



Signing on television

Proposed changes

Consultation

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Section 1

Summary

Introduction

- 1.1 This consultation is concerned with reviewing the provision of access to signing (rather than other forms of assistance for the disabled such as subtitling and audio-description) by low-audience channels (see further below).
- 1.2 Ofcom is not proposing in this consultation to make any changes to the current obligations imposed by the Communications Act 2003 (“the Communications Act”) on public service (“PSB”) channels whose combined audience share accounts for over two thirds of the UK’s total audience share or on most channels with an audience share of 1% or more (which account for a further 7.7% of viewing). Ofcom recognises the need to maintain the current arrangements on PSB channels in order to ensure that analogue-only viewers continue to have access to signed programmes.
- 1.3 The purpose of this consultation is to seek views from stakeholders on three specific matters:
 - a) firstly, on Ofcom’s proposals to determine that some low-audience channels should be excluded from their current obligations for sign-interpreted programming (with a signer displayed in the corner of the screen) on the basis of evidence suggesting that the costs incurred produce little or no benefit to the audience for access services;
 - b) secondly, to consider whether Ofcom should impose alternative arrangements on those excluded services to provide greater benefit to audiences; and
 - c) thirdly, if so, to propose that when deciding whether to impose alternative arrangements, Ofcom should take into account any voluntary arrangements that have been entered into by those excluded services in order to provide other more effective and beneficial assistance for the disabled in the form of sign-presented programmes, either on those channels, or in a sign zone on the Community Channel.

Research

- 1.4 Research commissioned by Ofcom for its review of access services last year suggested that very few people were making use of sign-interpreted programmes (where a signer appears superimposed in a corner of the screen) on low-audience channels. Feedback from disability groups lent support to this view. Given their viewing preferences, it is likely that few, if any, sign language users with access to multichannel television watch the programmes on low-audience channels (channels with an audience share of less than 1%). As we explain in this document, the numbers watching sign-interpreted programmes on these channels are likely to be very small. Under the current arrangements, therefore, low-audience channels incur costs, but the target audience gains little or no benefit.

Current arrangements

- 1.5 When the Communications Act came into force, the previous arrangements for signing, subtitling and audio description ('access services') on public service and digital terrestrial channels were extended to channels available by cable and satellite. In brief, section 303 of the Communications Act requires such channels to sign 5% of their programmes from the tenth anniversary of the 'relevant date'¹.
- 1.6 Ofcom decided to exercise its powers under the Act to impose interim targets on channels from the first anniversary of the date. These interim targets apply to channels that meet audience share and revenue thresholds set out in Ofcom's Code on Television Access Services². As a result, some 90 channels are required to provide some signing in 2007³. The interim signing targets rise gradually from 1% to 5%.

Scheduling and presentation

- 1.7 Unlike subtitling and audio description, viewers have no option whether or not to receive signing – it is incorporated into the image broadcast to all viewers (so-called 'open' signing). While technology is being developed that may allow the image of the signer to be transmitted separately and included in the picture (or not) at the discretion of the viewer, it is not yet at the stage where it could provide a practical or cost-effective alternative to open signing. Feedback from broadcasters and access service providers suggests that many non-sign language users find open signing distracting, so broadcasters generally schedule signed programmes late at night or early in the morning.
- 1.8 The provisions of the Communications Act allow broadcasters the choice of meeting the targets with programmes presented in sign language, or with sign interpretation. Almost all signed programmes are programmes prepared for a hearing audience and subsequently dubbed with the image of a signer ('sign-interpretation'). The only current example of a programme presented in sign language ('sign-presentation') is the BBC's 'See Hear' programme⁴.

Use of signing

- 1.9 While it is undoubtedly the case that some people do rely on signing to a greater or lesser extent for access to television, the research findings and feedback (summarised in section 2) suggest that the proportion of the UK population using sign language is very small. This is not, of course, a reason why signed television should not be provided – when Parliament enacted the Communications Act, it was aware that relatively few people know sign language⁵. However, more significant is the

¹ For channels broadcasting at the time the Communications Act came into force which had not previously been subject to access service obligations, the relevant date was 29 December 2003 (effectively the beginning of 2004), while for newer channels, the relevant date is the date they started broadcasting.

² Ofcom's Code on Television Access Services is published on its website at <http://www.ofcom.org.uk/tv/ifi/codes/ctas/ctas.pdf>.

³ These obligations attach to all channels with an audience share of more than 0.05%. A full list of these channels can be found on Ofcom's website at http://www.ofcom.org.uk/tv/ifi/guidance/tv_access_serv/tv_access_statement07/tv07.pdf.

⁴ More information about this can be found at <http://www.bbc.co.uk/seehear/>.

⁵ See, for example, column 331 of Hansard for the House of Lords, in which the figure of 50,000 people having British Sign Language as their first language is quoted. <http://www.publications.parliament.uk/pa/ld200203/ldhansrd/vo030515/text/30515-04.htm>

evidence that many of those who claim to use and understand sign language actually prefer to use subtitling when watching television. The small numbers of people watching signed television programmes mean that those television channels which have very small audiences shares (almost all the cable and satellite channels) may be attracting very few viewers, if any, to their signed programmes.

- 1.10 Accordingly, Ofcom concluded that the current approach to signing on television is not meeting the needs of sign language users in general, and that it imposes costs on smaller broadcasters that do not give rise to any significant benefits.

Policy objectives

- 1.11 In the light of its statutory duties, and the research evidence and feedback demonstrating that sign language users benefit little from sign-interpreted programmes on low-audience channels, Ofcom considers that its policy objectives should be to exclude those low audience channels from the current requirements under the Communications Act on the basis of the statutory criteria and identify and secure alternative arrangements that better meet the needs of sign language users, having regard to the clear preference they expressed for sign-presented programmes over sign-interpreted programmes.
- 1.12 Ofcom considers that any alternative arrangements should not impose disproportionate burdens on broadcasters. We also consider that they should not have a significant impact on the amount of subtitling provided by broadcasters. Section 3 elaborates on Ofcom’s policy objectives and sets out possible alternative requirements that Ofcom considers it would be appropriate to impose in order to achieve these objectives.

Exclusion of programmes/services from the current requirements

- 1.13 The Communications Act provides for Ofcom to determine that certain descriptions of programmes, or all the programmes included in a service (where that service is a “special case”), should be excluded from the requirement to provide particular access services (including signing). A service is a “special case” if Ofcom is satisfied that on the basis of certain statutory criteria (see below), all the programmes in the service should be excluded.
- 1.14 In deciding whether it is appropriate to exclude any programmes/services, Ofcom must have regard, in particular to the criteria set out in section 303(8) of the Communications Act. These criteria include:
- a) the extent of the benefit which would be conferred by the provision of assistance (e.g. signing) for disabled people in relation to the programmes/services;
 - b) the size of the intended audience for the programmes;
 - c) the number of persons who would be likely to benefit from the assistance and the extent of the likely benefit in each case; and
 - d) the cost, in the context of these matters, of providing the assistance.
- 1.15 Having regard in particular to these factors, we believe that low-audience channels which are currently subject to the statutory requirement to meet the targets set out in section 303 (those with an share of more than 0.05% but less than 1%) should be

excluded from that requirement, particularly in view of the minimal extent of the benefit that is actually being delivered and the consequently disproportionate cost of providing those benefits (see section 2).

- 1.16 Where Ofcom has excluded programmes or services, the Communications Act allows Ofcom to impose alternative requirements in relation to those excluded programmes or services (section 303 (10)(c)).

Discussions with interested parties

- 1.17 In considering whether alternative requirements should be imposed on individual channels, it is also open to Ofcom to take into account any voluntary arrangements entered into by broadcasters that Ofcom believes would also meet the needs of sign-language users more effectively. As explained in section 2, Ofcom met both disability groups and broadcasters to discuss possible alternatives to the current arrangements. Ofcom also participated in an event organised by Sky and the Community Channel to enable sign language users to evaluate the idea that, instead of providing signing on their own channels, broadcasters should contribute to the costs of a sign zone on the Community Channel. Finally, Ofcom invited a broad range of sign language users to form a working group to report back on their preferred option, having regard to the current statutory framework.
- 1.18 Ofcom believes that the proposal which emerged could provide a good basis for an acceptable alternative to imposing requirements. Section 3 seeks stakeholders' views on this alternative approach.

Options considered by Ofcom

- 1.19 The options considered by Ofcom include:
- a) retaining the present arrangements for signing on television (i.e. not applying the statutory criteria to exclude low-audience channels from the current requirements to meet the statutory targets for signed programmes) (Option 1);
 - b) applying the statutory criteria to exclude low-audience channels from the current requirements to meet the statutory targets for signed programmes but requiring them to substitute additional subtitling for their current signing requirements (Option 2); and
 - c) applying the statutory criteria to exclude low-audience channels from the current requirements to meet the statutory targets for signed programmes, and imposing a requirement on those channels to make a smaller amount of sign-presented programmes, unless acceptable alternative arrangements are in place, for example participation in the proposed sign zone on the Community Channel (Option 3).

