

# LICENSING FRAMEWORK FOR UNIFIED CARRIER LICENCE

## Statement of the Telecommunications Authority

9 May 2008

### INTRODUCTION

In the Statement on “Deregulation for Fixed-Mobile Convergence” issued on 27 April 2007 (“FMC Statement”), the Telecommunications Authority (“TA”) recommended that the Secretary for Commerce and Economic Development (“SCED”) should create the unified carrier licence (“UCL”) by subsidiary legislation under section 7(2) of the Telecommunications Ordinance (“Ordinance”).

2. On 21 December 2007, on the TA’s recommendation, the SCED issued a consultation paper entitled “Consultation Paper on the Creation of a Unified Carrier Licence under the Telecommunications Ordinance” setting out the proposals on the general conditions (“GCs”), period of validity and fees for the UCL (“SCED Consultation Paper”)<sup>1</sup>. In parallel, the TA issued a separate consultation paper entitled “Licensing Framework for Unified Carrier Licence” covering the special conditions (“SCs”) proposed to be attached to the UCL, the general approach for granting a UCL under different scenarios and the arrangement for migration of existing carrier licences to UCLs (“TA Consultation Paper”)<sup>2</sup>.

3. At the close of the consultation exercises on 4 March 2008, a total of 11 and 16 submissions were received in response to the SCED Consultation Paper and the TA Consultation Paper respectively from the industry and the general public. The submissions were published on the websites of the Commerce and Economic Development Bureau (“CEDB”) and the Office of the Telecommunications Authority (“OFTA”)<sup>3</sup>.

---

<sup>1</sup> See the SCED Consultation Paper at <http://www.cedb.gov.hk/ctb/eng/paper/doc/ucl.pdf>

<sup>2</sup> See the TA Consultation Paper at <http://www.ofta.gov.hk/en/report-paper-guide/paper/consultation/20071221.pdf>

<sup>3</sup> See submissions to the SCED Consultation Paper at

4. In response to the TA Consultation Paper, submissions were made by the following parties:

- (1) Chu Kwong Yiu
- (2) Cheng Ngan Wa
- (3) AT&T Global Network Services Hong Kong Ltd (“AT&T”)
- (4) Hong Kong Telecommunications Users Group (“HKTUG”)
- (5) PACNET Group (“PACNET”)
- (6) New World Telecommunications Limited (“NWT”)
- (7) Wharf T&T Limited (“WTT”)
- (8) Hong Kong Institution of Engineers, Electronics Division and Information Technology Division (“HKIE”)
- (9) Hong Kong Broadband Network Limited (“HKBN”)
- (10) PCCW-HKT Telephone Limited (“PCCW”)
- (11) Hong Kong Cable Television Limited (“HKCTV”)
- (12) China Mobile Peoples Telephone Company Limited (“Peoples”)
- (13) Hong Kong CSL Limited and New World PCS Limited (“CSLNWM”)
- (14) SmarTone Mobile Communications Limited (“SmarTone”)
- (15) Consumer Council (“CC”)
- (16) Hutchison Telecommunications (Hong Kong) Limited (“HTL”)<sup>4</sup>

5. This Statement sets out the TA’s considerations and conclusions on the issues raised in the TA Consultation Paper. For avoidance of doubt, while the SCED has decided to create the UCL and proceeded with the making of subsidiary legislation necessary under the Ordinance<sup>5</sup>, the detailed arrangement for granting of UCL and the SCs which will be attached by the TA under a UCL as detailed in this Statement will be subject to the enactment of the concerned subsidiary legislation.

---

[http://www.cedb.gov.hk/ctb/eng/paper/ucl\\_submission.htm](http://www.cedb.gov.hk/ctb/eng/paper/ucl_submission.htm) and submissions to the TA Consultation Paper at <http://www.ofta.gov.hk/en/report-paper-guide/paper/consultation/20080308/table.html>

<sup>4</sup> The submission from HTL is a late submission received on 29 April 2008.

