

GCI representing itself

In answer to the question “Do you have any comments on the proposed statutory instrument set out in this notice”, we would say as follows:-

1. Whilst the proposal to lift the restriction on the use of COSUGS is welcomed such that these can be used without having to obtain a licence, in our view the wording of proposed new Regulation 4(5) is not quite right in so far as it is the commercial use of GSM gateways to a single customer which is, in our view, what should now be included within the exemption from the restriction (or carved out of the current exception to the exemption).

Our customers may indeed be a single “body” as defined in the proposed new definition in Regulation 3(1) of the Principal Regulations. However, this will not always be the case, including where, for example, our contracted customer is a group company and we permit other members of its group to use our services, or where we have a master services agreement or framework agreement in place (including with a public authority, for example) and affiliated bodies (in the public authority situation, certain contracting authorities) are authorised to enter into individual call-off contracts for services; in these instances we may use a single GSM gateway to provide our services to all such recipients within our “customer”.

On the basis that it is public security concerns which justify the restriction, and in particular, concerns about ability to identify caller line identification, there is no such concern in the foregoing cases as the originating caller can still be identified.

2. COSUGS ought never to have been included within the exception to the exemption in the Principal Regulations, and they ought to have been capable of provision without a specific licence way back in 2003.
3. There is a duty placed on OFCOM to actually liberalise which applies here because gateways don't create harmful interference or adversely affect technical quality of service or cause an inefficient use of the spectrum - see section 8(4) of the Wireless Telegraphy Act 2006 which requires it to make regulations to exempt the installation and use of relevant apparatus etc from the licensing regime where the conditions specified in sub-section (5) are met.
4. In light of the foregoing, and in particular the courts' findings that the Commercial Use Restriction is not justified on the basis of the need to avoid harmful interference or to ensure the efficient use of the spectrum, under domestic legislation OFCOM should in fact remove the restriction on the commercial use of both COSUGS and COMUGS. Then in so far as the Commercial Use Restriction to the extent that it applies to COMUGS is justified on the basis of public security concerns, the Government should give a direction under section 5 of the Communications Act 2003 to such end (on the basis that the restriction on the commercial use of COMUGS is in the interests of national security). We consider that that is the proper way to proceed.