Proposals

- 1.20 Having had regard to the criteria in section 303(8) of the Communications Act and in the light of the evidence and analysis set out in section 3 and in the impact assessment at Annex 5, Ofcom:
- a) proposes that channels with an audience share of 1% or more should continue with the current arrangements, though in the case of channels with an audience share of just less or just more than 1%, we would consider whether to exercise

discretion as to whether or not it is appropriate to exclude any particular services having regard to relevant criteria in the Act;

- b) proposes to exclude channels with an audience share of less than 1% from the obligation to meet the volume targets set out in the Code on Television Access Services, and instead require them to broadcast sign-presented programming in one or more regular slots at least once a month between 7am and 11pm. The minimum duration of such programming would be 30 minutes on each channel from the first to the fifth anniversary of its relevant date, 45 minutes from the fifth to the seventh anniversary and 60 minutes from the seventh anniversary;
- c) proposes not to impose any such requirements on any low-audience channel which has voluntarily entered into arrangements that provide what Ofcom considers to be an acceptable alternative (such as the Community Channel scheme referred to in paragraph 1.17 above);
- d) proposes to make the consequential changes to the Code on Television Access Services set out in Annex 7; and
- e) proposes to review the new arrangements after they have been in place for 12 months. Assuming it proves possible to put new arrangements in place from 2008, this would mean that a review would take place during 2009, with the objective of making any changes that were considered appropriate from 2010. The review would cover the operation of any approved voluntary arrangements, as well as any requirements imposed by Ofcom in relation to those not participating in such arrangements, and any other relevant issues.

Next steps

- 1.21 At the end of the consultation period, Ofcom will consider responses from consultees before deciding whether to exclude low-audience channels from the current requirements and what alternatives (if any) to the current arrangements should be put in place. It will aim to publish its decision by the end of July, with a view to any new arrangements taking effect from the start of 2008.

The consultation

- 1.22 We would welcome views before the consultation closes on 14 June 2007 [**Amended to 27 July 2007**]. Given the substantive discussions that have taken place with interested parties since the access services review was published in March 2006, and the merits of replacing the current arrangements with more effective alternatives by the beginning of 2008, Ofcom considers that a short consultation period of five weeks is appropriate. More details of how to respond are given in Annex 1, and Ofcom's consultation principles are set out in Annex 2. The specific questions on which we are seeking views are set out in the consultation document, and repeated in Annex 4.
- 1.23 A copy of this document in a format suitable for use by screen readers has been posted on Ofcom's website. A Plain English version of this summary has been published separately. Ofcom can also provide documents to individuals in alternative formats (e.g. Braille, audiotope or large print) on request. We may also provide translations of documents into languages other than English. To request non-standard versions of documents, please contact the Ofcom Contact Centre at contact@ofcom.org.uk, by phone at 0845 456 3000 or 020 7981 3040, or by

textphone at 0845 456 3003. Please note that the time needed to produce an alternative format document will depend on the length of the document.

Section 2

The effectiveness of current signing arrangements

Introduction

2.1 In this section, we summarise the current requirements under the Communications Act for signing and examine the evidence for how the signing currently available is used (and not used) to understand and enjoy television by those people with a hearing impairment who have sufficient competence in sign language. The evidence is drawn from the quantitative and qualitative research commissioned by Ofcom, as well as feedback we received from sign language users and groups representing their interests. Both the research evidence and feedback were taken into account by the access services review, which concluded that further discussion was required with sign language users and broadcasters.

Current arrangements

- 2.2 Section 303 of the Communications Act extended the previous arrangements for signing, subtitling and audio description ('access services') on public service and digital terrestrial channels to channels available by cable and satellite. In relation to signing, the effect of this was to require those broadcasters who were already broadcasting at the time section 303 came into force (29 December 2003) and to whom the obligation had not previously applied, to either present or interpret 5% of their programmes (by hours) in sign language within 10 years of that date, unless excluded from the requirement by Ofcom, having regard to the criteria set out in section 303(8) of the Act (see paragraph 2.6 below). For newer channels that started broadcasting after 29 December 2003 the 5% target is calculated from the date they started broadcasting.
- 2.3 As a result of signing requirements being extended to cable and satellite channels, some 90 channels, most with audience shares of less than 1%, are now required to provide some signing. Most of these channels are currently required to broadcast 175 hours of signed programmes a year (representing 2% of output); from 2009, this will rise to 260 hours (3%), and eventually to 440 hours (5%).
- 2.4 Given that the provisions of section 303 allow broadcasters the choice of meeting the targets with programmes presented in sign language, or with sign-interpretation broadcasters have opted to meet their quotas with sign-interpreted programmes (programmes prepared for a hearing audience which are subsequently dubbed with the image of a signer)⁶.
- 2.5 Section 303(9) of the Communications Act provides for Ofcom to determine that certain descriptions of programmes, or all the programmes included in a service (where that service is a "special case"), should be excluded from the requirement to provide particular access services (including signing). A service is a "special case" if Ofcom is satisfied that on the basis of certain statutory criteria (see paragraph 2.6 below), all the programmes in that service should be excluded.

⁶ The only current example of a programme presented in sign language is the BBC's 'See Hear' programme.

- 2.6 When the Code on Television Access Services was first devised, Ofcom considered, having regard in each case to the statutory criteria set out in section 303(8) of the Communications Act, that certain low audience channels should be exempted from providing access services. The effect of this was that channels with a UK audience share of less than 0.05% were excluded from the statutory requirements to provide access services. The criteria applied were:
- a) the extent of the benefit which would be conferred by the provision of assistance for disabled people in relation to the programmes/services;
 - b) the size of the intended audience for the programmes;
 - c) the number of persons who would be likely to benefit from the assistance and the extent of the likely benefit in each case;
 - d) the extent to which members of the intended audience for the programmes are resident in places outside the United Kingdom;
 - e) the technical difficulty of providing the assistance; and
 - f) the cost, in the context of the matters mentioned in paragraphs (a) to (e), of providing the assistance.
- 2.7 In the light of qualitative and quantitative research undertaken for the access services review and the feedback we have received from sign language users and groups representing their interests we have reviewed whether, according to these criteria, additional low-audience channels should be excluded from the signing requirements in section 303.

Research

- 2.8 Ofcom reviewed the Code on Television Access Services in 2006, and for this purpose commissioned Ipsos-MORI to carry out independent research. The research objectives, established after discussion with disability groups, broadcasters and access service providers, were to establish how many people stood to benefit from the different access services, to measure usage and barriers to use, and to understand the needs and preferences of users and potential users.
- 2.9 The research, which has been published on Ofcom's website⁷, comprised:
- a) quantitative research into the numbers of people across the UK with sensory impairments, their awareness of television access services, and the extent to which they used them; and
 - b) qualitative case studies with people with sensory impairments, in order to gain a better understanding of their experiences in using access services, and to shed light on why some of them did not use such services. The results of this research were indicative rather than representative, as respondents were deliberately weighted toward those with more significant sensory impairments, in order to understand their experiences better.
- 2.10 In relation to signing, the key findings were that:

⁷ *Provision of access services – research study conducted for Ofcom*, Ipsos-MORI, March 2006
<http://www.ofcom.org.uk/consult/condocs/accessservs/provision.pdf>.

- a) people with a hearing impairment are significantly more likely than the general population to reside in an analogue-only household; 44% of hearing impaired have access to analogue television only, against 30% of the general population. Of those with severe or profound hearing impairments, even more (51%) rely on analogue-only television;
- b) despite a high awareness of signing amongst the hearing-impaired (84%), only 6% have ever used signing to follow programmes more easily. Viewing of signed programmes is higher amongst people with a severe / profound impairment, around a third of whom (31%) say they watch signed programmes at least some of the time. However, even amongst this group, over two-fifths (43%) claim never to watch signed programmes;
- c) those with a severe or profound hearing impairment use a variety of means to understand television, of which the most popular is subtitling (73%), increasing the volume (43%), lip-reading (28%), using loops or headphones (23%), watching signed programmes (20%), or asking a household member (14%);
- d) amongst the case study respondents, there was less satisfaction with signing than with subtitling. Those with the most significant hearing impairments and strongest signing skills were more likely to agree that signing on television improved their understanding. Nonetheless, two thirds of these preferred subtitles; and
- e) it was difficult to obtain a reliable estimate of the numbers of people who use signing to watch television. Over a million people claimed to have done so, but as a far lower number actually claimed to possess a reasonable understanding of sign language, it is likely that many equated seeing a programming with signing as using signing. In order to get a better approximation, the researchers applied a number of filters. These showed that 66,000 people (central estimate) claiming a hearing impairment said that they had some knowledge of signing and had used it to watch television. This number fell to 44,000 when the same group of people were asked whether they used signing occasionally to communicate. There were 11,000 people with a moderate to profound hearing impairment with any knowledge of signing who claim to have used signing to watch television.

Feedback

- 2.11 Comments from sign language users, groups representing their interests and broadcasters tended to confirm the view that sign language users made little use of sign-interpreted programmes:
- a) the National Deaf Children's Society said that feedback it had received from families suggested that sign-interpreted programmes were not meeting the needs of sign language users. However, it also noted that a joint NDCS-BBC survey suggested that deaf children often watched programmes with sign-presentation, and that their families wanted more such programming;
 - b) groups including the British Deaf Association and the Deaf Broadcasting Council told Ofcom that they wanted more sign-presented programmes on television, even if this mean a significant reduction in the amount of sign-interpretation; the RNID said that there was strong evidence that more programming presented in sign language was wanted; and

- c) in terms of the broadcasters, Nickelodeon said that it had received no feedback on its signed programmes, in contrast to subtitled programmes, and that audiences for signed programmes were too small to measure and BSkyB said that it sold very few signed films in its pay-per-view service.