<sup>5</sup> See the paper on “Outcome of the Public Consultations on the Proposed Creation of a Unified Carrier Licence under the Telecommunications Ordinance” prepared for the meeting of the Legislative Council Panel on Information Technology and Broadcasting on 13 May 2008 (<http://www.legco.gov.hk/yr07-08/english/panels/itb/papers/itb0513cb1-1456-6-e.pdf>)

## **LICENSING FRAMEWORK FOR THE UNIFIED CARRIER LICENCE**

### **SCOPE OF SERVICE**

6. The UCL will be a new type of carrier licence prescribed under the amended Telecommunications (Carrier Licences) Regulation (Cap 106V) (the “Regulation”). It will be a unified licensing vehicle replacing the existing fixed telecommunications network services (“FTNS”) licence / fixed carrier licence (“FCL”)<sup>6</sup>, mobile carrier licence (“MCL”), fixed carrier (restricted) licence (“FCRL”) and mobile carrier (restricted) licence (“MCRL”)<sup>7 8</sup>. Provision of any combination of fixed, mobile and converged services may be authorized under the UCL. The TA has no intention to pre-set any limit on the number of unified carrier licensees, or any restriction on the types of services which may be authorized under the UCL, subject to separate authorization by the TA on the granting of rights such as spectrum to operate the services proposed to be provided by the applicant under the UCL (see paragraphs 7 – 12 for details).

### **RIGHTS UNDER UCL**

7. In the TA Consultation Paper, the TA proposed that a unified carrier licensee might be granted with specific rights commensurate with the scope of service of its licence. A summary of the proposal is given in the following paragraphs.

---

<sup>6</sup> Unless otherwise stated, FCL hereafter referred to in this paper includes FTNS licence.

<sup>7</sup> Before 1 April 2001, the operation of mobile carrier services was regulated under the Public Radiocommunication Service Licence (PRSL). After the carrier licence regime came into force on 1 April 2001, the MCL has been used to license the operation of mobile carrier services, while the PRSL already issued has continued to be in force until expiry. There is now only one PRSL issued for mobile services other than land mobile services remaining valid and it will expire in 2011. Unless otherwise stated, MCRL hereafter referred to in this paper includes this PRSL providing mobile services other than land mobile services.

<sup>8</sup> For avoidance of doubt, the existing Space Station Carrier Licence (“SSCL”), which allows the licensee to establish, possess, maintain, use and operate a space station or earth station for telemetry, tracking, control and monitoring of a space object and for space radiocommunications, will not be covered under the unified carrier licensing regime.

**(a) Use of radio spectrum**

The granting of licence and the assignment of spectrum right by the TA to a licensee are separate matters. While a unified carrier licensee will not be automatically granted spectrum right which shall be acquired separately, it should be able to acquire rights to use radio spectrum for deployment of wireless technologies by applying to the TA for assignment of spectrum where there is no competing commercial demand<sup>9</sup> or bidding through an open and competitive process for acquisition of spectrum where there is competing commercial demand<sup>10</sup>. Where a UCL is granted by conversion or replacement of an existing carrier licence, the spectrum right which is still valid for the remaining period of the original licence can be transferred to the new UCL, but it shall not operate to extend the remaining period of spectrum right assigned under the original licence. The TA will take guidance from the Spectrum Policy Framework in deciding whether to assign the same or varied radio frequencies when the spectrum right expires, and the licensee should not have any legitimate expectation of the spectrum right being extended or renewed automatically upon expiry of assignment even if the UCL has not expired. In addition, the transfer of spectrum right from an existing carrier licence to UCL shall in principle be accompanied by the transfer of associated obligations imposed on the licensee at the time when it acquired the spectrum right. A unified carrier licensee

---

<sup>9</sup> Under the guidance of the Radio Spectrum Policy Framework promulgated by the Government in April 2007 (“Spectrum Policy Framework”), the TA will publish and regularly update information on unassigned spectrum for which supply exceeds demand, and can readily be made available for assignment. Such information has been published in the Hong Kong Table of Frequency Allocations (<http://www.ofta.gov.hk/en/freq-spec/freq-allocations.pdf>).

<sup>10</sup> In accordance with the guiding principle under the Spectrum Policy Framework, the TA will use a market-based approach for management of spectrum wherever the TA considers that there are likely to be competing demands from providers of non-Government services, unless there are overriding public policy reasons to do otherwise. The market-based approach implies that a competitive bidding process will be used for assignment of spectrum where there are competing demands for non-Government applications. A spectrum release plan about the potential supply of spectrum from the TA through an open, competitive bidding or tendering process in the following three years has been published and recently updated by the TA on 30 April 2008 (see latest spectrum release plan at <http://www.ofta.gov.hk/en/freq-spec/plan2008.pdf>).

may also acquire new spectrum rights from time to time during the validity period of its UCL provided that it holds a valid licence issued by the TA for using the spectrum at the time.

