

**Telecommunications Authority**  
**Report on promotional material relating to**  
**Hong Kong Broadband Network Limited's Broadband Phone Service**

**27 September 2004**

**Executive summary**

On 23 August 2004, the Telecommunications Authority (“TA”) initiated inquiries into whether the promotional material relating to the Broadband Phone service provided by Hong Kong Broadband Network Limited (“HKBN”) has provided sufficient and accurate information to consumers to make informed choices in the market.

2. This report highlights issues relevant to ordinary consumers. The promotion of the Broadband Phone, like any new technology, has the potential to confuse consumers and sometimes mislead or deceive them. The information and analysis provided in this report should assist consumers to make better informed purchasing decisions. It also reiterates the obligations of all operators to comply with the law against misleading and deceptive conduct in the telecommunications sector as found in section 7M of the Telecommunications Ordinance (“the Ordinance”).

3. This inquiry was initiated by the TA as part of a broader pro-active inquiry into this important new product offering. Staff of the Office of the Telecommunications Authority (“OFTA”) began by identifying 7 aspects of the relevant promotional material where they believed possible section 7M issues may exist, namely, in relation to:

- i. HKBN’s claim: “The Broadband Phone is no different from a traditional phone”
- ii. The fact that the Broadband Phone will not work during a power outage
- iii. Emergency calls on the Broadband Phone

- iv. The claim that Internet services will not be affected when using the Broadband Phone
- v. HKBN's claim: "The best and reliable broadband phone service"
- vi. Installation issues
- vii. Compliance with HKBN's Fixed Telecommunications Network Services ("FTNS") licence

4. Based on the promotional material reviewed during this inquiry, the TA has concluded that HKBN has not breached section 7M of the Ordinance in any of the 7 areas discussed in this report. Nevertheless, in discussions with HKBN the TA has suggested areas for improvement that HKBN has agreed to address.

### **Overview**

5. HKBN began promoting its Broadband Phone Service in late July 2004. The service offers traditional telephone functionality via voice over Internet protocol ("VoIP") technology, which utilises a broadband Internet connection for making telephone calls. The Broadband Phone is one of the first such services being offered to Hong Kong consumers.

6. The Broadband Phone Service has two key components. First, it has an adapter that connects a standard telephone handset to the customer's pre-existing broadband Internet connection. Secondly, customers pay a monthly service fee to HKBN in the same way that they would pay for the rental of a traditional fixed-line service. A wide range of common value-added services is also available, including caller line display, call waiting, call forward and conference call.

7. Because of the relative newness of the Broadband Phone technology and its importance as a potential alternative to traditional fixed-line telephone services, the TA initiated its own inquiries into HKBN's Broadband Phone promotional material to determine whether any aspect of this documentation may be considered misleading or deceptive. During these inquiries, the TA received information and views from HKBN and from a number of other telecommunications operators.

8. This report highlights issues relevant to ordinary consumers. The promotion of the Broadband Phone, like any new technology, has the potential to confuse consumers and sometimes mislead or deceive them. The information and analysis provided in this report should assist consumers to make better informed purchasing decisions. It also reiterates the obligations of all operators to comply with the laws against misleading and deceptive conduct in the telecommunications sector.

9. In this latter respect, the TA notes the high level of co-operation that HKBN demonstrated during these inquiries, and its responsiveness to the TA's suggestions on ways to improve aspects of its promotional material that may be considered deficient even if not a breach of the law.

### **TA inquiries**

10. The focus of the TA's inquiries as summarised here was to determine if any aspect of the advertising material and related practices of HKBN when promoting the Broadband Phone has the potential to breach section 7M of the Ordinance, which states:

*“A licensee shall not engage in conduct which, in the opinion of the Authority, is misleading or deceptive in providing or acquiring telecommunications networks, systems, installations, customer equipment or services including (but not limited to) promoting, marketing or advertising the network, system, installation, customer equipment or service.”*

11. Based on the material reviewed by OFTA staff, including information provided by HKBN and others, 7 areas where possible section 7M issues may exist were identified. A summary of the TA's findings in each of these areas is set out below.

