



# Commercial Multi User Gateway Review

Consultation

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Closing Date for Responses: 10 February 2017

## About this document

This document invites comments on whether the use of commercial multi-user 'gateway' devices, known as COMUGs, meets the requirements for licence exemption set out in the Wireless Telegraphy Act 2006.

A gateway device uses SIM cards created and issued by a mobile network operator (MNO). This allows the device to originate calls on the MNO's network. Calls made using these devices from fixed lines to mobiles are treated by the recipient's network as if they were made by a mobile phone, rather than made from the fixed line phone. Gateways have typically been used in this way to try to reduce the cost of making fixed-to-mobile calls.

The use of COMUGs is currently illegal in the UK without the grant of a licence by Ofcom. We are consulting on whether it would be appropriate to make regulations exempting these devices from the requirement to obtain a licence under section 8(1) of the Wireless Telegraphy Act 2006.

The closing date for responses is 10 February 2017.

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## Section 1

# Executive summary

- 1.1 The purpose of this consultation is to review the current regulatory regime for the authorisation of mobile gateway devices ('gateways') in the UK. In particular, we are seeking views on the current regulatory position in relation to devices known as commercial multi-user gateways ('COMUGs'), whereby a person uses a gateway to provide services by way of a business to multiple end-users (individuals or businesses).
- 1.2 Under section 8(1) of the Wireless Telegraphy Act 2006 (the '2006 Act') it is an offence to establish, install or use equipment to transmit except under and in accordance with a licence granted by Ofcom. Under section 8(3) of the 2006 Act, Ofcom may by regulations exempt from the requirement to hold a licence the establishment, installation or use of equipment of such classes or descriptions as may be specified in the regulations, either absolutely or subject to conditions. Under section 8(4) of the 2006 Act, Ofcom is required to make regulations exempting equipment of a particular description where it is satisfied that certain conditions, set out in section 8(5), are satisfied.
- 1.3 The current UK position is that user stations are exempted from the obligation to obtain a licence under section 8(1) of the 2006 Act where they are installed or used by a single customer/end-user for self-use or where the services are provided by way of a business to a single end-user. This exemption, provided for under the Wireless Telegraphy (Exemption) Regulations 2003 (as amended) (the '2003 Exemption Regulations'), thus permits the use of self-use mobile gateways and commercial single-user gateways ('COSUGs').
- 1.4 The exemption provided for under the 2003 Exemption Regulations does not apply to COMUGs and it is therefore currently unlawful for anyone to use COMUGs in the UK without the grant of a licence by Ofcom.
- 1.5 In this Consultation we are consulting on whether it would be appropriate to make regulations exempting COMUGs from the licensing requirement under section 8(1) of the 2006 Act, by reference to the conditions set out in section 8(5) of that Act. We are also seeking views on any conditions that should be attached to an exemption, should we decide that it is appropriate to exempt COMUGs.
- 1.6 The conditions set out in section 8(5) of the 2006 Act are that the use of stations or apparatus of the relevant description is not likely to:
  - a) involve undue interference with wireless telegraphy;
  - b) have an adverse effect on technical quality of service;
  - c) lead to inefficient use of the part of the electromagnetic spectrum available for wireless telegraphy;
  - d) endanger safety of life;
  - e) prejudice the promotion of social, regional or territorial cohesion; or
  - f) prejudice the promotion of cultural and linguistic diversity and media pluralism.

- 1.7 We currently consider that the condition set out in section 8(5)(b) of the 2006 Act, namely whether the use of COMUGs is likely to have an adverse effect on technical quality of service, is the most relevant issue in deciding whether to exempt COMUGs, and on what terms. However, we also welcome any evidence from stakeholders in relation to the application of the other conditions set out in section 8(5) of the 2006 Act to COMUGs.

## Document Structure

- 1.8 The document is structured as follows:
- Section 2 sets out the background and legislative framework;
  - Section 3 sets out the exemption conditions under section 8 of the 2006 Act and considers the application of those conditions in relation to the use of COMUGs;
  - Annexes 1 – 3 explain our consultation principles and how to respond to this consultation; and
  - Annex 4 sets out the consultation questions.

