding or the legal aspects, and that is not our role. The industry will tell Ofcom what is not working for them and we have to say what is not working for us. Ofcom then has the task of marrying up these sometimes conflicting requirements, but I think we have not fully made our case.

Tony Shipley: I have carefully written down what James said: "Ofcom will decide".

James Bullock: That's not to say it won't be appealed!

John Gill: We have concentrated upon the possibility of USO funded by industry, but what about more horizontal legislation and its effect upon funding?

Rick Holyomes: I refer back to Guido's excellent presentation and the view that regulation can be a strait-jacket. I would have a concern that a piece of legislation might create more barriers than it offered solutions.

Bill Pechey: There is horizontal legislation in the UN Convention on the Rights of Disabled People. Article 9 puts all sorts of liabilities on Government to provide accessible services. It is being ratified by the EU as a body as well as by the UK. Is this a powerful argument to use?

Carine Marzin: I think it is. It's a human rights issue now and the EU Member States are signing up to it. The articles you mention relate to equal treatment and binding legislation on eAccessibility. The case is growing stronger but the Commission has been dithering. We need it to get its act together and propose the legislation, and we will welcome action from the Parliament.

Guido Gybels: The DDA has brought about an informal change in attitude and awareness in broad society, without being very specific. It has been very instrumental in raising issues and making people more aware of disability and I think there are broader opportunities to influence society as a whole through horizontal legislation. On the other side, one of the problems is that you tend to get into a conflict situation between one piece of legislation or another. When there is sector-specific legislation, different rights have to be weighed up against each other, with no straight-forward mechanism for resolving these differences. I think it is too easy for us as user organisations to expect that we can create a piece of horizontal legislation that will solve these problems and not run into conflicts of interest. Another point I was going to make is that we are seeking to change the norm in society, not just the law, for our users. We have to ensure that the UN Convention has a fundamental effect on the way society treats them, otherwise it is just a piece of technical legislation.

Tony Shipley: I agree with Guido. The great thing about the DDA is that it is a means of reflecting what disabled people actually need out on the streets now. It is not a prescribed list of actions produced by a panel of wise men sitting in a room like this, where they might get it wrong and anyway it would quickly become out of date. The DDA is a horizontal action that is a live animal and it moves with the times. It may move slowly but I believe that it moves as fast as any other kind of legislation we have seen. Governments are likely to implement the UN Convention by applying it to services that they pay for themselves, because that is a lot easier than persuading the rest of the community to get on and do what is expected. As an opinion former, it is acts like the DDA and the various equality measures which eventually have the effect of changing awareness and opinions.

I wanted to look at the effectiveness of some of the other measures that have been proposed over the years, such as legislation which aims to be binding on manufacturers in terms of accessibility. The RTTE Directive on telecoms terminals is a case in point. Some of us have been working on this since about 1996, before it became law, to see what effect it might be given. Reluctantly, we came to a consensus that the accessibility clauses in that

Directives are useless, and that is because you cannot write the kind of regulation that would give them any effect. We could find only two possibilities. One was to require a tactile dot on the 5 key, which is pointless because it is done anyway, and the other, which might still be of use, was to require labelling to show which accessibility features were present. Beyond that you are stuck because there is no 'one size fits all' when it comes to accessibility. Accessibility is a difficult concept and we tend to use the word in a specialised sense which confuses a lot of people, because we omit to say who the thing is supposed to be accessible for. Even when it is clear that accessibility for people with some kind of disability is what is meant, there is still no single solution. In the USA they have tried to get round this by saying that manufacturers must make a range of equipment covering various types of user, but some manufacturers make only specialised equipment and not necessarily for domestic use. Maybe it is easier with white goods, which was one of the examples Carine mentioned, but you have to be careful to avoid legislating on a basis of 'intended use' because in the EU that is defined by the manufacturer. If you want to ensure both affordability and availability of terminals to suit the needs of a range of disabled people, I think you have to be ready to intervene in the market and subsidise supply.

Bob Warner: I had hopes that there was some potential on a European basis for making terminal equipment more accessible. You would never make anything fully accessible but surely it must be possible to lay down a few criteria, such as for spoken or tactile outputs which would improve things for 50 to 80% of these users. I will go home depressed after what Tony has said, but is this not a matter of the best driving out the good?

Tony Shipley: Would you get refreshable Braille for the deaf-blind?

Bob Warner: They would be in the last 20%.

Tony Shipley: I used to say that if I were still working as a consultant in the disability and telecoms area, I could make a very good living telling terminal manufacturers how to demonstrate that they met accessibility obligations without altering their equipment. It will be sufficiently accessible for some categories of disabled person, and it is the problem of saying which category needs which facilities that makes it difficult if not impossible to list required features. Rather than the best being the enemy of the good, it is the groups that shout the loudest that get the facilities while the rest are ignored, and we have seen that situation in the USA.

Guido Gybels: I'll offer some consolation. I fully agree with Tony that trying to specify accessibility needs in terms of features doesn't work. We are seeking to do something different and I think you can achieve progress by driving people's mind-sets rather than specifying features. Web accessibility has failed so far because we are hung up by ticking boxes in standards, rather than understanding what is being done. If you want more accessible websites, if you want more accessible products on the market, then use things like the DDA to change mind-sets and raise awareness. Otherwise it is just like painting by numbers, it is just a reproduction without thought or creativity.

Technology in the Information sector is very young and it is developing from the very specific to the more general. When functions are more fluid and defined by software, it will give us opportunities to meet more people's needs by using mainstream technology in different ways and delivering a more individual experience. As an overall trend this creates great opportunities for us, even if the answers will not be available tomorrow, and real progress is possible.

Bob Warner: The DDA made the law a trigger in changing people's attitudes. I completely agree with what you say about that and I wonder if we now need something to kick-start the next steps, not by specifying features but by specifying the equipment approach for someone that can't see, for example, so as to engage the mind-set.

Guido Gybels: I would agree with that.

Tony Shipley: So would I agree with that. We don't want to go too far down that avenue now or we will be discussing finer details, but we have to look at it in general. The DDA does not apply to manufactured goods but it does apply to the service of selling those goods. I think that is the sector where this kind of horizontal legislation can be made to work. You don't say to manufacturers 'you have got to make all your phones, televisions, usable by people who cannot see' but you do say to the people who sell these things to the public that 'you must do your utmost according to equality laws to obtain what the customer needs'.

John Gill: We have now come to the time to finish. I would like to thank everybody very much. A Report of today's proceedings will be put on the PhoneAbility website and Rick Holyomes will get a copy. This meeting has been a single stakeholder event, and other stakeholders will have some very different views, so BIS may want organise further meetings. So I will just thank all of you very much for coming, thank you Ofcom for hosting this event, thank you BIS for funding it, and thank you Norma for very kindly doing the transcription. Thank you.

# *PhoneAbility*

## **Seminar/Workshop – ‘New Approaches to Universal Service’**

Wednesday 9<sup>th</sup> September 2009

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