12. In accordance with the TA's *Guidelines on Misleading or Deceptive Conduct in Hong Kong Telecommunications Markets*, 21 May 2003 (“the Guidelines”) (available on the OFTA website at [www.ofta.gov.hk](http://www.ofta.gov.hk)), the TA analysed all the statements in the subject promotional material having regard to all relevant circumstances and asking whether a “reasonable person” would be misled or deceived by the statements in question (or by the omission of certain information).

13. In accordance with paragraph 2.11 of the Guidelines, the TA considered the relevant target audience in which to undertake the “reasonable person” test to be cost-conscious, Hong Kong consumers. This view was consistent with the content and tone of the marketing material used by HKBN to promote its Broadband Phone.

14. The promotional material reviewed by OFTA staff during this inquiry consisted of a number of newspaper advertisements, leaflets, flyers, registration forms and installation booklets. The analysis below refers to these materials in a general sense and highlights particular issues, without necessarily identifying the particular document concerned.

15. As it does with other service providers, OFTA will monitor HKBN’s Broadband Phone promotional material as it is updated and/or replaced by new documentation. The findings of the TA as described here relate only to the material made available up to the finalisation of this report.

***HKBN’s claim: “The Broadband Phone is no different from a traditional phone”***

16. Variations of the above statement appear in most of HKBN’s Broadband Phone promotional material. The prominence of this statement reflects the importance HKBN claims to place on persuading consumers to adopt its alternative product by promising that they will experience no difference between using it and the traditional fixed-line service it seeks to replace.

17. From the perspective of a reasonable person in the relevant target market, it is the TA’s view that the above statement and its related variations would not create inferences other than those intended by HKBN. While the underlying technology is different from traditional fixed-line services, the usability of the Broadband Phone – once installed – is the same.

18. In conducting their own tests, OFTA staff assessed both the usability and the service quality of the Broadband Phone. In these tests, an ordinary analogue telephone was connected to the Broadband Phone technology in accordance with the installation instructions provided and was then connected to an existing broadband service.

19. OFTA staff confirmed that the method of using the telephone, by lifting the

receiver and dialling the relevant outside telephone number, was no different from the method used to activate traditional fixed-line services. There was no limitation on which numbers the Broadband Phone could be used to call or to receive calls from, whether locally or internationally.

20. The quality of the call was also not appreciably different, for either outgoing and incoming calls. Value-added services could also be activated in the same way and the stability of the calls and value-added services was assessed as being no different from a usability point of view.

21. Based on these informal trials, the TA formed the view that an ordinary consumer who takes literally the claim by HKBN that its Broadband Phone is no different from an ordinary fixed-line phone – in terms of its usage, which is the interpretation the TA considers is the most likely – would not be left unconvinced of its truth or accuracy after using the phone. In other words, a cost-conscious, Hong Kong consumer would likely confirm the above claim if asked, and therefore would not be misled or deceived by relying upon it.

22. It was claimed by another operator that the Broadband Phone is different from a traditional fixed-line service inasmuch as it will not operate when there is a power outage and that calls made to emergency services would not be processed in the same way as calls from traditional fixed lines. These differences were given as evidence that HKBN's claimed similarity with traditional services cannot be substantiated. It was also stated that usage of the Broadband Phone could adversely affect other broadband services operating at the same time, which a traditional phone does not do. There was also concern that HKBN may not be in position to control the overall quality of the Broadband Phone service when the broadband connection is not supplied by it.

23. The TA has considered each of these issues separately below. While it is accepted that these are possible differences – which may require further elaboration in HKBN's marketing material – the TA does not consider that a member of the target audience would view the existence of these issues as being inconsistent with HKBN's general claim that its product is no different from its traditional alternative.

24. Accordingly, the TA finds that this general claim is not misleading or deceptive in breach of section 7M of the Ordinance.

***The Broadband Phone will not work during a power outage***

25. HKBN makes clear in its marketing material, its registration form and its installation pamphlet that the Broadband Phone will not work during a power outage. Having determined that this aspect of the Broadband Phone service is not inconsistent with the claim that the Broadband Phone is no different from a traditional phone (which in some cordless forms will also not work during a power outage), the TA is satisfied that consumers' attention will be drawn to this operational limitation and therefore does not consider this to be a significant issue under section 7M.

