

Name withheld 2

6th December 2015

Dear Cliff,

Whilst I hold Ofcom in high esteem generally, this is not my view as regards its conduct concerning GSM Gateways. You will know that Ofcom's own position in its advice to the then Minister in 2003 was that taking into account all the issues all Gateways should be liberalised - in line with Ofcom's own statutory duty. This was also reflected by the RA consultation in 2002, in which the majority of respondents took the same position. I believe this would have been the correct course of action. What amazes me now is that it has taken over 12 years for this announcement - which even then does not in my view deliver what I understand the High Court requires Ofcom to do, and has required now for some time.

I also recall that a new SI was actually introduced just *prior* to the conclusion of the original consultation; so contrary to what I read on its face about views being taken carefully into account this was not in fact what happened. A subsequent consultation which was required as I recall by a UK Court, was not even completed, and I also recall being told that Ofcom set a cookie on the document which was not at the time made clear. Why should I have any confidence this time - not least since I also recall reading a previous Ofcom document which stated that the whole regulatory mechanism of exceptions to exemptions was cumbersome? Maybe this will be "third time lucky?"

When Parliament reviewed the original SI, Regulation 4(1) was reported for "defective drafting." I wonder if they understood Regulation 4(2) when Ofcom itself was making such comments. It should have already been the case since 2003 that gateway services are lawful without a specific licence, as I understand the law. Ofcom, on at least one occasion, certainly did not, since it gave clarification one way to a European manufacturer and then several months later changed its mind.

Back in 2003, I remember that there were no definitions proffered of various types of "CE approved" equipment, and no "by way of business" restriction under EU law. Now the UK Courts have made the position clear then in fact under the Wireless Telegraphy Act (Section 8) then as I understand the position Ofcom has a duty to liberalise COMUGS and COSUGS and there is no need to have a specific licence requirement for either. It is a matter of law that they do not cause harmful interference or any of the other things Ofcom has variously alleged over the years. If Ofcom thought otherwise, then it had the opportunity to challenge the position in Court. I note it did not.

If wider concerns are then felt to exist regarding COMUGs then a section 5 direction must be served under the Communications Act 2003. This has not happened - ever - so far as I am aware, though the power to do so exists and was obviously put there for a purpose. Ofcom must also know that the definition of COSUG used in this consultation document is not in accord with that used in either the Floe Telecom or Recall cases. It is clear from the High Court findings that a COSUG *can* be provided without licence to one customer, such as the Police or the NHS amongst others, even though such service will be made use of by a number of individual users. Incidentally both the Police and the NHS use COSUG GSM gateways. You would surely not be suggesting that they were doing so illegally?

I do hope Cliff that we can expect considerably better from Ofcom this time, otherwise I would be amazed if this matter is left to lie. It is time that Ofcom did the decent thing, as I see it. There is much Ofcom has done and still does do which is good, but I do not see it's conduct as regards GSM gateways as of an adequate standard and by any measure certainly not one of its finest hours. Does Ofcom not also have a duty also to disclose significant risks in its accounts? I don't ever recall reading about gateways. Perhaps I am wrong? We all make mistakes. It is time however that Ofcom accepted its own errors in this matter and did the decent thing and apologised for them. This is my personal view and it would go a long way to helping the healing process. For any errors I may have made above I apologise, and I am willing to stand corrected. So must you. There has been a lack of clarity in this matter for too long...