**(b) Use of numbers**

A unified carrier licensee is entitled to apply for allocation of telecommunications numbers and codes in the Numbering Plan for Telecommunications Services in Hong Kong<sup>11</sup> (“Hong Kong Numbering Plan”) for provision of telecommunications service in accordance with the established procedure followed by existing carrier licensees, and it shall comply with the relevant guidelines and codes of practice (“CoPs”) issued by the TA. In the TA Consultation Paper, it is proposed that the existing arrangement of number allocation applied to the fixed and mobile services will continue to apply under the UCL until the TA decides otherwise. When a unified carrier licensee applies to the TA for allocating numbers for a particular telecommunications service, the TA will assess the nature of the service and determine whether fixed or mobile numbers should be allocated. Where a UCL is issued due to conversion of existing carrier licences, the unified carrier licensee will be entitled to continue using such numbers and codes allocated under the original carrier licences.

**(c) Road opening**

A unified carrier licensee may be granted with right of road opening if it is authorized to provide fixed services under its licence and it demonstrates that it is rolling out a wireline-based infrastructure. At present, other than the four fixed network operators (“FNOs”) licensed in 1995<sup>12</sup> and Hong Kong Cable Television Limited

---

<sup>11</sup> The Numbering Plan for Telecommunications Services in Hong Kong is published by the TA on OFTA’s website. It specifies the number allocations for different types of telecommunications services to telecommunications licensees for provision of telecommunications services in Hong Kong.

<sup>12</sup> The four FNOs are PCCW-HKT Telephone Limited (“PCCW”), Hutchison Global Communications Limited (“HGC”), Wharf T&T Limited (“WTT”) and New World Telecommunications Limited (“NWT”)

(“HKCTV”), which are granted with road opening right in general, local wireline-based FNOs licensed after the full liberalisation of the local fixed telecommunications market in 2003 are required to seek the TA’s approval on a case-by-case basis on road opening works. All licensees authorized to carry out road opening works are required to follow the coordination mechanism set out in the “Guidelines for Road Opening for Telecommunications / Broadcasting Operators” (“Road Opening Guidelines”). In the TA Consultation Paper, it is proposed that under the UCL, a harmonised road opening authorization will apply and a unified carrier licensee will be granted with road opening right on the same basis as wireline-based FNOs licensed after 2003.

**(d) Building access**

Similar to the case of road opening, a unified carrier licensee providing fixed services may be granted with the rights of building access subject to the technology it uses for an installation in a building, whether the installation is for serving the residents and occupants of that building and whether there are difficulties to obtain building access agreements from the property management companies or building developers. At present, the four FNOs licensed in 1995 and HKCTV have been granted with rights of building access in general, while FNOs licensed after 2003 are granted with such rights on a case-by-case basis. In the TA Consultation Paper, it is proposed that under the UCL, a harmonised building access authorization will apply and a unified carrier licensee will be granted with building access authorization under section 14(1) of the Ordinance on the same basis as wireline-based FNOs licensed after 2003.

*Views and comments*

8. While the majority of respondents raised no objection to the above proposed arrangement of granting the respective rights under a UCL, HKCTV and WTT considered that their blanket authorization of road opening and

building access should be maintained. The latter considered that the case-by-case approval process is administratively cumbersome for operators and OFTA and is not conducive to speedy rollout of network and services. It also requested the TA to clarify what the case-by-case approval process would actually mean, in particular for building access. Further, it urged the TA to issue practical guidelines in issuing section 14 authorization.

#### *Response and consideration*

9. As a matter of principle, similar rights and obligations should be applied for carriers providing the same kind of service. The TA is of the view that the granting of rights in respect of road opening and building access should be harmonised among all operators providing fixed wireline-based services. Furthermore, the TA considered that the concerned rights should only be reserved for those qualified operators demonstrating a genuine need and commitment to carry out works of road opening and installation of telecommunications facilities inside buildings for the provision of services to residents and occupants of those buildings. The TA is also mindful of the need for a simple and efficient approval procedure so that there will not be any unnecessary administration hurdle that may cause undue delay to the rollout of networks and services by operators.