26. A sample statement that appeared in materials provided to OFTA on 8 September 2004 reads as follows:

“需注意的情況是，正如大部份室內無線電話及傳真機一樣，「寬頻電話」服務在停電的情況下是不能運作的。”

(In English translation: It should be noticed that, similar to most of the indoor cordless phones and fax machines, “Broadband Phone” service cannot be used when there is power outage.)

27. Having said that, the TA is concerned about the consistency with which HKBN notes this aspect of the Broadband Phone. While most of the marketing material reviewed during the present inquiry process does include an appropriate reference, some does not. Having raised this apparent inconsistency directly with HKBN, the TA understands that all future materials will make clear that a working power supply is necessary to operate the Broadband Phone.

28. To be clear, the TA is not concerned that HKBN may mislead consumers by not highlighting the effect of power outages on the operation of the Broadband Phone, but rather that consumers should be made aware of this fact for their safety and convenience.

29. It is further noted that during their inquiries, OFTA staff became aware that PCCW-HKT Limited (“PCCW-HKT”) had begun to highlight this and other aspects of the Broadband Phone Service in circular letters to its broadband service subscribers and on its Internet webpage. This initiative, which has itself attracted criticism from third parties for the stridency of its comments on various aspects of the Broadband Phone Service, has, it would seem, gone some way towards making a significant

portion of potential users of the Broadband Phone aware of all apparent limitations of this new service.

30. Somewhat predictably, HKBN has responded by offering all recipients of PCCW-HKT's circular letter a 6-month free trial of the Broadband Phone to assess for themselves whether or not PCCW-HKT's claims are justified. It has also published a list of "facts" rebutting PCCW-HKT's claims, citing, among other things, the 99.9% reliability of power supply in Hong Kong, the relative insignificance of the Broadband Phone's bandwidth demands when compared with other services and the popularity of VoIP services in other countries.

31. The TA considers this exchange of information concerning the Broadband Phone to be a feature of competition. However, claims made by the participants that go beyond the provision of accurate factual information will be investigated if necessary.

32. For the above reasons, the TA does not consider the Broadband Phone's reliance on a working power supply to be a material section 7M issue.

### ***Emergency calls on the Broadband Phone***

33. Calls to emergency services can be made using the Broadband Phone. In the event that callers are unable to state their address, their caller identification information (eg directory number) is automatically transmitted to emergency services staff enabling them to obtain address details directly from HKBN under an existing verification protocol that exists between HKBN as well as other operators and emergency service agencies. In this respect, there would appear to be little difference between the Broadband Phone and traditional fixed-line services, which do not universally provide address details automatically.

34. For completeness, it is noted that mobile telephones do not provide call address information. It is possible in some circumstances, however, to trace a call made from a particular geographic location, but this is not considered a reliable method.

35. From a section 7M perspective, the TA must assess whether or not a reasonable person in the relevant target audience would consider the fact that the Broadband Phone does not automatically provide address details to the emergency

services to be misleading or deceptive, or more precisely whether HKBN's failure to communicate this fact in its promotional material may be misleading or deceptive.

36. In the TA's view, the link between this issue and section 7M is a tenuous one. To begin with, the TA understands that the address verification procedure for the Broadband Phone is no different from that utilised by some other fixed-line services. Accordingly, it is questionable whether Broadband Phone should have any obligation under law to highlight its arrangements without other operators highlighting their similar arrangements.

37. Secondly, it is not apparent that a reasonable person in the target audience would need – or even care – to know of any differences between the Broadband Phone and another service in this context. It is probable that some consumers may not even know that their address information can be independently verified by emergency service staff. In most instances the caller him or herself will be able to provide the relevant address details.

38. Accordingly, the TA is not convinced that this aspect of the Broadband Phone Service – or HKBN's communications with consumers in relation to it – is an issue requiring analysis under section 7M at all.

