

25th January 2017

Paul Chapman
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Via email: Eniola.awoyale@ofcom.org.uk

Dear Sir,

Ref: Notice of Ofcom's proposal to make regulations amending the Wireless Telegraphy (Exemption) Regulations 2003

I refer to the consultation document issued by OFCOM concerning commercial multi-user gateway (COMUGS) law relaxation. I make the following observations and representations:-

- It is on record that the company of which I was a director and shareholder, EasyAir Limited (EasyAir), was in 2003, directly via our solicitor Mr Mark Whitell and indirectly via the Mobile Network Operator (O2 plc trading as O₂) seeking clarification of the legislation from OFTEL relating to the use of GSM Gateways. EasyAir, in the business as a contracted Mobile Service Provider, was purchasing wholesale airtime. EasyAir was encouraged by the Mobile Network Operator (BT Cellnet, re-branded O2 plc, now part of Telefónica UK Limited) who supplied us with SIMs (Subscriber Identification Module) and marketing material and airtime tariffs specifically for the GSM Gateway market. On 28th December 2003 the duties of OfTel were inherited by Ofcom. Clarification of being able to provide commercial single use gateway services (COSUGS) and COMUGS without a specific licence should have been provided in 2003. Giving such lack of clarification fourteen years later it is plainly ridiculous, disingenuous and unacceptable. Not only have businesses faced significant additional costs which their European colleagues have avoided but there has been the significant impact on removing the revenues, profits and ultimate loss of such an innovative business, with the subsequent damage, loss of investment, value, income and employment for many people.
- In previous correspondence relating to the use of COSUGS your attention was drawn to the definition in the draft regulations as to what constitutes a commercial single use gateway, which does not accord with the suggested wordings in either the "Floe" or "Recall & others" cases, where there is reference to a single customer not a single body. The definition of Commercial Single Users Gateway (COSUGS) might be a service provided to a single customer, even though serving that customer involves the provision of services to a number of individual end users.
- The law in the Wireless Telegraphy Act 2006 Section 8 requires that OFCOM has to liberalise both COSUGS and COMUGS i.e. removing the need for a specific licence from both types. If required, the Government should then serve section 5 direction under the Communications Act 2003 in respect of COMUGS.

Fourteen years on I am at a loss as to why Ofcom did not liberalise GSM Gateways as these devices do not create harmful interference or adversely affect technical quality of service or cause an inefficient use of the spectrum, as has been proven and agreed in the UK High Court. At the same time of seeking clarification from OFCOM, EasyAir proposed to O2, on several occasions, that GSM Gateway sites could be

Mr. Anthony Lloyd-Weston,

located at places where they would cause no congestion on the network. These sites were jointly identified around sporting event sites including Old Trafford and Twickenham for example, where the mobile infrastructure was being used mainly at weekends or other off-peak hours when GSM Gateway traffic would have been low. This was born out by the actual example of EasyAir Limited, O2 and Floe Telecom working together and moving a GSM gateway location from Hammersmith to near the National Rifle Association Bisley site, which also only had heavy local mobile traffic at weekends

The benefit to consumers were and would continue to have been considerable, as GSM gateways were providing a competitive alternative to the Mobile Operators and BT's wholesale charges for mobile termination charges and these were being passed onto customers. It does seem ironic that Ofcom had to use legislative powers to reduce termination charges, after removing a competition from mobile termination rates by the GSM gateway ruling, but perhaps that is the reason why we find ourselves in this position now, where the intransigence has commercially benefitted the network operators and not the paying public. Certain organisations were allowed to operate COMUGS with the tacit approval of the networks (including the Police and Fire Services, the British Government, The Scottish Office, and National Health Service) most of which was anti-competitive as few businesses could bid for the contracts.

It would appear that all parties are in agreement that GSM Gateways are a necessity, but having a single company use gateway is an impractical solution, as it is not only the employees of that organisation that may use the telephony equipment, it can also be used by visitors, suppliers, contractors and subcontractors. It would appear that the only logical solution is to licence COMUGS.

The only original legal objection to COMUGS it would appear is national security. This is a red herring as it is possible to track the callers CLI that has been made via a GSM Gateway, in the same way that this would be done with traditional telephone systems (does the fact that Ofcom are now considering reviewing the legislation with a view to allowing commercial GSM gateways, that Ofcom does not consider commercial GSM gateways a national security threat and we have assumed that Ofcom have taken direction from the Home office). There are also other telecommunication services that have no ability to track the calling party, including open Wi-Fi networks based VOIP calls made over a mobile device such as "WhatsApp" and "Skype". These types of devices have not been legislated against. I have seen no proposals to restrict these types of calls for reason of national security and feel that these types of "untraceable" calls represent a far greater threat to national security. To discriminate against GSM COMUGS would, therefore be illegal. From my practical hands-on experience in providing information relating to calls made from GSM Gateways fully disclosing the CLI thus meeting requirements of The Regulation of Investigatory Powers Act 2000, regulating the powers of public bodies to carry out surveillance and investigation, and covering the interception of communications, my company never had any problems or issues working with the UK Security Services or Police Forces.

I wish this correspondence to be placed on record and accepted as a submission to the consultation process. Please redact the postal, email addresses and confirm receipt by email.

Yours faithfully



Anthony Lloyd-Weston

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