Access services review

- 2.12 In the light of the research and discussions with both broadcasters and disability groups, Ofcom's review noted that although the proportion of the UK population using sign language was very small, this was not a reason why signed television should not be provided – when Parliament enacted the Communications Act, it was aware that relatively few people know sign language⁸. Moreover, Ofcom's review noted that it was undoubtedly the case that some people do rely on signing to a greater or lesser extent for access to television.
- 2.13 However, it appeared that many of those who claim to use and understand sign language actually prefer to use subtitling when watching television. This could explain the almost complete absence of feedback to broadcasters about signed programmes (as compared with subtitled or audio-described programmes), and the very limited take-up of signed films reported by a provider of a pay-per-view film service. Ofcom expressed concern that the small numbers of people watching signed television programmes meant that those television channels which have very small audiences shares (almost all the cable and satellite channels) may be attracting very few viewers, if any, to their signed programmes. Even if, as might be expected, the propensity of sign language users to watch signed programmes on such channels was somewhat greater, the absolute numbers of sign language viewers would still be very small. Moreover, it should be noted that 44% of households with hearing-impaired members only receive the five main terrestrial channels, so are not able to watch cable and satellite channels at home.
- 2.14 Ofcom concluded that the evidence suggested that the current approach to signing on television is not meeting the needs of sign language users in general, and that it imposes costs on smaller broadcasters that do not give rise to any significant benefits.
- 2.15 In light of the evidence, we consider that the extent of the actual benefit provided by the current obligations on low-audience channels – which is minimal - cannot be justified when weighed against all the other relevant statutory criteria including the cost to the channels of providing these services. Against this background, and having regard to the criteria in section 303(8) of the Communications Act 2003, Ofcom considered that there was a case for reviewing the continued application of the current statutory requirements on low-audience channels.

⁸ See, for example, column 331 of Hansard for the House of Lords, in which the figure of 50,000 people having British Sign Language as their first language is quoted.
<http://www.publications.parliament.uk/pa/ld200203/ldhansrd/vo030515/text/30515-04.htm>

Section 3

Exclusion of services from the current requirements and possible alternative arrangements

Introduction

3.1 This section:

- a) describes Ofcom's policy objectives, in the light of the discussions summarised in section 2, and having regard to its duties;
- b) analyses the extent to which different options would meet those objectives; and
- c) sets out Ofcom's proposals:
 - to determine that some low-audience channels should be excluded from their current obligations for sign-interpreted programming (with a signer displayed in the corner of the screen) on the basis that the evidence suggesting that the costs incurred produce little or no benefit to the audience for access services;
 - to consider whether Ofcom should impose alternative arrangements on those excluded services to provide greater benefit to audiences; and if so
 - that when deciding whether alternative arrangements should be imposed, Ofcom should take into account any acceptable voluntary arrangements that have been entered into by those excluded services in order to provide other more effective and beneficial assistance for the disabled in the form of sign-presented programmes, either on those channels, or in a sign zone on the Community Channel.

Legal framework

3.2 Ofcom has a general duty under the Communications Act to further the interests of citizens in relation to communications matters (section 3(1)(a)). In performing that duty, Ofcom is required, amongst other things, to have regard to the needs of people with disabilities (section 3(4)(i)) and to have regard to the opinions of consumers in relevant markets and of members of the public generally (section 3(4)(k)). Ofcom must also have regard to the principles under which regulatory activities should be transparent [and] proportionate (section 3(3)). For this reason it may be appropriate to impose alternative requirements in relation to those programmes or services that Ofcom proposes to exclude. However, it is also open to Ofcom to take into account any voluntary arrangements entered into by broadcasters that Ofcom believes would also meet the needs of sign-language users more effectively. We believe that this would be consistent with Parliament's intentions in legislating in this area that broadcasters should assist sign language users to understand and enjoy television.

3.3 Having regard to the criteria in section 303(8), and in particular to:

- a) the extent of the benefit which would be conferred by the provision of assistance for disabled people in relation to the programmes/services
- b) the size of the intended audience for the programmes;
- c) the number of persons who would be likely to benefit from the assistance and the extent of the likely benefit in each case; and
- d) the cost, in the context of these matters, of providing the assistance,

we believe that low-audience channels which are currently subject to the statutory requirement to meet the targets set out in section 303 (i.e. those with a share of more than 0.05% but less than 1%) should be excluded from that requirement (see paragraphs 3.7 to 3.8 below).

Ofcom's policy objectives

- 3.4 Ofcom considers that both the research evidence and feedback from hearing-impaired sign language users and the groups representing their interests demonstrate that they benefit little from sign-interpreted programmes on low-audience channels, and that their interests and needs would be better served by the provision of more sign-presented programming (even at the expense of a significant reduction in the amount of sign-interpreted programming). However, the interests of analogue-only viewers need to be protected. In addition, any alternative arrangements that are devised should not result in a significant diminution in the amount of subtitling on television, since subtitling benefits a large number of hearing-impaired people, including many sign language users.
- 3.5 In the light of this, and having regard to its statutory duties and Parliament's intentions, Ofcom considers that its policy objectives should be to exclude low audience channels from the current requirements under the Communications Act on the basis of the statutory criteria, and to identify and secure alternative arrangements that better meet the needs of sign language users, and do not impose disproportionate burdens on broadcasters.
- 3.6 In the light of the clear preference of sign language users for sign-presented programming, these alternative arrangements should aim to increase the amount of sign-presented programming on television, even if this results in a reduction in the amount of sign-interpreted programming. However, these arrangements should not disadvantage analogue-only sign language users, nor should they result in a significant reduction in the amount of subtitling.

Q1. Do consultees agree that these are appropriate policy objectives for Ofcom in considering possible alternative arrangements for signing on television?

Excluding low-audience channels from their current obligations for sign-interpreted programming

- 3.7 In the light of qualitative and quantitative research undertaken for the access services review, we have had regard to the implication of the criteria in section 303(8) for signing provision on low-audience channels:

- a) research and feedback demonstrate that sign-interpretation on low-audience channels confers very little benefit on sign language users⁹;
- b) the ratio of hearing-impaired viewers with competency in sign language to viewers without a hearing impairment suggests that the target audience (in terms of the signing requirements) for channels with an audience share of less than 1% is tiny, even if a higher propensity amongst deaf viewers to watch signed programmes is assumed. For example, given a total potential audience of 66,000 hearing impaired people who are sufficiently competent in sign language, a channel with an audience share of 0.1% that was not available to analogue viewers might attract 37 sign language users if the share was the same as for other viewers, or 370 sign language users if they were ten times as likely as other viewers to watch such a programme;
- c) the research has also shown that sign language users generally prefer subtitled programmes and sign-presented programmes rather than sign-interpreted programmes. This, coupled with the fact that most signed programmes are shown after midnight provides evidence that the actual benefit to hearing impaired viewers of the signing that is currently provided is even lower than might otherwise be assumed; and
- d) while the estimated cost of providing signing on these channels (using data obtained for the 2006 access services review) is not substantial (around £1.5 million), it appears disproportionate in the light of the very limited benefits conferred upon sign language users.

3.8 Accordingly, while many low-audience channels can afford to continue providing signing, as well as subtitling and audio description, we consider that, applying these criteria on a case by case basis, most, if not all, channels with an audience share of less than 1% (and possibly some with 1% or slightly more than 1%) should be excluded from the current requirements¹⁰. In the case of channels with an audience share of just less or just more than 1%, it would be open to Ofcom to consider whether to exercise discretion having regard to the criteria under section 303(8)¹¹.

Discussions with interested parties

3.9 In order to gauge the views of interested parties on possible alternatives to the current arrangements for signing, Ofcom arranged meetings with disability groups representing the interests of sign language users with hearing impairments, with representative groups of broadcasters, and with individual broadcasting groups. Ofcom also participated in an event organised by Sky and the Community Channel to enable sign language users to evaluate an option proposed by the two broadcasters. Finally, Ofcom invited a broad range of sign language users to form a working group

⁹ The sign language working group suggested that it does not make sense to devote resources to sign-interpretation of sports, soaps, films and music programmes, and that even signing on factual programming should be discontinued unless broadcasters have clear evidence that sign language users are happy with its selection and scheduling.

¹⁰ In considering which programmes/services should be excluded, the legislation requires Ofcom to look at each channel on a case by case basis. We therefore propose an indicative threshold of 1% or more audience share with the flexibility to apply the criteria in section 303(8) in marginal cases where a channel may have a 1% audience share or just over.

¹¹ For example, given that sign language users have said that signing does not work well with films, Ofcom might decide to exclude a film channel with an audience share just above 1% from the current arrangements

to report back on their preferred option, having regard to the current statutory framework.

Sign language users

- 3.10 Disability groups (RNID, the British Deaf Association, the Deaf Broadcasting Council, the Telecommunications Action Group, the National Deaf Children's Society and Sense) with which Ofcom met made clear that sign language users wanted to see more sign-presented programming, even if this came at the expense of a much reduced amount of sign-interpreted programming.
- 3.11 Disability groups recognised the need to ensure that analogue-only viewers were not disadvantaged, and argued that public service channels should therefore continue to provide signing as at present. A number indicated that the continued provision of signing on public service channels would also serve to reassure those who might be uncertain about the repercussions of change, by ensuring that sign language users retained access to a wide variety of signed programmes on those channels. RNID, TAG and Hearing Concern were keen that any new arrangements should not disadvantage subtitle users, pointing out that many more hearing impaired people relied on subtitles than signing, and that many sign language users also used subtitles.