39. One factor does need further discussion, however. It relates to the fact that users of the Broadband Phone can disconnect their phone at one location and reconnect it at another without informing HKBN. Their telephone number remains the same as does their obligation to pay the monthly service charge. But the fact that the phone has moved to another location means that when HKBN provides details of the original address to emergency services staff during a verification call, that address will not be the address of the caller at the time.

40. This is an issue that HKBN already addresses in its promotional and information materials concerning the Broadband Phone. OFTA staff have reviewed a number of different publications in which it is clearly stated to consumers that any changes to the address of the Broadband Phone should be communicated to HKBN. After discussion with OFTA staff on this issue, HKBN has added further explanation as to why this change of address notification is necessary.

41. An example of HKBN's notice to consumers regarding these issues is reproduced below:

“該服務及有關器材必須於已登記之香港服務安裝地址內使用。客戶若改變安裝地址而沒有通知「香港寬頻」，在處理緊急事故時「香港寬頻」將無法向香港警察或其他由電訊管理局指定處理緊急事故機關提供閣下撥出電話之正確位置。”

(In English translation: The [Broadband Phone] service and the equipment must be used at the installation address registered with HKBN. If the customer relocates the equipment without informing HKBN, in handling emergency events, HKBN will not be able to provide the HK Police Force or other authorities assigned by OFTA with the correct address of the phone.)

42. The TA is satisfied that to the extent that any section 7M issues arise in the present context, they are effectively addressed by statements made by HKBN in its promotional and information material as noted above. Insofar as the emergency services notification arrangements between the relevant authorities and HKBN is concerned, the TA does not consider these to be deficient in themselves and notes that HKBN is now making clear to its customers the relationship between it knowing the address of the Broadband Phone and the ability of emergency services to respond to emergency calls.

***Internet services will not be affected when using the Broadband Phone***

43. While the Broadband Phone utilises the same broadband Internet connection as the Internet service accessed by consumers from their personal computers, HKBN claims that use of the Broadband Phone will not adversely affect consumers' simultaneous use or enjoyment of their broadband Internet service. In support of its claim, HKBN has highlighted to OFTA staff the relatively small bandwidth required to make calls on the Broadband Phone and the minimum requirement of a 1.5 Megabits per second connection over which to run the phone. It also referred to its published list of authorised or validated broadband services.

44. Tests by OFTA staff confirm that any effect that a Broadband Phone may have on a concurrent broadband Internet application is likely to be negligible. These tests, which included the simultaneous use of the Broadband Phone, broadband television and the downloading of large files from the Internet, suggest that HKBN's claim may be justified, even if it is presented in definitive terms and some effects can

be detected, albeit not to an appreciable level. From the perspective of a reasonable person in the target audience, it is likely that the claim would be viewed as accurate.

45. It is emphasised, however, that OFTA's tests have not been exhaustive and it is not possible for us to test the Broadband Phone in every prospective user's home environment. Some other service providers have disputed HKBN's claim, but none has come forward to provide evidence to support their case.

46. In these circumstances, the TA has insufficient basis for concluding that HKBN's claim is likely to be misleading or deceptive amongst members of the target audience. Nevertheless, it remains open for anyone with evidence to the contrary to provide information to the TA so that this issue may be reviewed as necessary.

47. While there is no mention in HKBN's promotional material regarding the effects of using the Broadband Phone on broadband television services, this is another area where other operators have claimed there are problems with interference between the two services. Again, the TA is yet to receive evidence to support these claims. Only if these claims can be demonstrated to the required level, will the TA consider whether or not HKBN should highlight this information in its promotional material in order to avoid a breach of section 7M.

***HKBN's claim: "The best and reliable broadband phone service"***

48. OFTA staff requested HKBN to explain the basis for its statement that its Broadband Phone was "the best and reliable broadband phone service." HKBN explained that use of this phraseology was not intended to be taken literally by members of its target audience, but rather constituted "puffery", which is described in the Guidelines at paragraph 3.6 as "... wildly exaggerated or fanciful claims that no-one could possibly treat seriously, and that no-one can reasonably be misled by."

