



OFCOM CONSULTATION

SIGNING ON TELEVISION

Submission by the Satellite and Cable Broadcasters' Group

13 July 2007

The SCBG is the trade association for satellite and cable programme providers who are independent of one of the main terrestrial broadcasters. Its members are responsible for over 100 channels in the UK and in addition broadcast many more services from the UK to continental Europe and beyond. Many member companies are pan-European broadcasters, producing and commissioning content for different national markets.

SCBG channels provide citizens and consumers with programmes and services for a diverse range of audiences across a wide range of genres and audiences, including entertainment, factual, educational, history, music, nature, art and science. Our member companies make and show programmes for children and young people, and for ethnic minorities in their own languages. SCBG members' channels are available in almost 50% of UK homes.

Satellite and cable broadcasters operate in an extremely competitive and volatile environment, without privileged access to scarce Government-controlled spectrum or to the must-carry status afforded to terrestrial networks. They are therefore unable to attract mass advertising revenues, and – with a couple of notable exceptions – do not benefit from public funding.

Satellite and cable broadcasting has been the fastest growing sector in the UK television industry, now employing over 6,000 people in the UK with revenues of nearly £5 billion.

Executive Summary

Here are the main elements of our submission:

- SCBG members have accepted the obligations placed on them by the Parliament in the Communications Act and have acted accordingly. Many SCBG members already put a lot of effort in delivering the required quota and in fact often exceed them, especially when it comes to subtitling, but also in audio description and even sign interpreted programming according to the latest television access services first quarterly report for 2007.
- We welcome that Ofcom is looking at this issue in order to find more suitable solutions for signing, but we cannot accept any arrangements or requirements that would increase the financial burden the current obligations imposed on our channels and hope that we can find a mutually beneficial system with a voluntary focus that allows channels to make a decision in the light of their particular circumstances.
- Regarding the 3rd and preferred option by Ofcom, we were not informed in the pre-consultation process about the alternative to produce sign presented programming. Producing such content could be far higher than the current costs incurred by several SCBG members and should therefore be considered very carefully. We wonder about the degree content regulation required if this option goes ahead and whether it is the competence of Ofcom to get involved in editorial and scheduling decisions.
- We have cautiously welcomed the voluntary arrangement proposed by Sky and the Community Channel as a possible route forward, provided that we get concrete information as to how it would work in practice and the exact cost implications as well as the level of representation and control that our members would have in this new system.
- We strongly recommend that any new structure should be optional, ie broadcasters that wish to carry on according to the current obligations could do so or they could chose from one of the alternatives in option 3.
- We look to Ofcom as an evidence-based regulator that has as its main aim to reduce rather than increase the regulatory burden on market players to avoid setting up a system that could have a detrimental impact on our volatile sector. We are wary of the lurking regulatory creep and hope that Ofcom makes sensible decisions that do not stifle the multi-channel sector and the UK as a broadcasting market as a whole.

1. Introduction

The satellite and cable broadcasters have always been sceptical about the onerous obligation put on our low audience channels to provide signing on television. As Ofcom's own research shows, it is likely that only a few, if any, of sign language users with access to multi-channel television watch programmes on low audience channels. Therefore, we have always considered this a clear obligation of public service broadcasters that receive public subsidy in order to cater for all parts of the society.

However, we have accepted the obligations placed on us by the Parliament in the Communications Act and have acted accordingly. In fact, many SCBG members already put a lot of effort in delivering the required quota and in fact often exceed them, especially when it comes to subtitling, but also in audio description and even sign interpreted programming according to the latest television access services first quarterly report for 2007.

In delivering these obligations we must bear in mind the majority of our viewers that find signing intrusive and distracting. Knowing that a very low percentage of the disability community watch our channels, we naturally have to schedule sign programming at times when it is least disruptive.

As these obligations are onerous on our channels, we welcome that Ofcom is looking at ways of improving the situation for both the disability community and the broadcasters and therefore agree that alternative arrangements should be considered. Satellite and cable broadcasters are primarily concerned about their audience and want to assure that their Access Services serve the maximum audience such services can while fulfilling their legislative/regulatory responsibilities and maintaining their editorial control of our services.

However, we do stress that given the volatility of broadcasting revenues at the moment, retaining financial flexibility remains an important consideration for satellite and cable broadcasters. Therefore, we cannot accept any arrangements or requirements that would increase the financial burden the current obligations impose on our channels and hope that we can find a mutually beneficial system with a voluntary focus that allows channels to make a decision in the light of their particular circumstances.

Ofcom should also recognise that the current policies were conceived in an entirely different context to the one in which we operate today. The broadcasting market has changed dramatically, as have financial/business models and, of course, technology. The widespread and increasing usage of hard-drive PVRs, for example, and the increasing availability of Video-on-Demand and IPTV services might stand as examples. As a regulator of converged communications services, Ofcom should be factoring-in the utilitarian arguments around the tiny number of beneficiaries (vs. subtitling) and looking at how the Government's policy objectives for signed audio-visual content could be met using new technologies beyond the formally-regulated linear TV space. These technologies, might also be better able to facilitate the much sought-after 'closed caption' signing facility which would allow hearing-viewers to switch-off the in-vision signer.