## Next steps

- 1.9 We welcome stakeholder feedback to this consultation document. The deadline to submit responses to us is 5pm on 10 February 2017.
- 1.10 If we decide that it is appropriate to exempt the use of COMUGs from the licensing requirements under section 8(1) of the 2006 Act, we will propose regulations under section 8(3) of that Act in order to provide for such an exemption. If we conclude that it is not appropriate to exempt COMUGs, these devices will remain subject to the existing authorisation regime under section 8(1).

## Section 2

# Background and legislative framework

2.1 In this document we are consulting on whether it would be appropriate to make regulations exempting COMUGs from the licensing requirement under section 8(1) of the 2006 Act, by reference to the conditions set out in section 8(5) of that Act. We are also seeking views on any conditions that should be attached to an exemption, should we decide that it is appropriate to exempt COMUGs.

## What is a gateway?

- 2.2 A gateway is a device which enables calls from a fixed handset or device to be passed from a fixed network to a mobile network in a way that is not recognised by the mobile network as being a fixed-to-mobile call. The call is first routed from the fixed network to the gateway, and then passed from the gateway over the mobile network to the mobile handset where the call is to be terminated.
- 2.3 A gateway operates in a similar manner to a mobile phone in that it uses SIM cards, created and issued by mobile network operators ('MNOs') to originate calls on each MNO's network. Unlike a mobile phone, however, a gateway will incorporate multiple SIMs and acts in such a way that when a user makes a call from a fixed line phone to a mobile phone number, that call is diverted from the fixed line through the gateway.
- 2.4 As the fixed line call passes through the gateway, it is converted into a call from one of the SIM cards in the device before being passed over to the network of the mobile phone used by the recipient of the call and on to that recipient's phone. The recipient's network treats the call as if it were made by a mobile phone using that SIM card in the gateway rather than as being made from the fixed line phone.<sup>1</sup> This means that when the call is terminated on that mobile network, it appears to the mobile operator terminating the call that the calling party and the called party are on the same mobile network (referred to as an 'on-net' call).
- 2.5 Gateways have typically been used in this way to try to reduce the cost of making fixed-to-mobile calls, by enabling the gateway operator to provide the capability to deliver an 'off-net' call, by purchasing an 'on-net call', and thereby take advantage of the traditionally lower retail rates offered by MNOs for on-net calls.
- 2.6 Gateways may be used in different ways:
- i) a self-use gateway - where a single end-user organisation or individual establishes, installs and/or uses the gateway for its own use; or
  - ii) where a third party provides electronic communications services by way of a business. This allows the GSM gateway operator to provide the capability to deliver an 'off-net' call, by purchasing an 'on-net call'. This may be in the form of:
    - o a commercial single-user gateway ('COSUG'), so that all the calls diverted through the gateway come from one end-user; or

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<sup>1</sup> Mobile gateways are also known as SIM gateways or GSM gateways. Since the first use of these with GSM networks, additional spectrum and technologies have come into use that might be accessed via a gateway.

- a commercial multi-user gateway ('COMUG'), so that the calls diverted through the gateway come from multiple end-users.