Broadcasters

- 3.12 In the light of the evidence that sign language users preferred sign-presented programmes to sign-interpreted programmes, Ofcom sought the views of a wide range of broadcasters on whether they would be willing to allocate the resources currently used to produce sign-interpreted programmes to making sign-presented programmes and broadcasting them at less inconvenient times than is currently the case.
- 3.13 Almost without exception, broadcasters said that they would not wish to do this voluntarily. The reasons they cited included the likelihood that the amount that they spent on signing would not allow a credible amount of sign-presented programming to be produced, a worry that sign-interpreted programmes would alienate the broader audiences they served, and concern (particularly amongst smaller channels relying principally on library material) that the need to commission programmes specially would add cost and complexity to their operations. Some broadcasters suggested that they be allowed to substitute additional subtitling for their current signing requirements.
- 3.14 Sky and the Community Channel proposed that broadcasters be invited to contribute to the costs of a sign zone on the Community Channel as an alternative to the current requirements. They suggested that a Trust of sign language users and broadcasters be created to receive and disburse funds for a sign zone, as well as to take decisions on commissioning, acquisition and scheduling. They invited a broadly representative group of sign language users (including several current and former members of relevant disability groups) to discuss the proposal in November 2006. When a consensus did not emerge from this process, Ofcom invited those present to form a working group to make recommendations. The group's report, which was delivered in February 2007, is attached at Annex 7. The report endorsed the general approach suggested by Sky and the Community Channel, with some modifications.

- 3.15 Broadcasters gave a cautious welcome to the proposal made by the working group, based on the original Sky / Community Channel concept. However, they remained concerned about the cost implications of alternative requirements; some wanted flexibility to adjust any contribution in the light of budgetary considerations. A number pointed to the need for an early indication of whether the scheme would proceed in 2008, given that budgets for that year would be prepared in the summer of 2007. Others wanted to know how the arrangements would work in practice, and what rôle broadcasters might have in the governance of the Trust.
- 3.16 These discussions confirmed Ofcom in its view that efforts should be made to identify alternative arrangements that would better serve the needs of sign language users and that this was an appropriate policy objective.

Options

- 3.17 In the light of Ofcom's policy objectives and the evidence and analysis discussed above, Ofcom has considered the following options:
- a) retaining the present arrangements for signing on television (i.e. not applying the statutory criteria to exclude low-audience channels from the current requirements to meet the statutory targets for signed programmes) (Option 1);
 - b) applying the statutory criteria to exclude low-audience channels from the current requirements to meet the statutory targets for signed programmes but requiring them to substitute additional subtitling for their current signing requirements (Option 2); and
 - c) applying the statutory criteria to exclude low-audience channels from the current requirements to meet the statutory targets for signed programmes, and imposing a requirement on those channels to make a smaller amount of sign-presented programmes unless acceptable alternative arrangements are in place, for example participation in the proposed sign zone on the Community Channel (Option 3).
- 3.18 Ofcom also considered a number of other suggestions that were put to it, and concluded that they were not appropriate, for the reasons set out below:
- a) some suggested that the small size of the signing population made it unreasonable to require broadcasters to provide signing, and that the appropriate way forward would be to drop the requirement, without putting any alternative arrangements in place. However, as we have explained above, it is a statutory requirement under section 303 of the Communications Act for broadcasters to provide signing and Ofcom may only exclude programmes or services that Ofcom considers should be excluded, having regard to the statutory criteria referred to above. While Ofcom accepts that, overall, the number of people served by signing is comparatively small, the fact that the proportion of the UK population using sign language is very small is not a reason why signed television should not be provided – when Parliament enacted the Communications Act, it was aware that relatively few people use sign language. Moreover, this approach would not help to achieve the policy objectives described above;
 - b) it was suggested that some or all of the public service channels should be excluded from the requirement to meet the current signing targets. From a legal perspective, Ofcom is not satisfied (having regard to the criteria in section 303) that any of the PSB channels would qualify as a special case. In any event, from

a policy perspective this would deprive analogue-only viewers of access to signed programmes and retention of the current arrangements would ensure that viewers on all platforms continue to have access to a wide range of signed programmes on channels accounting for two thirds of viewing; and

- c) it was also suggested that broadcasters be encouraged to allocate the resources they currently allocate to sign-interpreted programmes to make sign-presented programmes. It was clear from the discussions that Ofcom held with a wide range of broadcasters that there was no appetite to do this on a voluntary basis.

Q2. Do consultees agree that Ofcom has identified appropriate options?

Q3. Do consultees agree with Ofcom's reasons for rejecting the ideas described in paragraph 3.18?

Option 1 – Do nothing

3.19 As reported in section 2, the research Ofcom commissioned and the feedback we have received from sign language users and disability organisations representing their interests suggests that sign language users do not watch much signed television. We conclude in section 2 above that signing on low-audience channels delivers little benefit to sign language users. Following the analysis in paragraphs 3.7 to 3.8 above, it is doubtful whether the costs, though modest compared to the total costs of subtitling or audio description (see impact assessment at Annex 5), are proportionate. Having regard to the criteria in section 303(8) of the Act, it is therefore difficult to argue that low-audience channels should not be excluded from the current arrangements.

3.20 Moreover, in Ofcom's view, the current arrangements would not help to meet the policy objectives. Accordingly, Ofcom considers that this option should only be selected if it is not possible to identify a practicable alternative that would be more likely to secure the policy objectives, and if it can be justified in relation to its statutory duties.

Option 2 – Impose additional subtitling requirements

3.21 Where Ofcom has excluded programmes or services, the Communications Act allows Ofcom to impose alternative requirements in relation to those excluded programmes or services (section 303(10)(c)). Accordingly, a number of broadcasters suggested that they be allowed to provide additional subtitling instead of meeting their signing arrangements.

3.22 While superficially attractive (research suggests that many sign language users also use subtitling to watch television), we concluded that this would not contribute to the policy objectives, since it would not meet the needs of those sign language users who find it difficult or impossible to use subtitling. Moreover, it might not deliver much incremental benefit to those sign language users who also use subtitling, since many broadcasters already provide more subtitling than they are required to under the Code on Television Access Services, and could meet revised targets without providing more access services¹².

¹² See, for example, the report covering the four quarters of 2006 (http://www.ofcom.org.uk/tv/ifi/guidance/tv_access_serv/tvaccessrep/q406/).

Option 3 – Impose alternative signing requirements unless acceptable alternative arrangements are in place

- 3.23 This option relies on Ofcom imposing alternative requirements in relation to programmes or services that it has excluded from the current statutory requirements unless acceptable alternative arrangements are in place, for example participation in the proposed sign zone on the Community Channel.
- 3.24 Ofcom believes it is appropriate to consider what alternatives may be available for the signing of programmes which are excluded from the current statutory obligations given that, in performing its statutory duty to further the interests of citizens in relation to communications matters, Ofcom is required under section 3 of the Act to have regard, amongst other things, to the needs of persons with disabilities. This is also in line with Parliament’s intention in legislating in this area that broadcasters should assist sign language users to understand and enjoy television. Against this background, we consider that it should be possible to achieve alternative arrangements that would serve the needs of sign language users better, whilst not reducing the resources allocated to signing on TV.
- 3.25 While deaf groups would prefer sign-presented programming to sign-interpreted programming, a balance would need to be struck having regard to the additional cost to broadcasters of commissioning or producing such programmes. We also consider that any costs incurred by broadcasters should be subject to the current limit of 1% of relevant turnover set out in the Code on Television Access Services, and that alternative arrangements should not have a significantly detrimental effect on the amount of subtitling carried by channels.
- 3.26 Against this background, we consider that it would be appropriate for excluded channels to be required to broadcast sign-presented programming in one or more regular slots at least once a month between 7am and 11pm. The minimum duration of such programming would be 30 minutes on each channel from the first to the fifth anniversary of its relevant date, 45 minutes from the fifth to the seventh anniversary and 60 minutes from the seventh anniversary (these anniversaries correspond with signing targets prescribed by the Code change)¹³.
- 3.27 While this would be more expensive than existing arrangements, we do not think that shorter or less frequent programmes would be reasonable having regard to the policy objectives, nor (for the reasons discussed in the impact assessment at Annex 5) do we consider that the burden on broadcasters would be disproportionate. We do not consider that, for the period before the outcome of the proposed review, there would be any significant risk to the amount of subtitled programming. As stated above, in considering whether alternative requirements should be imposed on individual channels, it is open to Ofcom to take into account any voluntary arrangements entered into by broadcasters that would also meet the needs of sign language users more effectively.
- 3.28 Against this background, Ofcom has considered whether, in principle, the scheme recommended by the sign language working group on the basis of the Sky / Community Channel proposal would appear to provide an effective alternative for

¹³ Where normal viewing times for a particular channel occur within a different time period (e.g. a shorter period in the case of children’s channels), Ofcom would consider what time period was appropriate, having regard to the likely benefit to the target audience.

meeting the needs of sign language users such that Ofcom could be satisfied that it need not impose alternative requirements¹⁴.