49. In analysing this issue, the TA noted that the Broadband Phone is not the only VoIP service available in Hong Kong. It is therefore possible that some consumers would understand the subject claim to be comparative in nature and possibly based on some measurement of quality or reliability. However, it is equally plausible that most consumers would not take this claim too seriously given its common usage in various forms not only in other areas of the telecommunications industry but throughout the retail sector in Hong Kong.

50. That said, the TA is aware that some VoIP services are transmitted on broadband services that are either owned by or subject to specific service management agreements with the VoIP provider. HKBN's Broadband Phone service has been described as a "free rider" or "unmanaged" service because HKBN does not have such agreements with every broadband service provider that may be used by prospective Broadband Phone customers. It has been put to the TA that HKBN's service may therefore be inferior – in terms of quality and reliability – compared with "managed" systems. However, it is difficult at this stage for the TA to confirm the significance or even the substance of such claims. The tests that OFTA staff have conducted, which have involved using the Broadband Phone on a number of different broadband services, have not indicated any apparent problems in this area.

51. The TA is aware that some operators offering a VoIP service may seek to differentiate their service by way of service guarantees. These guarantees are likely to arise where the VoIP service provider utilises its own broadband service or has formal management arrangements in place with other broadband service providers. From a section 7M perspective, any claimed service quality advantages based on these guarantees will need to be objectively justifiable to ensure that consumers are able to make informed decisions about which service best suits their needs and budget.

52. On balance, the TA tends to agree with HKBN's explanation that its claim to be the best and reliable broadband phone service constitutes mere puffery and is therefore unlikely to have the effect of misleading or deceiving anyone in the target audience in breach of section 7M. Nevertheless, questions have been raised about the literal accuracy of HKBN's statement. The TA therefore welcomes HKBN's undertaking not to use this claim in its future promotional material.

### ***Installation issues***

53. HKBN's promotional material refers to a number of installation issues relating to the Broadband Phone. Typically, these include statements (usually in Chinese) to the effect that the Broadband Phone is:

- i. compatible with ADSL, VDSL and optical fibre Metro Ethernet, and requires bandwidths over 1.5Megabits per second;
- ii. not recommended for use on Cable Modem service; and

iii. only for use with unlimited broadband Internet services.

54. Apart from the expectation that the compatibility claims in point i. should be capable of substantiation, the TA is generally not concerned about these statements from a section 7M perspective. However, there are a number of observations that the TA has shared with HKBN in relation to point ii. and its installation procedures generally. These observations are discussed below.

55. HKBN states that point ii. above is not a prohibition against the use of the Broadband Phone with the Cable Modem service. Rather, it is intended to put consumers on notice that the Broadband Phone may not work as well – or possibly at all – with the Cable Modem service. In itself, the TA has no concerns with this notice. However, it may not be obvious to the reasonable person in the target audience that “Cable Modem” in this context generally refers to the cable modem service of i-Cable, a division of Hong Kong Cable Television Limited (“HKCTV”).

56. HKBN has explained its reluctance to name HKCTV because that might imply some criticism of its network. It also has a general aversion to naming a competitor in its own promotional material. The TA accepts this position, but has asked HKBN to consider ways of making clearer to consumers this operational limitation of the Broadband Phone.

57. The TA notes that all HKBN sales staff are instructed to discuss this issue with prospective customers during the registration process. If the TA had concluded that there existed a section 7M problem in the relevant promotional material, this initiative would not cure the misleading nature of the original statements. However, in the present context instructing sales staff to deal with this issue on a case by case basis can have a positive, practical effect in terms of avoiding complaints.

58. HKBN elsewhere describes the Broadband Phone as having “Plug and Play” convenience. In this context it states that the Broadband Phone has “easy set up through simple DIY procedures.” Nevertheless, HKBN has told OFTA staff that installations are generally carried out by HKBN staff or contractors in the customer’s residence.