## Legislative framework

- 2.7 We are responsible for authorising use of the radio spectrum and achieve this by granting wireless telegraphy licences under the 2006 Act and by making regulations exempting users of particular equipment from the requirement to hold such a licence.
- 2.8 Under section 8(1) of the 2006 Act, it is unlawful to establish or use a wireless telegraphy station or install or use wireless telegraphy apparatus except under and in accordance with a licence granted by Ofcom.
- 2.9 Under section 8(3) of the 2006 Act, Ofcom may make regulations exempting from the licensing requirement under section 8(1) the establishment, installation or use of wireless telegraphy stations or wireless telegraphy apparatus of such classes or descriptions as may be specified in the regulations, either absolutely or subject to such terms, provisions and limitations as may be specified. When making such regulations, section 122(7) of the 2006 Act enables Ofcom to make such exemptions and exceptions as it thinks fit and to make incidental, supplemental, consequential and transitional provisions.<sup>2</sup>
- 2.10 Section 8(4) of the 2006 Act provides that if Ofcom is satisfied that certain conditions, set out in section 8(5), are met as respects the use of stations or apparatus of a particular description, we must make regulations exempting the establishment, installation and use of a station or apparatus of that description from the need to obtain a licence.
- 2.11 The conditions set out in section 8(5) of the 2006 Act are that the use of stations or apparatus of the relevant description is not likely to:
- a) involve undue interference with wireless telegraphy;
  - b) have an adverse effect on technical quality of service;
  - c) lead to inefficient use of the part of the electromagnetic spectrum available for wireless telegraphy;
  - d) endanger safety of life;
  - e) prejudice the promotion of social, regional or territorial cohesion; or
  - f) prejudice the promotion of cultural and linguistic diversity and media pluralism.
- 2.12 Before making regulations under section 8(3) of the 2006 Act, Ofcom is required to give notice of its proposal to do so.<sup>3</sup>

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<sup>2</sup> Under section 8(3B) of the 2006 Act, the terms, provisions and limitations specified in regulations made under section 8(3) must be: (a) objectively justifiable in relation to the wireless telegraphy stations or wireless telegraphy apparatus to which they relate; (b) not such as to discriminate unduly against particular persons or against a particular description of persons; (c) proportionate to what they are intended to achieve; and (d) transparent in relation to what they are intended to achieve.

<sup>3</sup> Section 122(4) of the 2006 Act.

## The legal status of gateway use in the UK today

- 2.13 The legislative provisions that apply to the use of gateways are those in the 2003 Exemption Regulations. Regulation 4(1) of the 2003 Exemption Regulations provides for an exemption in relation to the establishment, installation and use of 'relevant apparatus', being the prescribed apparatus defined in Schedules 3 to 10 of those Regulations. Gateways fall within the definition of prescribed apparatus connecting to networks defined at paragraph 3 of Part III of Schedule 3, namely cellular radiotelephone systems for use in certain specified services on relevant frequency bands.
- 2.14 Until April 2016, Regulation 4(2) of the 2003 Exemption Regulations provided an exception to the exemption set out in Regulation 4(1). Under that provision, relevant apparatus was not exempted if it was "established, installed or used to provide or to be capable of providing a wireless telegraphy link between electronic communications apparatus or an electronic communications network and other such apparatus or system by means of which an electronic communications service is provided by way of business to another person". Consequently, prior to April 2016, gateways were exempted from the obligation to obtain a licence only where they were used for self-use, but not for commercial use.<sup>4</sup> Therefore, any use of COSUGs or COMUGs required a licence from Ofcom.
- 2.15 The 2003 Exemption Regulations were amended in April 2016 to ensure that COSUGs fell within the exemption. This change arose as a result of the judgment of the Court of Appeal in *Recall Support Services Limited and Others v Secretary of State for Culture Media and Sport* (the 'Recall case'). In that case, both the High Court and the Court of Appeal found that the restriction on the use of gateways in the 2003 Exemption Regulations, insofar as it applied to COSUGs (only), was in breach of the Authorisation Directive and constituted an infringement of EU law (further details of the Recall case are set out below).<sup>5 6</sup>
- 2.16 In order to give effect to the Courts' findings, Ofcom made the Wireless Telegraphy (Exemption) (Amendment) Regulations 2016<sup>7</sup> (the '2016 Amendment Regulations'). Those regulations amended the 2003 Exemption Regulations so as to include COSUGs within the exemption, setting out COSUG use in Regulation 4(5) as '...the situation where relevant apparatus is established, installed or used to provide an electronic communications service by way of business to more than one person within a single body'.<sup>8</sup> The 2016 Amendment Regulations entered into force on 28 April 2016. The 2016 Amendment Regulations did not, however, extend to the inclusion of COMUGs within the exemption.