- 3.29 The voluntary scheme that has been proposed could not, however, be imposed as a requirement by Ofcom since under the legislation any alternative requirements that are imposed must be “in relation to” the excluded programmes themselves, and are therefore not fulfilled by the provision of signing on another channel.
- 3.30 Nonetheless, we believe that this proposal could provide a good basis for an acceptable alternative to imposing requirements. Hosted by an experienced channel backed by leading broadcasters¹⁵, the sign zone would provide sign language users with the opportunity to see a range of sign-presented programming (supplemented by selected sign-interpreted programming) reflecting their preferences at more convenient times. The Trust would allow deaf groups to play a significant role in the decision-making, and would also facilitate the porting of programme distribution to other platforms (e.g. web tv) if this proved sensible in the future.
- 3.31 The consultation may bring to light other ways of securing the availability of more sign-presented programming, and Ofcom would be prepared to consider these.

Proposals

- 3.32 In the light of the analysis presented above, Ofcom:
- a) does not intend to exclude public service channels from the current arrangements (having regard to the statutory criteria, Ofcom would be unable to determine that any of the public service channels currently qualifies as a special case);
 - b) would not expect to exclude channels with an audience share of 1% or more from the current arrangements, but in the case of channels with an audience share of just less or just more than 1%, would consider whether to exercise discretion having regard to the criteria under section 303(8)¹⁶;
 - c) would, having particular regard to relevant factors in section 303(8) of the Act, expect to exclude channels with an audience share of less than 1% from the obligation to meet the targets set out in the Code on Television Access Services, and instead require them to meet alternative requirements;
 - d) proposes that excluded channels should be required to broadcast sign-presented programming in one or more regular slots at least once a month between 7am and 11pm. The minimum duration of such programming would be 30 minutes on each channel from the first to the fifth anniversary of its relevant date, 45 minutes

¹⁴ In brief, the scheme envisaged that a Trust be established to make sign language programmes. The Trust would enter into a contract with the Community Channel under which the Trust would fund the production and acquisition of programmes, and the Community Channel would provide airtime for these to be shown at various times during the week. Broadcasters whose services had been excluded from the statutory obligations under section 303 could enter into a contract to provide funding to the Trust, thereby providing benefit to deaf people but without having to provide that assistance on their own channels.

¹⁵ The Community Channel is owned by the Media Trust, whose members include the BBC, BSkyB, Channel 4, Discovery Networks Europe, Emap plc, MTV Networks, Time Warner and Disney Channel UK, as well as leading newspaper groups.

¹⁶ For example, given that sign language users have said that signing does not work well with films, we might decide to exclude a film channel with an audience share just above 1% from the current arrangements

from the fifth to the seventh anniversary and 60 minutes from the seventh anniversary;

- e) would not be minded to apply any such requirements on anyone who has entered into any voluntary arrangements that provide what Ofcom considers to be an acceptable alternative (such as the proposed Community Channel scheme described above);
- f) proposes to make the consequential changes to the Code on Television Access Services set out in Annex 7; and
- g) proposes to review the new arrangements after they have been in place for 12 months. Assuming it proves possible to put new arrangements in place from 2008, this would mean that a review would take place during 2009, with the objective of making any changes that were considered appropriate from 2010. The review would cover the working of any approved voluntary arrangements, as well as any requirements imposed by Ofcom in relation to those not participating in such arrangements, and any other relevant issues.

Q4. Do consultees agree with the proposals outlined in paragraph 3.32?

Next steps

- 3.33 Given the substantive discussions that have taken place with interested parties since the access services review was published in March 2006, Ofcom considers that a short consultation period of five weeks is appropriate, with a closing date of 14 June 2007 [**Amended to 27 July 2007**]. At the end of the consultation period, Ofcom will consider responses from consultees before deciding what alternatives (if any) to the current arrangements should be put in place. It will aim to publish its decision by the end of July, with a view to any new arrangements taking effect from the start of 2008.

Q5. Do consultees agree that the aim should be to put any new arrangements in place from the start of 2008?

- 3.34 Without prejudice to the outcome of the consultation, Ofcom considers that it would be prudent for further work to be undertaken on practical plans for a sign zone on the Community Channel, so that the option of implementing such a zone in 2008 is not foreclosed. Accordingly, Ofcom will invite the Community Channel and members of the sign language working group to work with interested parties to develop more detailed proposals.

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 14 June 2007 [Amended to 27 July 2007]**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/condocs/signing/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email peter.bourton@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Peter Bourton
Content & Standards
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7981 3806
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex X. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Peter Bourton on 020 7981 3494 or call Ofcom on textphone 020 7981 3043.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement in July 2007.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

Vicki Nash
Ofcom
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW

Tel: 0141 229 7401
Fax: 0141 229 7433

Email vicki.nash@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will normally allow ten weeks for responses to consultations on issues of general interest.

A2.6 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organizations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

After the consultation

A2.8 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Consultation questions

Q1. *Do consultees agree that these are appropriate policy objectives for Ofcom in considering possible alternative arrangements for signing on television?*

Q2. *Do consultees agree that Ofcom has identified appropriate options?*

Q3. *Do consultees agree with Ofcom's reasons for rejecting the ideas described in paragraph 3.18?*

Q4. *Do consultees agree with the proposals outlined in paragraph 3.32?*

Q5. *Do consultees agree that the aim should be to put any new arrangements in place from the start of 2008?*

Q6. *Do consultees have any comments on the impact assessment? Where possible, it would be useful for arguments about the cost of different options to be supported by relevant data.*

Q7. *Do consultees consider that the proposed revisions to the Code are sufficiently clear?*

Annex 5

Impact Assessment

Introduction

- A5.1 Ofcom is required by the Communications Act to review the Code from time to time. The access services review carried out last year found that current arrangements for signing on television were not meeting the needs of sign language users. In our statement on the access services review, we said that we were continuing a dialogue with disability organisations and broadcasters on whether there were better ways of meeting the needs of sign language users¹⁷. As a result of that dialogue, Ofcom is seeking views on three specific matters:
- a) firstly, on Ofcom's proposals to determine that some low-audience channels should be excluded from their current obligations for sign-interpreted programming (with a signer displayed in the corner of the screen) on the basis of evidence suggesting that the costs incurred produce little or no benefit to the audience for access services; and
 - b) secondly, to consider whether Ofcom should impose alternative arrangements on those excluded channels to provide greater benefit to audiences; and
 - c) thirdly, if so, to propose that when deciding whether to impose alternative arrangements, Ofcom should take into account any voluntary arrangements that have been entered into by those excluded services in order to provide other more effective and beneficial assistance for the disabled in the form of sign-presented programmes, either on those channels, or in a sign zone on the Community Channel.
- A5.2 The analysis presented in this Annex represents an impact assessment as defined in section 7 of the Communications Act 2003 (the Act). The assessment examines the impact on sign language users, subtitle users, broadcasters and access service providers that the possible alternative arrangements might have. You should send any comments on this impact assessment to us by the closing date for this consultation. We will consider all comments before deciding whether to implement our proposals.
- A5.3 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see the guidelines on our website¹⁸.

¹⁷ *Television Access Services Statement*, 27 September 2006 (<http://www.ofcom.org.uk/tv/ifi/codes/statement/>).

¹⁸ *Better policy-making: Ofcom's approach to impact assessment* (http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf).

The citizen and/or consumer interest

A5.4 Research and feedback from people who have a hearing impairment and use sign language indicates that the current arrangements for signing on television are not conducive to helping them to understand and enjoy television. Ofcom considers that the citizen / consumer interest lies in excluding low audience channels from the current requirements under the Act on the basis of the statutory criteria (see below) and identifying and securing alternative arrangements that would better serve their needs. At the same time, Ofcom is concerned not to disadvantage viewers who rely upon analogue television or other access services users and does not propose, therefore, to make any changes to the current obligations imposed by the Act on public service channels. An additional dimension of the citizen interest is the need to retain access for sign language users to a broad range of programming that informs, educates and entertains.

Ofcom's policy objectives

A5.5 Ofcom has a general duty under the Communications Act to further the interests of citizens in relation to communications matters (section 3(1)(a)). In performing that duty, Ofcom is required, amongst other things, to have regard to the needs of people with disabilities (section 3(4)(i)) and to have regard to the opinions of consumers in relevant markets and of members of the public generally (section 3(4)(k)). Ofcom must also have regard to the principles under which regulatory activities should be transparent [and] proportionate (section 3(3)).

A5.6 In proposing legislation that would require all licensed television services in the UK (except to the extent that their programmes or channels are excluded by Ofcom), to provide subtitling, signing or audio description, the Government made it clear that it considered that, as a matter of public policy, access to television for people with hearing and / or visual impairments should be broadened significantly. Parliament approved the Government's legislative proposals. Accordingly, and having regard to Ofcom's statutory duties, Ofcom does not consider it either necessary or appropriate that it should seek to demonstrate that the policy is justified because the benefits outweigh the costs. Rather, Ofcom considers that its task is to give effect to the legislation in a manner which is proportionate.

A5.7 In view of Ofcom's duties and having regard to Parliament's intention in legislating in this area that broadcasters should assist sign language users to understand and enjoy television Ofcom considers that its policy objective should be to exclude those low audience channels from the current requirements under the Communications Act on the basis of the statutory criteria and to identify and secure alternative arrangements that better meet the specific needs of sign language users, and do not impose disproportionate burdens on broadcasters. In the light of the clear preference of sign language users for sign-presented programming, these alternative arrangements should aim to increase the amount of sign-presented programming on television, even if this results in a reduction in the amount of sign-interpreted programming. However, these arrangements should not disadvantage analogue-only sign language users, nor should they result in a significant reduction in the amount of subtitling.