We also look to Ofcom as an evidence-based regulator that has as its main aim to reduce rather than increase the regulatory burden on market players. We are wary of the lurking regulatory creep and hope that Ofcom makes sensible decisions that do not stifle the multi-channel sector and the UK as a broadcasting market as a whole.

2. The proposed options

Option 1 and 2

SCBG and its members have had extensive discussions with Ofcom prior to the publication of the consultation document. Our understanding throughout that process was that Ofcom was looking for a valid alternative to the current system that would be voluntary and cost neutral. Unfortunately we do not think that the proposed options in the paper reflect this understanding.

Stellite and cable broadcasters have from the outset been sceptical about access service obligations as we do not enjoy any public subsidy to facilitate the costs nor do we have enough viewers that would benefit from such programming. We therefore welcome a discussion about the sustainability of option 1.

However, we do question the validity of only imposing these new requirements on channels at the very fringes of audience share while allowing public broadcasters to continue with the same system of mainly sign interpreted programming. As mentioned above, signing should be an obligation of all public service broadcasters.

Regarding option 2 that presumes more subtitling on our channels we are of the opinion that subtitling is not equivalent to signing and should be looked at separately. SCBG channels already exceed the subtitling quota it may be difficult to require them to do even more. However, in the event that Ofcom would be looking at this option in more detail, we would need to understand what cost implications this option would have.

Option 3

It seems from the consultation document that Ofcom has made up its mind and decided to go ahead with option 3 even though this option was never part of the pre-consultation exercise. We do have some sympathy for Ofcom's need to be seen to deliver the requirements of the Communications Act and to increase the amount of programming accessible to the deaf community, but presenting two alternatives to our industry that would be financially burdensome without any future guarantees of successfulness is something that we find difficult to accept.

In our previous contacts with Ofcom about future of signing, we have cautiously welcomed the voluntary arrangement proposed by Sky and the Community Channel on the basis that it would be voluntary and cost neutral. We also understood that those channels that did not wish to enter such an arrangement would carry on with their obligations according to the Act. It is worth noting that the Act specifically provides that signing obligations may be delivered by way of sign-interpreted or sign-presented programming and find it hard to understand how Ofcom interprets the Act as having the competence of unilaterally, without consultation of the Parliament, changing the spirit of the Act.

We also made clear that the provision of sign-presented programming by individual licensees on their own channels was not an acceptable alternative, which Ofcom recognises in the consultation paper itself.

In spite of this clear opposition from broadcasters, and Ofcom's stated desire to reach a consensus on the way forward, it is now proposing a new licence requirement to provide sign-presented programming for 30 minutes per channel per month with a gradual increase to 60

minutes after seven years. Broadcasters have raised many concerns with this approach in the last twelve months, which include the high additional costs of sign-presented programming, as well as the difficulty of integrating such programming into their schedules, which Ofcom has noted but failed to address in its consultation. Moreover, the low audience channels that will be affected by this new regime are predominantly niche channels with specific remits and genres that might be difficult to sign-present. Documentaries and cartoons are good examples of such genres.

The Community Channel's estimation is that a sign presented programme with a duration of 30 minutes would cost approximately £30,000 to produce. This cost is in stark contrast to the current costs incurred by several SCBG members and one needs to carefully consider whether the economics of producing such content and advertising revenue stemming out of it will add up. Furthermore, SCBG members estimate the costs of producing a low-budget, studio-based half-hour programme to be far in excess of £30,000, at £60,000 to £80,000. Rather than relying on the Community Channel's own estimate of likely production costs, Ofcom should consult with the affected broadcasters themselves, to get a clearer and more accurate picture of the likely regulatory impact.

SCBG is also unconvinced that the deaf community would turn en masse to our channels for the odd 30 minute slot per month and the programmes might not always be programmes that attract all of them.

We also have reservations about the degree of content regulation required if this option goes ahead. It is not the competence of Ofcom to get involved in editorial and scheduling decisions and we do not think that it is appropriate for a light-touch regulator to go this route.

Broadly speaking we are very disappointed that Ofcom did not allude to this alternative in its pre-consultation exercise, as we would have been able to have a more thorough discussion about it and flagged up some of our concerns about it at the outset.

The voluntary arrangement

We have been aware of the Sky/Community Channel proposal for some time now and have cautiously welcomed it as a possible route forward, provided that we get concrete information about how it would work in practice and the exact cost implications as well as the level of representation and control that our members would have in this new system.

In our previous contributions to Ofcom we have tried to be as constructive as possible in posing several important questions and comments about the system that we expected to be answered in this consultation document. Without certainty on these issues we will not be in the position to sign up to the proposal.