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<sup>4</sup> This use refers to a person providing a gateway to another person as part of a service provided by way of business to that other person.

<sup>5</sup> *Recall Support Services and Others v Secretary of State for Culture Media and Sport* [2013] EWHC 3091 (Ch) ('High Court judgment').

<sup>6</sup> *Recall Support Services and Others v Secretary of State for Culture Media and Sport* (2014 EWCA Civ 1370).

<sup>7</sup> SI 2016/486.

<sup>8</sup> Decision by Ofcom to make regulations amending the Wireless Telegraphy (Exemption) Regulations 2003, 8 April 2016. Available at:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0023/54167/statement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0023/54167/statement.pdf).



## **Recall Support Services Ltd & Ors v Secretary of State for Culture, Media and Sport**

- 2.17 The Recall case considered whether the restriction on the use of COSUGs and COMUGs provided for under the 2003 Exemption Regulations, as originally made<sup>9</sup> (described as the ‘Commercial Use Restriction’), constituted an infringement of EU law, and in particular the Authorisation Directive.
- 2.18 The Secretary of State for Culture Media and Sport (‘DCMS’) argued that the Commercial Use Restriction could be justified on the basis of: (a) the need to avoid harmful interference; (b) the need to ensure the efficient use of spectrum; and (c) national security.<sup>10</sup>
- 2.19 In its judgment, the High Court found that:
- 2.19.1 DCMS could not justify the Commercial Use Restriction, in relation to either COSUGs and COMUGs, on the basis of (a) the need to avoid harmful interference or (b) the need to ensure the efficient use of spectrum.<sup>11</sup>
  - 2.19.2 DCMS could rely on national security concerns to justify imposing the Commercial Use Restriction in so far as it restricted the provision of COMUGs, but not in so far as it restricted the provision of COSUGs.<sup>12</sup>
  - 2.19.3 Accordingly, the restriction in the Regulation 4(2) of the 2003 Exemption Regulations, insofar as it applied to COSUGs (only), was in breach of the Authorisation Directive and constituted an infringement of EU law.<sup>13</sup>
- 2.20 These findings were upheld by the Court of Appeal on appeal. As explained above, Ofcom subsequently amended the 2003 Exemption Regulations to lift the restriction on COSUGs in order to give legislative effect to the Courts’ findings.

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<sup>9</sup> I.e. prior to amendment to the 2003 Exemption Regulations made by the 2016 Amendment Regulations.

<sup>10</sup> High Court judgment, paragraphs 37 and 62.

<sup>11</sup> High Court judgment, paragraphs 149 and 158.

<sup>12</sup> High Court judgment, paragraph 114.

<sup>13</sup> High Court judgment, paragraphs 159-160.

## Section 3

# Exemption conditions under section 8 of the Wireless Telegraphy Act 2006

- 3.1 As set out in Section 2 above, the 2003 Exemption Regulations currently permit the use of self-use gateways and COSUGs on a licence exempt basis, but restrictions on the use of COMUGs remain. We have now decided to review whether the restrictions preventing the use of COMUGs continue to be appropriate or whether Ofcom should licence exempt these devices.
- 3.2 In this section we consider the application of the conditions for licence exemption set out in section 8(5) of the 2006 Act to COMUGs. As explained below, our current view is that the condition set out in section 8(5)(b), namely whether the use of COMUGs is likely to have an adverse effect on technical quality of service, is likely to be the most relevant issue in considering whether or not it is appropriate to exempt COMUGs (and on what terms). This is therefore the main issue on which we are consulting and we set out below the views and evidence which we are seeking from stakeholders.
- 3.3 We do not currently consider that the use of COMUGs is likely to raise issues in relation to the other conditions set out in section 8(5) of the 2006 Act that would justify maintaining the current restriction on the use of these devices, namely whether such use would be likely to:
- 3.3.1 involve undue interference with wireless telegraphy (section 8(5)(a));
  - 3.3.2 lead to inefficient use of the part of the electromagnetic spectrum available for wireless telegraphy (section 8(5)(c));
  - 3.3.3 endanger safety of life (section 8(5)(d));
  - 3.3.4 prejudice the promotion of social, regional or territorial cohesion (section 8(5)(e)); or
  - 3.3.5 prejudice the promotion of cultural and linguistic diversity and media pluralism (section 8(5)(f)).
- 3.4 However, we would also welcome any evidence on these issues which stakeholders consider relevant to our decision.