Exclusion of programmes/services from the current requirements

A5.8 The Communications Act provides for Ofcom to determine that certain descriptions of programmes, or all the programmes included in a service (where that service is a "special case"), should be excluded from the requirement to provide particular

access services (including signing). A service is a “special case” if Ofcom is satisfied that on the basis of certain statutory criteria (see below), all the programmes in the service should be excluded.

A5.9 In deciding whether it is appropriate to exclude any programmes/services, Ofcom must have regard, in particular to the criteria set out in section 303(8) of the Communications Act. These criteria include:

- a) the extent of the benefit which would be conferred by the provision of assistance (e.g. signing) for disabled people in relation to the programmes/services;
- b) the size of the intended audience for the programmes;
- c) the number of persons who would be likely to benefit from the assistance and the extent of the likely benefit in each case; and
- d) the cost, in the context of these matters, of providing the assistance

A5.10 Having regard in particular to these factors, we believe that low-audience channels which are currently subject to the statutory requirement to meet the targets set out in section 303 (those with an share of more than 0.05% but less than 1%) should be excluded from that requirement, particularly in view of the minimal extent of the benefit that is actually being delivered and the consequently disproportionate cost of providing those benefits (our analysis is discussed in section 3 of the consultation document).

Options considered

A5.11 Ofcom has considered the following options:

- a) retaining the present arrangements for signing on television (i.e. not applying the statutory criteria to exclude low-audience channels from the current requirements to meet the statutory targets for signed programmes) (Option 1);
- b) applying the statutory criteria to exclude low-audience channels from the current requirements to meet the statutory targets for signed programmes but requiring them to substitute additional subtitling for their current signing requirements (Option 2); and
- c) applying the statutory criteria to exclude low-audience channels from the current requirements to meet the statutory targets for signed programmes, and imposing a requirement on those channels to make a smaller amount of sign-presented programmes unless acceptable alternative arrangements are in place, for example participation in the proposed sign zone on the Community Channel (Option 3).

A5.12 In addition, as explained in section 3 of the consultation document, Ofcom also considered a number of suggestions that were put to it, but decided that they were not appropriate.

Analysis of the different options

Option 1

- A5.13 As Ofcom's guidelines on impact assessments note, the fact that markets sometimes work imperfectly may not always justify intervention. The current arrangements (in aggregate) deliver a significant amount of signed programming across a wide variety of channels, which helps to secure access to a diverse range of programming. The costs are also relatively modest, when compared to the costs to broadcasters of meeting subtitling targets. The access services review concluded that the direct cost per hour of commissioning sign-interpreted programming was about £644, and that broadcasters generally repeated such programmes about six times. Thus a 24 hour channel could expect to pay about £19,000 a year on direct costs¹⁹, together with a share of the indirect costs arising from the need to administer access service arrangements (commissioning or selecting programmes, and scheduling them) and to secure compliance with the targets (monitoring and reporting).
- A5.14 Nonetheless, as reported in section 2 of the consultation document, the research Ofcom commissioned and the feedback we have received from sign language users and disability organisations representing their interests suggests signing on low-audience channels delivers little benefit to sign language users. Following the analysis in section 3 of the consultation document, it is doubtful whether the costs, though arguably modest, are proportionate. Having regard to the criteria in section 303(8) of the Act it is therefore difficult to argue that low-audience channels should not be excluded from the current arrangements.
- A5.15 Moreover, in Ofcom's view, the current arrangements would not help to meet the policy objective. Accordingly, Ofcom considers that this option should only be selected if it is not possible to identify a practicable alternative that would be more likely to secure the policy objective, and if it can be justified in relation to its statutory duties.

Option 2

- A5.16 Where Ofcom has excluded programmes or services, the Communications Act allows Ofcom to impose alternative requirements in relation to those excluded programmes or services (section 303(10)(c)). Accordingly, a number of broadcasters suggested that they be allowed to provide additional subtitling instead of meeting their signing arrangements.
- A5.17 While superficially attractive (research suggests that many sign language users also use subtitling to watch television, and it would be cheaper for broadcasters than signing), we concluded that this would not meet the policy objectives, since it would not meet increase the amount of sign presented programming and therefore would not meet the needs of those sign language users who found it difficult or impossible to use subtitling. Moreover, it might not deliver much incremental benefit to those sign language users who could use subtitling, or to other subtitle users, since many broadcasters already provide more subtitling than they are required to under the Code on Television Access Services, and could meet revised targets without

¹⁹ A channel broadcasting 24 hours per day would transmit a total of 8,760 hours of programming a year. A 3% target for signing would equate to just over 175 hours a year. If there was a repeat rate of six times, this would imply around 29 hours of original sign-interpretation, which at £644 an hour, would equate to a cost of around £18,800 a year.

providing more access services²⁰. Accordingly, we concluded that this would not meet our policy objective, and have not carried out further analysis.

Option 3

- A5.18 This option relies on Ofcom imposing alternative requirements in relation to programmes or services that it has excluded from the current statutory requirements unless acceptable alternative arrangements are in place, for example participation in the proposed sign zone on the Community Channel.
- A5.19 For the reasons given in section 3 of the consultation document, we believe it is appropriate to consider that a credible alternative for the signing of programmes which are excluded from the current statutory obligations would be to impose a requirement that sign-presented programming is broadcast in one or more regular slots at least once a month between 7am and 11pm. The minimum duration of such programming would be 30 minutes on each channel from the first to the fifth anniversary of its relevant date, 45 minutes from the fifth to the seventh anniversary and 60 minutes from the seventh anniversary (these anniversaries correspond with signing targets prescribed by the Code change).

Benefits

- A5.20 Having regard to discussions Ofcom has had with groups representing the interests of sign language users, it is clear that they would welcome more sign-presented programmes on television, even at the expense of a significant reduction in sign-interpreted programming – indeed, they endorsed this option before Ofcom began a round of discussions with broadcasters (though it is clear that they now have a preference for a sign zone on the Community Channel). Although it is not practicable to put a precise financial value on the perceived benefit to sign language users, the fact that it would make signed programmes more attractive and more convenient for the target audience tends to suggest that there would be a positive benefit from this change.
- A5.21 Producers of sign-presented programmes could also be expected to benefit, as it is likely that much of the production would be commissioned externally rather than undertaken in-house.
- A5.22 Broadcasters argue that the current requirements to provide signing, even late at night, imposes opportunity costs on them, so they would derive a benefit from a proposal that allows them to reduce significantly the amount of sign-interpreted programmes broadcast in their schedules²¹. Thus, they could replace the sign-interpreted programming with programming that does not impose as great an opportunity cost. This value will increase over time given that under the Act the obligation to provide signed programmes will rise steadily to a quota of 5%. However, the opportunity costs, and the concomitant benefits of reducing them, are likely to vary considerably from one channel to another, depending on the size of their audiences and their viewing patterns.

²⁰ See, for example, the report covering the four quarters of 2006 (http://www.ofcom.org.uk/tv/ifi/guidance/tv_access_serv/tvaccessrep/q406/).

²¹ See, for example, ITV's response to the access services review (<http://www.ofcom.org.uk/consult/condocs/accessservs/responses/itv.pdf>)

Costs

- A5.23 On the basis of data provided by the Community Channel, the basic cost of a sign-presented half-hour programme is around £30,000. Assuming a repeat rate of six times, this would equate to an annual cost of £60,000 for a channel previously subject to a 2% volume target, rising after a few years to £120,000 where the channel would have been subject to a 5% target. Based on data and estimates prepared for the access services review, this would compare to an annual cost for a channel subject to a 2% volume target of about £19,000, or £47,000 in relation to a 5% target. There would be indirect costs in commissioning or acquisition the programming, but these would be offset in whole or part by the elimination of costs for the commissioning or acquisition of sign-interpreted programmes. On that basis, the annual direct incremental costs for most channels subject to a 2% volume target in 2008 could be in the region of £41,000²².
- A5.24 There could also be a cost in relation to a requirement to show the programme between 7am and 11pm (i.e. if such a programme was less attractive to audiences and there was a consequent loss of advertising revenue. However, the overall scale of the opportunity costs for such programming is difficult to estimate; it may be the case that there would be a loss of advertising revenue if audiences for sign-presented programmes were significantly lower than would otherwise be the case, but conversely the cost of sign-presented programming could be relatively lower than the cost of the programming it might displace. Equally, broadcasters do have some flexibility in how they schedule advertising airtime, and might be able to accommodate this requirement without significant loss of revenue.
- A5.25 There would also be an impact on those companies, in-house staff and free-lancers currently providing sign-interpretation for broadcasters. Assuming that fifty channels subject to a 2% signing requirement were to be exempted, and using the data obtained for the access services review, this could result in about 1500 fewer hours of sign interpretation of programmes being commissioned each year, worth around £940,000. However, the actual reduction is likely to be somewhat smaller, as some broadcasters acquire signed programming made for one channel (e.g. a public service channel) for use on their own channels. The impact on companies and individuals might be offset to some extent by the opportunities to participate in the production of sign-presented programmes, or to serve the growing market for sign language interpreters.
- A5.26 As set out above, it is difficult to weigh up the overall impact on the broadcasters that would be affected by this proposal. On the one hand, by moving towards more specific targets for sign-presented programming, there would be an immediate benefit for sign language users and broadcasters would also be able to reduce the opportunity cost they faced from having to show (a higher volume of) sign-interpreted programming. On the other hand, the direct costs the broadcasters would incur for the specific commissioning of sign-presented programming are likely to be higher than they currently incur just for sign-interpretation and there might be some loss of advertising revenue from a requirement to show the sign-presented programming between 7am and 11pm.
- A5.27 In relation to reducing the impact of this proposal, Ofcom does not think that shortening the duration of sign-presented programming or allowing a higher repeat