The first issue that we have raised is how difficult it will be to translate volume-based quotas into fixed financial contributions. According to Ofcom, a 24 hour channel would pay approximately £20,000 per year for sign interpreted programming based on one first-run and six repeats. We would need to understand whether the financial contribution is likely to be based on this average calculation or on the actual costs incurred for sign interpreted programming per channels and would the fee be proportionate to the size and turnover of the various broadcasters?

We believe that any alternative arrangements would need to balance the need for adequate and stable income for the commissioning fund, against the fact that broadcasters currently enjoy a

high degree of control over their own costs in this area. In agreeing to adopt an approach with potentially greater impact, we would not want to find ourselves in a position where it also constituted a higher financial burden.

The funding formula will therefore be a crucial area for clarification before we pass final judgement on this proposed arrangement.

The second – and related – issue is ensuring that the fund is actually governed in a way that protects the contributions of broadcasters and ensures that it is spent appropriately, efficiently and in the best interests of all sign language users. We would like to understand how our contributions would be utilised ie would contributions be allocated according to genre? Moreover, we would need to know whether contributors to the system would be able to access information about how and where their contributions have been spent.

Thirdly, we have pointed out to Ofcom that we need to be comfortable with the independence of the Trust, the level of representation from our sector as well as the possibility of inputting into and agreeing to its charter, contribution structure and appropriate opt out provisions if we find that it is not working from our perspective. In order to protect and control our spending and the integrity of our brands, we would want to see very strong broadcaster representation on the governing Trust.

Finally, we would need to explore further with you how Ofcom would measure the success of these new arrangements. If the rationale behind this proposal is to increase the effectiveness of sign-language broadcasting, we would welcome clarification about what kinds of benchmarks and targets will demonstrate whether this objective is being met.

3. Our recommendations

SCBG strongly recommends that the new structure should be optional, ie broadcasters that wish to carry on according to the current obligations could do so or they could chose from one of the alternatives in option 3. If broadcasters would voluntarily be prepared to produce sign presented programming they should be encouraged doing so, but we would seriously advocate against any obligation to do so.

As many SCBG members have reacted positively to the proposed Sky/Community Channel arrangement, we would like to give our own initial recommendations as to how the system could work. We feel that if we are going to be contributors to the system our voice should be heard in creating it. Therefore we welcome that broadcasters and the Community Channel will sit together to discuss this in more detail at a meeting on 13 July and hope that any results will be carefully considered when setting up this new entity.

Here are a few ideas on how the system could function effectively and fairly:

- In order to encourage broadcasters to support the system one could leave it to broadcasters to determine themselves, on a self-regulatory basis, how much they would have spent on signing provision, and therefore how much they should contribute to the fund.
- Representation on the Trust must be balanced between those that contribute financially and those that would benefit from it. Therefore there must be a proportionate amount of representatives from the deaf community and the broadcasting sector. Would it not be of great assistance to the Trust and the quality of the programming to have the experience and

input of more broadcasters? We also believe that all programming genres need to be represented on the Trust.

- Ofcom should review the process periodically, and make its own evidentiary-based determination of whether the system was functioning effectively.

In general, we believe that any changes to the current system should be for a trial period of not more than 2 years and a full consultation and evidentiary-based analysis of the changes should take place.

4. Conclusions

Providing signing on television is according to the Communications Act an important policy goal. We are sympathetic towards Ofcom's efforts to adhere to the obligations in the Act and to this socially important issue, but would remind Ofcom of its important role to protect all players in the market and to provide a broadcasting industry characterised by plurality and choice for the viewers. Posing too onerous financial obligations on this volatile multi-channel industry could be very damaging for the future of this sector. Satellite and cable broadcasters fight for viewers as any other broadcasters and finance their programming with commercial revenue based on the attractiveness of our programming.

We have accepted our obligations for access services and have put in a lot of effort in delivering them. These obligations are delivered through a careful balance of first-run and repeat programming, and while our targets are clearly fixed, the financial outlay needed to achieve those targets is not. Asking us to deliver even more in the form of sign presented programming that is not only costly, but only attractive for a very small minority of potential viewers is putting a lot of constraints on our channels. Conversely, asking us to contribute to an arrangement before having more information about it is also unrealistic. We therefore call on Ofcom, Sky and the Community Channel as well as the deaf community to work on a more detailed proposal for the voluntary arrangement and hope that other possible contributors to the system, such as SCBG members, are invited to take part in those discussions.

Any new system must be voluntary to the current obligations and should not incur higher costs than required from our channels at this moment. If Ofcom is serious about encouraging a thriving multi-channel environment in the UK, regulation must be light-touch and any financial obligations must be reasonable.

We would like to continue our dialogue with Ofcom on this issue and hope to be able to meet up to discuss our concerns in more detail.