## Potential impact of COMUG usage on technical quality of service

- 3.5 This section considers the potential impact of COMUGs on technical quality of service and sets out the evidence we are seeking from stakeholders in order to determine whether or not it is appropriate to exempt COMUGs from the licensing requirement under section 8(1) of the 2006 Act.
- 3.6 In assessing this issue, we are primarily concerned with identifying whether the use of COMUGs has the potential to impact on the performance of a network such that the technical quality of service which would otherwise be available to other users of that network is adversely affected. This could take many forms such as a reduction in cell coverage, an inability to set up or complete a call, a reduction in the speed or reliability of data services, delay or packet loss (among others).

- 3.7 As explained below, in the past we have received submissions from stakeholders that COMUGs have the potential to cause significant congestion on mobile networks. In particular, stakeholders have submitted that the use of COMUGs, by concentrating traffic from many users at a single location, is likely to lead to rapid and unpredictable increases in call traffic in the cell site in which the GSM gateways are located and, in certain circumstances, in neighbouring cell sites.<sup>14</sup> The potential for congestion to arise from the use of gateways was also noted by the High Court in the Recall case.
- 3.8 In general, where congestion occurs on a mobile network, subscribers to the mobile network, and those attempting to call subscribers to the mobile network, are likely to suffer a degraded quality of service. In particular, congestion in this context could affect parameters such as the likelihood of being unable to make or receive a call, voice quality, and the incidence of dropped calls.
- 3.9 In assessing whether it is appropriate to licence exempt the use of COMUGs we therefore need to consider, in particular, the following issues:
- 3.9.1 firstly, the extent to which COMUGs have the potential to cause congestion on the mobile network(s) whose SIM cards they utilise;
- 3.9.2 secondly, whether and how any such congestion effects have the potential to materially affect the technical quality of service available to other users of those mobile network(s); and
- 3.9.3 finally, whether any adverse effects on technical quality of service can be effectively managed.
- 3.10 It is on these matters that we are primarily seeking evidence from stakeholders in this Consultation.

#### **Previous evidence of potential impact of COMUGs on quality of service**

- 3.11 As noted above, we have in the past received evidence indicating that the operation of COMUGs using SIM cards on a MNO's network has the potential to cause congestion and consequently a degradation in the quality of service received by consumers using that network.
- 3.12 For example, in our 2005 consultation on the *Future regulation of GSM gateways under the Wireless Telegraphy Act*<sup>15</sup> and the *Re-investigation of a complaint from Floe Telecom Limited against Vodafone Limited*,<sup>16</sup> we noted evidence which had previously been submitted by stakeholders in relation to the impact of the operation of gateways on quality of service. We also received statistical evidence showing that gateways can generate substantial local congestion. This included evidence which showed statistics for cell traffic illustrating an increase in peak load traffic in a cell over a short period and a correspondingly significant increase in congestion (in one

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<sup>14</sup> Ofcom, *Re-investigation of a complaint from VIP Communications Limited against T-Mobile (UK) Limited*, 28 June 2005. Available at:

[http://webarchive.nationalarchives.gov.uk/20160702162827/http://stakeholders.ofcom.org.uk/binaries/enforcement/competition-bulletins/closed-cases/all-closed-cases/cw\\_806/tmobile2.pdf](http://webarchive.nationalarchives.gov.uk/20160702162827/http://stakeholders.ofcom.org.uk/binaries/enforcement/competition-bulletins/closed-cases/all-closed-cases/cw_806/tmobile2.pdf).

<sup>15</sup> Available at: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0028/37828/gsm.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0028/37828/gsm.pdf).