²² That is, the difference between the estimated annual cost of £60,00 for 2 x 30 minutes of sign-presented programming and the estimated annual cost of £19,000 for sign-interpretation of just under 30 hours of programming.

rate would be justifiable in terms of delivering its policy objectives in this area. Having regard to the limit of 1% of relevant turnover set by the Code on Television on Access Services for all access services (including subtitling and audio description), Ofcom understands that this proposal would still be affordable for most channels²³, and would not have a significant adverse effect on the amount of subtitling for at least two years. On balance, therefore, Ofcom considers that this proposal is viable although its impact would need to be considered by the review that is proposed. As stated above, in considering whether alternative requirements should be imposed on individual channels, it is open to Ofcom to take into account any voluntary arrangements entered into by broadcasters that would also meet the needs of sign language users more effectively. For the reasons set out in paragraph 3.29 of the consultation document, these arrangements could not be imposed upon broadcasters. Nonetheless, as the Community Channel option could meet Ofcom's policy objective, we consider that it would be appropriate to assess its possible impact in order to decide whether or not to impose alternative requirements. Other possible alternatives may emerge from consultation; while their potential impact cannot be assessed, it is possible to identify factors that would be relevant to such an assessment.

Benefits

A5.28 As regards the benefits:

- a) the report of the sign language working group suggests that sign language users would place a significantly greater value on the provision of a sign zone on the Community Channel as compared with the current arrangements, particularly if the Deaf community was seen as having a rôle in commissioning, acquiring and scheduling programming. However, it is not practicable to put a specific financial value on the perceived benefit to sign language users;
- b) broadcasters will reap the benefits of eliminating the opportunity costs of scheduling signed programmes (see paragraph A5.18 above); and
- c) the Community Channel and some small producers specialising in the production of signed programmes could be expected to benefit from expenditure by the Trust. The amount that the Trust might have at its disposal is discussed below.

Costs

A5.29 The assessment of costs depends on assumptions about how much broadcasters would be willing to pay, how much the Trust would expect from subscribing channels, and what size of contribution Ofcom would see as representing an acceptable alternative to the imposition of arrangements under section 303. We consider it reasonable to suppose that broadcasters would be willing to pay something approaching the costs of the proposed scheme for a sign zone on the Community Channel in order to free up their schedules and avoid the indirect costs associated with commissioning and scheduling sign-presented programming²⁴.

²³ The review of access services concluded last year found that this measure of affordability was working well, and enabled channels to scale down their access service requirements or drop them completely, depending on how much their income fell.

²⁴ While there is no Trust in place at present, the Community Channel has told Ofcom that a budget of £900,000 would suffice to provide a basic but worthwhile service, and that additional funding would allow more sign-presented programming to be commissioned.

A5.30 It is likely that Ofcom would consider an appropriate range to be between the current assessed costs of about £19,000²⁵ and the cost of broadcasting sign-presented programming (£60,000 for a channel currently required to sign 2% of programming). However, having regard to the policy objective of avoiding an adverse impact on subtitle users²⁶, Ofcom considers that a contribution at the lower end of this range would be appropriate – of the order of, say, £20,000 per annum initially.

A5.31 On this basis:

- a) the annual cost to the broadcasting industry of fifty channels participating in the scheme would be £1 million, while the incremental cost for each channel would be in the region of £1000; and
- b) the cost to companies, in-house staff and free-lancers providing sign-interpretation for broadcasters could be expected to be somewhat less than £0.9 million (see paragraph A4.19 above). This might be offset to some extent by the opportunities to participate in the production of sign-presented programmes, or to serve the growing market for sign language interpreters.

Race impact assessment

A5.32 We are not aware of data on the extent to which people from minority ethnic backgrounds may be over or under-represented amongst sign language users. However, to the extent that people from minority ethnic backgrounds belong to economically-deprived groups that cannot easily afford access to multi-channel television, the requirement for public service channels to continue providing signing as at present will prevent them from being disadvantaged.

A5.33 The options outlined above would not have a bearing on channels aimed at people from minority ethnic backgrounds, as none of these achieve the requisite audience share. For the reasons set out in the race impact assessment contained in the access services review²⁷, we consider that extending access service requirements to channels that would not meet the audience share and relevant turnover criteria could reduce overall choice for consumers from an ethnic minority background, as the additional costs could oblige some channels to exit the market.

The preferred options

A5.34 As pointed out in paragraph A5.6 above, Ofcom does not consider it either necessary or appropriate that it should seek to demonstrate that access service provision is justified because the benefits outweigh the costs, and this principle applies to alternative ways of meeting the policy objective. Rather, Ofcom considers that its task is to give effect to the policy objective in a manner which is proportionate. This would be achieved in large measure by continuing to apply the 1% expenditure ceiling.

²⁵ Data collected for the access services review shows that the hourly cost for signing paid by broadcasters at the end of 2005 ranged between £600 and £880, with a mean price of £644. Assuming that programmes are repeated six times, the direct costs of an average broadcaster would be about £18,800, with overheads and opportunity costs on top.

²⁶ The Code provides that broadcasters who cannot meet the full cost of access service targets by spending 1% of relevant turnover can reduce the amount of subtitling they provide to 66% of the target (Level Two) or 33% (Level 3).

²⁷ See Annex 6 to the Access Services Review

(<http://www.ofcom.org.uk/consult/condocs/accessservs/access.pdf>).

- A5.35 Accordingly, the key consideration in assessing the options is which would make the greatest contribution to achieving the other elements of the policy objective, namely an increase in the amount of sign-presented programming which does not result in a cut in the resources for subtitling.
- A5.36 Option 3 would achieve this objective and in Ofcom's opinion, would be proportionate, although an alternative arrangement such as participation in the proposed scheme is likely to be perceived as delivering greater benefits to sign language users at a lower cost to broadcasters than the requirements that Ofcom would impose. However, for the reasons explained in paragraph 3.29 of the consultation document, it is not open to Ofcom to mandate that broadcasters participate in arrangements involving a different channel. Accordingly, Ofcom considers that the best available option is Option 3 (to impose alternative signing requirements unless broadcasters wished to participate in acceptable alternative arrangements).

Q6. Do consultees have any comments on the impact assessment? Where possible, it would be useful for arguments about the cost of different options to be supported by relevant data.

Annex 6

Sign / Community Channel Working Group report

Proposal to Ofcom

1. The Sign/Community Channel Working Group has studied the results of research carried out by Ofcom (2006)²⁸, Sky (2006)²⁹, The National Deaf Children's Society (2005)³⁰, the BDA/DBC Sign Language Channel campaign (2004)³¹, the Centre for Deaf Studies/Deaf Studies Trust at Bristol University (various dates)³² and others. We have also consulted widely with Deaf BSL users about what Deaf people think of the present provision of British Sign Language (BSL) on television and what they would really like to see.
2. It is clear that the great majority of Deaf people are not satisfied with the present provision. The 1% BSL access, increasing to 5%, regulated by Ofcom under the Communications Act 2003, has not led to the kind of provision Deaf people want. The overwhelming majority are not satisfied with:
 - The mix of programmes chosen by broadcasters for interpretation. Deaf people have made it clear that their preferred priorities are for programmes of a factual nature, not sport, soaps, films, or a number of other genres.
 - The times at which they are shown on most channels.
 - The small size of the interpreter on the screen chosen by most broadcasters.

²⁸ Ofcom Television Access Services Review
(<http://www.ofcom.org.uk/consult/condocs/accessservs/access.pdf>)

Ofcom Television Access Services Review Statement
(<http://www.ofcom.org.uk/tv/ifi/codes/statement/ars.pdf>) and other documents

²⁹ All about Access to Television through Signing
(<http://www1.sky.com/accessibility/pdfs/SkySignLanguageReport.pdf>)

³⁰ In their own words: Young deaf people's access to television
(http://www.ndcs.org.uk/information/technology/tv_videos_films/in_their_own.html)

³¹ Unpublished data provided by Austin Reeves and David Jackson

³² Various provided by Professor Jim Kyle, Centre for Deaf Studies, Bristol University

3. Above all, Deaf people are unhappy that nearly all broadcasters have chosen the route of interpreting existing programmes into Sign Language, instead of making original programmes in BSL with Deaf presenters.
4. This general dissatisfaction is demonstrated in the low viewing figures for Sign Language interpreted programmes shown in both the Ofcom and the Sky reports.
5. All relevant surveys have shown that the majority of Deaf people would like to see a Sign Language Channel, run by Deaf people and with programmes made by Deaf people. Until that is achieved, they would certainly like to be able to view more programmes produced in BSL, and to see those and BSL-interpreted programmes at better times. Ideally, they would like as many as possible of those programmes to be shown on one easy-to-find channel at convenient times of the day. The Community Channel has offered to provide the platform for the regular transmission of BSL programmes in easy-to-find slots, at times designed to reach the maximum audience, including some prime time.
6. The Working Group recognises that broadcasters are complying with the current legislation and regulations. We recognise that there are some public service channels that Ofcom will not allow to remove BSL from their current output and use the money for other purposes. However, outside that number of channels determined by Ofcom, we recommend that broadcasters be invited to consider changing the way in which they spend the money currently committed to Sign-interpreted programmes.
7. If broadcasters wish to invest more money in original BSL programmes to be shown on their existing channels at attractive viewing times, we are sure Deaf BSL users would welcome that. However, if they are unable or unwilling to do so, we recommend that they be invited to put the money they are committed to spending on Sign- interpreted programmes into a BSL Fund for the production and distribution of BSL programmes.
8. We recommend that the management of this Fund is decided

by a BSL Board consisting mainly of Deaf BSL users and representing, as far as can be achieved, a fair spectrum of the Deaf BSL-using community. In the first instance, the Fund should be used for the production of programmes originated in BSL for transmission on the Community Channel.

