

RESPONSE AND REPRESENTATION TO OFCOM CONSULTATION

NOTICE OF OFCOM'S PROPOSAL TO MAKE REGULATIONS AMENDING THE WIRELESS TELEGRAPHY (EXEMPTION) REGULATIONS 2003

DRAFT WORDING FOR RESPONSE AGREEING TO COSUG EXEMPTION AND DEALING WITH THE WORDING

Firstly, it should be noted that OFCOM is under a duty, by virtue of Section 8 of the Wireless Telegraphy Act 2006, even though OFCOM does not make reference to that duty in its consultation document. This duty has effectively been in existence one way or another since around 2003 when the European Union's 'New Approach' Directives took effect in the United Kingdom. OFCOM is therefore to be congratulated in its apparent, sudden and very belated decision to comply with European (and United Kingdom) law, after all this time.

Secondly, OFCOM does not explain why the wording of the critical section of the proposed order is as drafted. Set out on page 13 of the Consultation Document the phraseology used is:

"..... by way of business to more than one person within a single body."

This is far too restrictive in the context of the definitions determined in the various Court cases over the last twelve years or so, having regard to the alleged distinctions between COMUGs and COSUGs.

The first of these in the CAT was that "GSM Gateway (is) dedicated to the use of a single customer..." and this clearly differs materially from "more than one person within a single body". The High Court, in 2013, looked at calls from a single 'user' comprising many individuals in a given user or customer's employment.

It can be seen, therefore, that in defining COSUGs the Courts had in mind a single customer to whom the telecommunications service is provided by way of business, in other words to a single entity by the entity providing it.

If OFCOM narrows the definition, as previously determined by the Courts, it is inviting yet more litigation over the meaning of its new wording for which it apparently has no objective justification and the meaning of which is obscure at best.

Norlink Services
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