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[http://webarchive.nationalarchives.gov.uk/20160702162827/http://stakeholders.ofcom.org.uk/binaries/enforcement/competition-bulletins/closed-cases/all-closed-cases/cw\\_805/floe2.pdf](http://webarchive.nationalarchives.gov.uk/20160702162827/http://stakeholders.ofcom.org.uk/binaries/enforcement/competition-bulletins/closed-cases/all-closed-cases/cw_805/floe2.pdf)

example, congestion went from the below the mobile operator's internal target of 2% to in excess of 35%<sup>17</sup>).

- 3.13 It was contended that by causing congestion in this way, gateways had the potential to degrade the quality of service received by users of mobile networks, which manifested itself through an increased likelihood of being unable to make or receive a call (call blocking), reduction in voice quality, dropped calls and increased interference on neighbouring cells.
- 3.14 In its response to our 2005 consultation, a MNO stated that it had investigated usage patterns and concluded that single-user gateways were unlikely to cause congestion in practice as a single company would be unlikely to generate sufficient call volume to cause a problem. In contrast it considered that multi-user gateways would inevitably cause congestion in busy areas. This MNO told us that a typical corporate user, with a six-SIM card gateway, would generate around 30 minutes of traffic a day per SIM whereas the comparable figure for a multi-user gateway could be as high as 400 minutes per SIM (and that gateways capable of accommodating up to 60 SIMs were commercially available).
- 3.15 On the other hand, providers of gateways have told us that they do not consider that gateways affect technical quality of service and that, in any event, any concerns could be addressed through discussion with or contractual arrangements with the MNOs. For example, in response to our consultation on the 2016 Amendment Regulations, one respondent (acting on behalf of a client previously involved in the gateway industry) commented that:

“from a technical perspective, whatever it is that gateways do in causing potential congestion does not constitute something that has an adverse effect on technical quality of service and, in any event, whatever it does not warrant proportionally a ban to achieve any desired result. In other words, it is difficult to see the adverse effect on technical quality provision that would cause any gateway not to be permitted.”<sup>18</sup>

### Consideration of technical quality of service issues in Recall

- 3.16 The issue of whether gateways can result in adverse effects on technical quality of service was not explicitly addressed in the Recall case. However, the High Court did consider the impact of congestion and degradation of service quality on mobile networks when gateways were in use. The judge explained, for example, that:

“128. There is plenty of evidence in the contemporaneous documents that at the time that GSM Gateways were operated by the GGOs<sup>19</sup> prior to the Secretary of State's decision confirming the Commercial Use Restriction, the MNOs complained to the GGOs of significant upset to the networks as a result of GSM Gateway traffic. For example, in the slides for an internal presentation for Vodafone in August 2003 the speaker refers to cell congestion and constant loading resulting from SIM cards in GSM Gateways. The speaker gives two recent examples; one where the user

<sup>17</sup> A congestion rate of 35% indicates that 35% of attempted calls within a particular cell site failed.

<sup>18</sup> Response of Jury O'Shea LLP to Ofcom's proposal to make regulations amending the Wireless Telegraphy (Exemption) Regulations 2003. Available at:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0023/59009/jury\\_oshea\\_llp.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0023/59009/jury_oshea_llp.pdf).

<sup>19</sup> GGOs stands for GSM Gateway Operators

was asking for more capacity because the network could not accommodate more than 24 channels being used at the same time and one where the use by several companies of GSM Gateways in the same office block meant that it was impossible to make a normal mobile phone call in the building. I note also that at a meeting between representatives of Floe and the DTI (the precursor to BIS) on 31 January 2003, it is recorded that it was agreed that irresponsible siting of GSM Gateways was causing 'hot spot headaches' for the MNOs and a degradation of service quality to end users.

