

From: [REDACTED]
Sent: Thurs 09/09/2004 10:56
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Mandatory rebates to non-disabled users who make calls to a textphone user

[REDACTED]

pl see legal advice rec'd regarding the point made in paragraph 7 of the Consumer Panel notes. Effectively, it looks as if there is no legal basis for rebating calls made through the relay service by non-textphone (ie non-disabled) users.

[REDACTED]

From: [REDACTED]
Sent: Wed 08/09/2004 10:56
To: [REDACTED]
Cc: [REDACTED]
Subject: Mandatory rebates to non-disabled users who make calls to a textphone user

[REDACTED]

A little while ago you asked me if the USD and the USO allowed us to impose regulation on US providers to provide a mandatory rebate to non-disabled users who make calls to a textphone user.

Summary of advice

My view is that Ofcom could **not** impose regulation on US providers to provide a mandatory rebate to non-disabled users who make calls to a textphone user.

What does the USD say?

Article 7(1) of the USD says that:

"Member States shall, where appropriate, take specific measures for disabled end-users in order to ensure access to and affordability of publicly available telephone services..."

Recital 13 says:

"...Specific measures for disabled users could include, as appropriate,...public text telephones..."

"Disabled users" is not defined but the provision of public text telephones and the affordability of this service is targeted specifically at them.

What does the USO say?

Paragraph 6(1) of the schedule to the USO says that:

"Special measures shall be taken to ensure access to and the affordability of public telephone services for end-users with a disability equivalent to those enjoyed by other end users"

These measures include those at paragraph (2)(c) which are:

“provision of, and the provision of access to, relay services for end-users with a disability where required to ensure access to publicly available telephone services by such end-users”.

A relay service is a textphone service which has been approved by Ofcom.

Again, access and affordability of a relay service is targeted specifically at “end-users with a disability”. “Disability” is as defined in the Disability Discrimination Act 1995.

Any other way we could get the universal service providers to make mandatory rebate to non-disabled users who make calls to a textphone user?

Article 9 says that Member States may, in the light of national conditions, required designated providers to provide tariff options or packages to consumers which depart from those provided under normal commercial conditions, to ensure that those people with low incomes or “special social needs” are not prevented from accessing or using the publicly available telephone service. This is reflected in paragraph 5(2) of the schedule to the USO. “Special social needs” is not defined in the USD or the USO.

There is an argument, therefore, that non-disabled people who use textphones have “special social needs” and therefore should be entitled to special tariffs for using that service.

However, I don’t think we could hang our hats on this from a legal perspective. Although “special social needs” is not defined, I don’t consider we could say people with one aspect of their lives that is “special” (i.e. using textphones) have special social needs. It suggests something more than this – i.e. difficulty affording calls. And *all* calls for that matter – I would be uncomfortable arguing that people who use textphones have special social needs by virtue of those calls and not others.

What is the position under the general conditions as currently drafted?

Finally it is worth looking at GC15.3 to see if there is any scope for saying that there should be a mandatory rebate to non-disabled users who make calls to a textphone (even if to say there was, it would be contrary to the USD and the USO).

My view is that GC15.3 does correctly implement the USD/USO in this regard. That is because it deals with access and the costs of making a textphone call by a subscribers who “because of their disabilities, need to make calls in which some or all of the call is made or received in text format”.

In other words, non-disabled users of the textphone service do not fall within the scope of GC15.3 because they are not subscribers who because of their disabilities, need to make calls in which some or all of the call is made or received in text format.

Conclusion

Both the USD and the USO permit Ofcom to take special measures to ensure that disabled people have access to relay services at an affordable price. This does not extend non disabled users. Therefore Ofcom would not be able to impose regulation under the US regime on universal service providers to make mandatory rebate to non-disabled users who make calls to a textphone user.



-----Original Message-----

From: [REDACTED]

Sent: 18 August 2004 1:29 PM

To: [REDACTED]

Cc: [REDACTED]

Subject: FW: Consumer Panel observations on USO review

[REDACTED] - please see paragraph 7 of the attached Consumer Panel Observations on the US Review. The background is that GC15.3(b) requires a special tariff scheme for "Subscribers who need to make calls to which a relay service applies" which we have taken to apply to textphone users only. This is to compensate textphone users for the extra time it takes to make a call because writing text takes longer than speaking. There is no corresponding obligation to offer a special tariff where a hearing user calls a textphone user and is billed for the call (because they don't **"need"** to make such calls).

There has been a view within disability circles which the Consumer Panel is now pressing that the social exclusion of disabled users might be reduced if the special tariff scheme were made to apply to any call involving a textphone user even when they are not the subscriber initiating or paying for the call. This is more a point of principle as in practice BT TextDirect applies the rebate irrespective of who initiated the call. It only arises in two special circumstance - on calls from Vodafone subscribers or made through payphones that can't access TextDirect directly (because they won't allow the 18002 prefix).

In brief, and irrespective of the merits of the policy, the question is whether article 7 of the USD and the US Order would permit a mandatory rebate to non-disabled users who make calls to a textphone user or, more generally, are "specific measures" restricted to disabled customers?

I'm on leave from Friday for two weeks but could you copy [REDACTED] in on your answer, please, as it would be helpful to have advice by 27 August if at all possible.

[REDACTED]