59. Tests conducted by OFTA staff suggest that some technical aptitude is certainly an advantage when setting up the Broadband Phone. These tests have also

revealed that where a customer has, for instance, a wireless broadband Internet connection, the installation procedures described by HKBN in its installation booklet must be adapted by the customer and extra cabling may be required if a customer uses the traditional BT telephone plug and socket system rather than the newer RJ system used by the Broadband Phone router.<sup>1</sup>

60. Given the sheer diversity of circumstances in which potential users of the Broadband Phone may seek to perform their installation, the TA appreciates the difficulties faced by HKBN in providing adequate guidance to consumers. However, the TA is also mindful that consumers should not be given a false impression as to the ease with which the Broadband Phone can be set up without the need for technical assistance.

61. “Easy set up” is a relative term which it is difficult for the TA to contradict in relation to the Broadband Phone. In comparison with other home appliances, the Broadband Phone may be considered either more difficult or easier to set up. However, having considered the context of the statement in question and its likely interpretation by members of the target audience, the TA is concerned that this statement could be misleading.

62. Given the border-line nature of HKBN’s DIY claim, the TA does not consider there to be sufficient basis at this stage for the matter to be formally pursued under section 7M. Nevertheless, the TA cautions HKBN on its future use of this claim – and specifically its reference to “plug and play” – and would be concerned if complaints are received from consumers on this aspect of the Broadband Phone promotional material. It is hoped that HKBN’s own concern about such complaints will be sufficient at this stage to address the issue.

63. It is further noted that the installation assistance that HKBN provides to its Broadband Phone customers is currently free of charge and assistance from HKBN’s Hotline staff is also available.

64. With regard to PCCW-HKT’s published statements on this issue, the TA is concerned that its alarmist language may over state the difficulties involved in setting up the Broadband Phone Service on a DIY basis. Claims that the set-up process involves “**complex network settings**, [and that] errors made during this process may

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<sup>1</sup> For further information about the replacement of the BT system with the RJ system, please refer to the OFTA website and the materials published there on 13 September 2004 (in Chinese only).

lead to **disconnection of your broadband service**” (emphasis in the original), may be considered unjustifiably negative. Nevertheless, for the same reasons that the TA does not consider there to be basis to instigate a section 7M case against HKBN for its claims, neither does it appear necessary for it to do so with respect to the above claims by PCCW-HKT at this stage.

65. It follows that the TA recognises the need to monitor all information published by all operators, not just HKBN, concerning the Broadband Phone and other VoIP services.

### ***Compliance with HKBN’s FTNS licence***

66. The TA is aware that other telecommunications operators are concerned that HKBN’s Broadband Phone may not comply with the requirements of HKBN’s FTNS licence. These concerns are based largely on the technical differences between the Broadband Phone and traditional fixed-line services, and include but are not limited to the non-operation of the Broadband Phone during a power outage and the effectiveness of calls made to emergency services as discussed above.

67. From a section 7M perspective, the TA must assess whether the reasonable person in the relevant target audience of cost-conscious, Hong Kong consumers would be misled or deceived if it were to be found that the Broadband Phone does not comply with HKBN’s FTNS licence.

68. In reality, members of the relevant target audience are unlikely to be interested in whether or not the Broadband Phone complies with FTNS licence conditions. They will simply assume that the service is “allowed” and that when the statement is made that the Broadband Phone is just like a traditional phone, this will in fact be the case at least in terms of usability as previously discussed. To the extent that specific issues could raise section 7M concerns, these have already been noted and are distinct from the issue of compliance with FTNS licence conditions *per se*.

69. The TA is of the view that Broadband Phone’s compliance or otherwise with HKBN’s FTNS licence conditions is a regulatory matter of concern to HKBN’s competitors, but not to its prospective customers. It follows that this is not a subject that raises section 7M concerns requiring assessment beyond the previous discussion of specific issues.

70. It is noted in passing that the TA, after carrying out a concurrent assessment of the Broadband Phone's compliance with relevant FTNS licence conditions, does not find any evidence showing that HKBN's Broadband Phone Service fails to comply with relevant FTNS licence conditions.

### **Conclusion**

71. Based on the promotional material reviewed during this inquiry, the TA has concluded that HKBN has not breached section 7M of the Ordinance in any of the 7 areas discussed in this report. Nevertheless, in discussions with HKBN the TA has suggested areas for improvement that HKBN has agreed to address.

**Office of the Telecommunications Authority**

27 September 2004