10. For road opening, FNOs licensed after 2003 are required to submit a master plan for the TA's approval and any updates to the master plan need to be approved by the TA. Irrespective of whether they are licensed before or after 2003, all FNOs shall co-ordinate and co-operate with one another in road openings in accordance with the Road Opening Guidelines, which specified, inter alia, the application procedure for road opening permit. Therefore, although in principle the approval is granted by the TA on a case-by-case basis, the actual procedure is based on a batch process and this should not be too burdensome to operators. From the actual experience of coordinating road opening works in the past few years, the TA finds that the requests of the FNOs for road opening submitted on a case-by-case basis are in general acceptable and seldom rejected. In the light of the concern expressed by some FNOs that the case-by-case approval may be inefficient and create extra administrative

burden, the TA will discuss with FNOs with a view to streamlining the case-by-base approval procedure. Should a more streamlined procedure be adopted, this will apply equally to all FNOs and unified carrier licensees providing fixed wireline-based services, including

- the four FNOs licensed in 1995 and HKCTV when their existing licences are replaced by UCLs in due course; and
- FNOs licensed after 2003 which may continue to operate under their existing FCLs before their replacement by UCLs.

The TA considers that this approach strikes the proper balance between the need for proper control of road opening requests and the need for minimising administrative burden for all parties concerned.

11. For building access, FNOs licensed after 2003 are presently responsible for negotiation with building management to gain access to buildings for installation of telecommunications facilities. On a case by case basis, FNOs may request OFTA's assistance for mediation with the building management in an attempt to resolve any dispute in relation to access to a particular building. In case the dispute cannot be resolved by mediation, the TA may grant an authorization pursuant to section 14(1) of the Telecommunications Ordinance, if the case warrants<sup>13</sup>. Again, from past experience, there is no evidence suggesting that section 14(1) has been abused and the majority of cases were justified. In the light of this situation and having considered the concern raised by FNOs, the TA is prepared to grant a blanket authorization to a unified carrier licensee which meets the following criteria:-

- it is authorized to provide fixed services and
- it demonstrates a plan to roll out self-built customer access network to buildings based on deployment of technology which requires the laying of facilities in common parts of a building for serving only the residents and occupants of that building.

In the case of the four FNOs licensed in 1995 and HKCTV, they will be re-issued with the blanket authorization when their licences are replaced by

---

<sup>13</sup> It should be noted that even though blanket authorization are granted to PCCW, WTT, NWT and HGC, some of these FNOs have from time to time requested the TA to grant authorization under section 14(1) to them for access to individual buildings where access problems are encountered.

UCLs if they continue to meet the above criteria. FNOs licensed after 2003 are also welcome to apply to the TA for such authorization provided they meet the same criteria. This will ensure a level playing field for all operators providing the same type of service. Nevertheless, to avoid any possible abuse or unforeseen problem and if the circumstances warrant, the TA will reserve the power to

- issue guidelines or CoPs governing how the FNOs may exercise their rights under the authorization and
- withdraw such blanket authorization by prior notice in writing.

12. Having considered the submissions, **the TA concludes that the proposed approach of granting specific rights in relation to spectrum, numbering, road opening and building access under the UCL as detailed in paragraph 7 would be adopted, except that he will further streamline the procedure for approval of road opening. He will also issue blanket authorization for building access to a unified carrier licensee providing fixed services in accordance with the criteria set out in paragraph 11 above. FNOs licensed after 2003 may also apply to the TA for the same rights in accordance with the new arrangements as described in paragraphs 10 and 11 above.**

## **OBLIGATIONS UNDER UCL**

### **General Conditions (“GC”) of UCL**

13. As prescribed by SCED in the Regulation, the GCs of UCL will be the same as those of the existing FCL, FCRL, MCL and MCRL. Such an arrangement will ensure that the same basic obligations will apply to a carrier irrespective of whether it is licensed under the unified carrier licensing regime or the existing fixed / mobile carrier licensing regime.

### **Special Conditions (“SC”) of UCL**

14. Pursuant to section 7A of the Ordinance, the TA may attach special conditions (SCs), consistent with the Ordinance and not inconsistent with the prescribed GCs, to a licence that the TA is empowered to issue including SCs on a carrier licence. In the TA Consultation Paper, a common set of SCs which would be universally applied to all unified carrier licensees is proposed. These SCs are basically modelled on the corresponding SCs in the existing FCLs and MCLs. The TA considers that such a proposal will help to harmonise the basic obligations for different operators providing different types of services under the UCL.

### ***Compliance with Codes of Practice (SC 1)***

15. Under this proposed SC 1, the TA may issue guidelines or CoPs to give practical guidance to the licensee on any particular aspect of any licence condition (under SC 1.1) as well as the areas specified under SC 1.2 in respect of

- (a) the provision of satisfactory service;
- (b) the protection of customer information;
- (c) the protection and promotion of the interests of consumers of telecommunications goods and services; and
- (d) calling line identification and other calling line identification related services.