9. Any broadcaster permitted to do so by Ofcom would be invited to contribute to this Fund, as a proxy arrangement for meeting their Ofcom requirements.
10. Numerous surveys and reports have shown that, for most Deaf people, Sign Language interpretation of some genres of programmes is definitely not a priority. These include sport, soaps, films and music programmes. We would strongly recommend that any channel that is dedicated to such a genre of programmes should consider re-directing funding from Sign Language interpretation into the BSL Fund.
11. Surveys have shown factual programmes to be the genre to which BSL users attach highest priority for Sign Language interpretation. However, the Ofcom and Sky reports suggest that even these are not reaching many BSL users. We recommend that channels which offer a diet consisting of 100% factual programming should re-direct their current or anticipated spending on Sign Language interpretation into the BSL Fund, unless it can be shown that the programmes they show with Sign interpretation are of the kind the Deaf BSL-using audience wants to see interpreted and that Deaf BSL users are happy with the scheduling.
12. Channels which offer a mix of programming, including factual and entertainment, are recommended to re-direct an appropriate proportion of their spend on Sign Language interpretation into the BSL Fund.
13. Research carried out by the National Deaf Children's Society in 2005 showed that "access to TV programmes is vital in supporting deaf young people to be part of everyday life and to join in discussions about TV programmes with their family and peers." The same research showed that "BSL-using young people's understanding of programmes is increased by having sign language interpretation, as it is their own language". So we recommend that children's channels should

continue to interpret at least the required percentage of programmes into BSL and continue to make those programmes that include BSL presentation. We would ask children's channels also to act positively on the NDCS report's finding that "Almost twice the number of (deaf) children were said to prefer having presenters who used sign language as opposed to having an interpreter on screen".

14. All channels that choose to re-direct funds in this way should be given full acknowledgment and credit both on the BSL output on the Community Channel and in all other possible ways.
15. It is possible that we could develop a model whereby a channel choosing to re-direct its funds in this way could, in consultation with the BSL Board, choose to use that money to sponsor a specific programme or programmes produced in BSL, with the channel receiving a credit to that effect. These programmes would also, of course, be available for screening on the sponsoring channel either before, after, or simultaneously with, screening on the Community Channel.
16. The Working Group recognises that no change of direction of this kind can be forced on any channel. However, our strong recommendation that many should do so is based on the known desires and preferences of Deaf BSL users. We believe that by re-directing funds in this way, broadcasters would be delivering a much better service to Deaf BSL users than by adhering to the present model.

Membership of Sign/Community Channel Working Group

Doug Alker	Chair, British Deaf Association
Rachell Bastikar	Vice Chair, British Deaf Association (till December 2006)
Penny Beschizza	Chair, Deaf Broadcasting Council
Bob Duncan	Independent Producer (Chair of Working Group)
Simon Hesselberg	Head of Community Development, Royal Association for Deaf People
David Jackson	British Deaf Association representative on broadcasting issues
Joel Kellhofer	Managing Director, AC2.com

Lesley McGilp	Independent Producer
Ruth Myers	Chair, Telecommunications Action Group
Mark Nelson	Director, Remark!
Austin Reeves	Independent Campaigner, former Chair, British Deaf Association, former Secretary, Deaf Broadcasting Campaign/Council
John Savva	Member, Deaf Broadcasting Council
Chris Underwood	Head of Communications, National Deaf Children's Society
Richard Vaughan	Technology Manager, National Deaf Children's Society
Nick Ware	Controller, Community Channel
Ramon Woolfe	Director, Remark!

Peter Bourton, Senior Policy Executive, Ofcom, attended for part of all meetings and gave invaluable advice, guidance and feedback.

The following were copied on all information and gave useful comments and feedback:

Sally Milne	Head of Resourcing and Diversity, ITV (attended first meeting of Working Group as an observer)
Terry Riley	Editor, See Hear!, BBC
Wilf White	Chief Adviser, Public Policy, BBC

Wider Consultation

Drafts of the Proposal were sent to national and large regional organisations that were not represented on the Working Group, along with a number of Deaf experts in the field. Support was widespread, with none against. The Appendix gives representative quotes from some of the national and large regional organisations.

SCCWG
February 2007

**APPENDIX: Sign/Community Channel Working Group
Proposal to Ofcom: Representative Responses**
(in alphabetical order, by organisation)

“Becoming Visible supports these proposals, as the beginning of the move towards a Sign Language Channel run by Deaf BSL users... This is the only way to produce the kind of television service that Deaf BSL users want.”

Tessa Padden, Chair, Becoming Visible, North East England

“This is a good set of recommendations. I am happy to support you.”
Jim Kyle, Harry Crook Professor in Deaf Studies, Bristol University

“...the other DCAL Directors and I are strongly in favour of your report... since increasingly BBC and other programmes are available via the internet, this could be a good way to archive and make accessible BSL programmes on demand.”

Professor Bencie Woll, Chair of Sign Language and Deaf Studies,
Director, UCL DCAL Research Centre

“RNID wishes to support the main recommendations and looks forward to Ofcom giving the proposals proper consideration.”

Mark Morris, Head of RNID Access to Arts Campaign

“Management Committee discussed and agreed to give our support to your proposal.”

Lilian Lawson, Director, Scottish Council on Deafness

“...research clearly demonstrates that BSL users do not want to watch programmes with an interpreter in the corner, and would rather have programmes produced in sign language... Your proposal represents a concrete proposal for better ways of providing a service that people would actually want to use... Sense is very happy to support the proposal...”

Katie Hanson, Parliamentary and Public Policy Officer, Sense

“...UK Council on Deafness welcomes the review of the use of sign languages on television and welcomes the involvement of BSL users and their representatives on the Working Group.”

Jonathan Isaac, Director, UK Council on Deafness

“On behalf of Wales Council for Deaf People, I would like to express my support for your proposal to Ofcom.”

Norman B Moore, Director, Wales Council for Deaf People

Annex 7

Code on Television Access Services

A7.1 Proposed amendments to the Code on Television Access Services are shown in the extracts below; deletions are scored through, additions are underlined.

Excluded programmes

10. Ofcom may exclude programmes and services having regard, in particular, to:

- (a) the extent of the benefit which would be conferred by the provision of the assistance for disabled people in relation to the programmes;
- (b) the size of the intended audience for the programmes;
- (c) the number of persons who would be likely to benefit from the assistance and the extent of the likely benefit in each case;
- (d) the extent to which members of the intended audience for the programmes are resident in places outside the United Kingdom ;
- (e) the technical difficulty of providing the assistance; and
- (f) the cost, in the context of the matters mentioned in paragraphs (a) to (e), of providing the assistance.

10a. Having regard to these factors, television services achieving an average audience share of all UK households over a 12 month period ('audience share') of 0.05% or less are excluded from providing television access services. Ofcom would expect to exclude television services achieving a audience share of 1% or less from providing signing, but will consider, in the light of the factors set out above, whether or not channels with an audience share of slightly more than or slightly less than 1% should be excluded.

Alternative requirements

10b. Section 303 (10) (c) of the Act allows Ofcom to impose alternative requirements with respect to the provision of assistance for disabled people in relation to any programmes or services it has excluded. In considering whether alternative requirements should be imposed on individual channels, it is open to Ofcom to take into account any voluntary arrangements entered into by broadcasters that would also meet the needs of sign-language users more effectively.

10c. Having regard to this, Ofcom requires that television services achieving an audience share between 0.05% and 1% should broadcast each month between 7am and 11pm the following amounts of presented in sign language³³:

- (a) 30 minutes, from the first anniversary of the relevant date to the fifth anniversary;
- (b) 45 minutes, from the fifth anniversary of the relevant date to the seventh anniversary; and
- (c) 60 minutes, from the seventh anniversary of the relevant date.

³³ Programming that, in Ofcom's opinion, contains a substantial proportion of sign-interpreted content will not fulfil this obligation.

10d. Broadcasters may, if they wish, propose alternatives to the arrangements set out in paragraph 10c, and Ofcom will consider these in the light of the factors set out in paragraph 10, as well as the needs of people with hearing impairments.

Cost

16. Ofcom has determined average costs per hour of providing programming with subtitling, signing and audio description, including any alternative requirements imposed in accordance with paragraph 10c. These have been used to calculate the costs of three levels of provision:

- (a) Level One equates to the full current annual targets for subtitling, signing and audio description, as well as any alternative requirements;
- (b) Level Two equates to 66% of the current annual target for subtitling, as well as 100% of the targets for signing and audio description, and any alternative requirements; and
- (c) Level Three equates to 33% of the current annual target for subtitling, as well as 100% of the targets for signing and audio description and any alternative requirements.

Q7. Do consultees consider that the proposed revisions to the Code are sufficiently clear?