129. I have no difficulty in finding that the use of an MNO's SIM cards in a GSM Gateway has the potential to cause congestion on that MNO's network and this may result in other subscribers to that network who are trying to make or receive calls suffering dropped or blocked calls or experiencing significant degradation in the quality of the calls they manage to make."<sup>20</sup>

### **Views and evidence sought from stakeholders**

- 3.17 We do not expect the potential impact of COMUGs on mobile networks to have changed significantly over time. We are, however, conscious that much of the evidence available to us in relation to this issue is historic, and was not submitted directly in relation to the question of whether COMUGs meet the criteria for exemption in section 8(5) of the 2006 Act.
- 3.18 We therefore have not yet reached a view as to whether the condition set out in section 8(5)(b) is satisfied in relation to COMUGs, and we are seeking evidence from stakeholders on this issue. In particular, we would like to identify the relevant characteristics (if any) of COMUGs which might be likely to cause adverse effects on the technical quality of service offered by MNOs over their networks today, as well as the circumstances in which any such effects are likely to occur.
- 3.19 We note that, even if we find that COMUGs do have some potential to impact technical quality of service, it may be possible that any adverse effects are manageable. There may therefore be a case for a qualified exemption of COMUGs, i.e. subject to conditions designed to address any concerns we identify.
- 3.20 For example, should concerns regarding the potential congestion caused by COMUGs remain, one option might be to exempt the use of COMUGs subject to a condition requiring the users of such devices to obtain prior written consent / authorisation from a host network. This could allow the relevant network operator to ensure sufficient resource provision to service the COMUG, while maintaining the quality of service offered to other mobile users.
- 3.21 We are therefore also seeking views on whether any concerns which stakeholders identify from a technical quality of service perspective could be adequately addressed through appropriate conditions imposed on the use of COMUGs and, if so, what conditions would be required.

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<sup>20</sup> High Court judgment, Paragraphs 128-129.

### Consultation questions

*Q1. Do you have any evidence that the installation or use of COMUGs does or does not have the potential to cause an adverse effect on technical quality of service of wireless telegraphy?*

*Q2. To the extent that you do have any concerns regarding the impact of the use of COMUGs on technical quality of service, do you think these concerns could be adequately addressed through a qualified exemption of COMUGs? If so, please explain what conditions you consider would need to be imposed on the use of COMUGs?*

*Q3. If you do not consider that your concerns could be addressed through a qualified exemption, please explain why, giving reasons for your views.*

### Other conditions under section 8(5) of the 2006 Act

- 3.22 Sections 8(5)(a) and (c) of the 2006 Act relate to the potential for equipment to cause undue interference or an inefficient use of spectrum, respectively.
- 3.23 As explained in section 2 above, the Courts considered these issues in the Recall case and concluded that a restriction on the use of COMUGs could not be justified either on the basis of the need to avoid harmful (undue) interference<sup>21</sup> or the need to promote the efficient use of spectrum.
- 3.24 We therefore consider that these issues would only be relevant if new evidence had come to light the substance of which was not before the Courts in the Recall case, and which might lead to a different conclusion to that reached in that case. We are not aware of any such evidence and we therefore do not currently consider that it would be appropriate to maintain the current restriction on COMUGs on the grounds of either undue interference or inefficient use of spectrum.
- 3.25 Sections 8(5) (d), (e) and (f) of the 2006 Act relate to the potential for equipment to endanger safety of life, prejudice the promotion of social, regional or territorial cohesion, and prejudice the promotion of cultural and linguistic diversity and media pluralism, respectively.
- 3.26 We do not currently have evidence to suggest that the use of COMUGs would raise concerns in relation any of these conditions that would justify maintaining the current restriction on COMUGs. However, we would welcome any evidence on these issues which stakeholders consider relevant to our decision as to whether it would be appropriate to exempt COMUGs at this time.

### Consultation questions

*Q4. Do you have any evidence that the installation or use of COMUGs is likely to:*

<sup>21</sup> We note that whilst the discussion of this issue in the High Court judgment focused on whether gateways cause 'harmful' interference rather than 'undue' interference, section 115(4) of the 2006 Act provides that "Interference with any wireless telegraphy is not to be regarded as undue for the purposes of this Act unless it is also harmful". The meaning of the term 'harmful' for the purposes of the 2006 Act is further explained in section 115(5).

- *involve undue interference with wireless telegraphy;*
- *lead to inefficient use of the part of the electromagnetic spectrum available for wireless telegraphy;*
- *endanger safety of life;*
- *prejudice the promotion of social, regional or territorial cohesion; or*
- *prejudice the promotion of cultural and linguistic diversity and media pluralism.*

*Q5. To the extent that you do have any concerns in relation to any of the issues referred to in question 4, do you think it can these concerns could be adequately addressed through a qualified exemption of COMUGs? If so, please explain what conditions you consider would need to be imposed on the use of COMUGs?*

*Q6. If you do not consider that your concerns could be addressed through a qualified exemption, please explain why, giving reasons for your views.*

## Next steps

- 3.27 Ofcom intends to use the responses to this Consultation in order to reach a decision on whether it is appropriate to exempt the use of COMUGs from the licensing requirement of section 8(1) of the 2006 Act.
- 3.28 If we conclude that each of the conditions set out in section 8(5) of the 2006 Act are satisfied, we will propose regulations exempting the use of COMUGs. Even if we do not conclude that each of the conditions under section 8(5) are fully satisfied, we will consider whether any concerns we identify are manageable and could be appropriately addressed by exempting COMUGs on a qualified basis.
- 3.29 If we determine that any issues regarding the use of COMUGs under section 8(5) are insurmountable, we will maintain the current authorisation regime for gateway devices.

## 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 10 February 2017**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <https://www.ofcom.org.uk/consultations-and-statements/category-2/commercial-multi-user-gateway-review>, 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 [Eniola.Awoyale@ofcom.org.uk](mailto:Eniola.Awoyale@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.
- Eniola Awoyale  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London  
SE1 9HA
- 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 4. 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 Eniola Awoyale on 020 7 783 4680

## 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](http://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/terms-of-use/>

## Next steps

- A1.11 If we decide that it is appropriate to exempt the use of COMUGs from the licensing requirements under section 8(1) of the 2006 Act, we will propose regulations under section 8(3) of that Act in order to provide for such an exemption. If we conclude that it is not appropriate to exempt COMUGs, these devices will remain subject to the existing authorisation regime under section 8(1).
- 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/email-updates/>

## 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](mailto: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 Steve Gettings, Secretary to the Corporation, who is Ofcom's consultation champion:

Steve Gettings  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

Tel: 020 7981 3601

Email [steve.gettings@ofcom.org.uk](mailto:steve.gettings@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 Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's '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.

### After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, 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](http://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 <http://stakeholders.ofcom.org.uk/consultations/consultation-response-coversheet/>.
- 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 question

*Q1. Do you have any evidence that the installation or use of COMUGs does or does not have the potential to cause an adverse effect on technical quality of service of wireless telegraphy?*

*Q2. To the extent that you do have any concerns regarding the impact of the use of COMUGs on technical quality of service, do you think these concerns could be adequately addressed through a qualified exemption of COMUGs? If so, please explain what conditions you consider would need to be imposed on the use of COMUGs?*

*Q3. If you do not consider that your concerns could be addressed through a qualified exemption, please explain why, giving reasons for your views.*

*Q4. Do you have any evidence that the installation or use of COMUGs is likely to:*

- involve undue interference with wireless telegraphy;*
- lead to inefficient use of the part of the electromagnetic spectrum available for wireless telegraphy;*
- endanger safety of life;*
- prejudice the promotion of social, regional or territorial cohesion; or*
- prejudice the promotion of cultural and linguistic diversity and media pluralism.*

*Q5. To the extent that you do have any concerns in relation to any of the issues referred to in question 4, do you think it can these concerns could be adequately addressed through a qualified exemption of COMUGs? If so, please explain what conditions you consider would need to be imposed on the use of COMUGs?*

*Q6. If you do not consider that your concerns could be addressed through a qualified exemption, please explain why, giving reasons for your views.*