Views and comments were invited for the following question.

*Question (1): Do you agree that the TA may issue practical guidance in the form of guidelines and CoPs for compliance by unified carriers under the proposed SC 1 ?*

### ***Views and comments***

16. The views and comments on the proposed SC 1 are quite divided. Five respondents including the HKTUG, the CC, two mobile network operators (“MNO”s) (Peoples, CSLNWM) and one FNO (HKBN) basically agreed with the proposal provided that the TA would carry out proper consultation before issue of the relevant guidelines or CoPs as set out in SC 1.3. In particular, the CC considered that it is within the TA’s jurisdiction under the Ordinance to issue such guidelines or CoPs. One MNO (SmarTone) had reservation on the proposed SC 1.1, 1.2(d) and 1.4 and considered that the TA should provide

more details about this SC. One FNO (NWT) maintained its previous view that the TA attempted to expand its powers and jurisdiction beyond the Ordinance into unspecified consumer issues. Another FNO (WTT) submitted that this licence condition was unnecessary and the TA should rely on market forces and consumer education to address customer-related issues rather than adding further and complex rules. A third FNO (PCCW) considered the SC redundant and/or too broad and submitted that section 6D of the Ordinance already conferred sufficient powers on the TA to issue guidelines to address the issues being contemplated.

### *Response and consideration*

17. The TA does not agree that the proposed licence condition is ultra vires. The Ordinance provides for the licensing and control of telecommunications, telecommunications services and telecommunications apparatus and equipment and the TA is empowered to do all things necessary to perform his functions under the Ordinance. Under section 7A of the Ordinance, the TA may attach special conditions, consistent with the Ordinance and not inconsistent with the prescribed general conditions, to a licence that he is empowered to issue. The proposed SC 1.2 (a) to (c) are related to consumer issues and similar SCs already appear in the MCL and the Service-based Operator (“SBO”) licence, while the proposed SC 1.2(d) and 1.4 in respect of CLI and related services are modelled on an existing SC in the SBO licence. The issue of guidelines or CoPs under this SC is related to the compliance with obligations under the UCL and this should not be taken as imposing additional obligations on the licensees. The issue of guidelines or CoPs under the proposed SC 1.1 is necessary for the TA to provide practical guidance in respect of any licence condition for clarification of the concerned obligation for compliance by the licensees and that is different from the issue of guidelines under section 6D which is related to provisions under the Ordinance.

18. In general, market forces, consumer education and other voluntary guidelines and measures to be adopted by the industry would be preferred to address the customer-related issues. The TA will continue to adopt a light-handed approach in regulating telecommunications services and he would encourage operators to tackle the customer-related issues by voluntary measures in the first place. If there is a need to issue any guidelines and CoPs under this SC, proper consultation will be carried out in accordance with SC

1.3. To conclude, **the TA maintains that SC 1 should be included in UCL without change.**

***Requirements for Interconnection: Any to Any Connectivity (SC 3)***

19. The proposed SC 3 is modelled on a similar SC in existing FCLs and MCLs and is intended to:-

- (a) ensure that any-to-any (“A2A”) connectivity shall be achieved; and
- (b) impose, inter alia, an obligation on the licensee to effect interconnection promptly, efficiently and based on reasonable terms and conditions.

Views and comments were invited on the following question.

*Question (2): Do you agree with the proposed SC 3 and the express statement of the A2A principle in the licence condition?*

*Views and comments*

20. The majority of respondents (NWT, WTT, HKCTV, Peoples, CSLNWM, SmarTone and the HKTUG) supported the TA’s proposal and in particular the insertion of the express statement of the A2A principle into the licence condition. Some of them submitted that the A2A principle should cover non-voice traffic including short message service (SMS), video and access to information contents of any networks by any user seamlessly. On the other hand, one FNO (HKBN) submitted that the proposed licence condition did not give clear and detailed qualifications on the terms and conditions of interconnection, and it considered that the TA should clearly state the types of technology/services to be covered by the A2A principle. Another FNO (PCCW) alleged that the proposed licence condition is inconsistent with the statements that were made in the TA Consultation Paper “Deregulation for Fixed-Mobile Convergence” issued on 14 July 2006 (“Second FMC Consultation”). It submitted that no market failure was likely if the A2A regime was removed and considered that a per se *ex ante* A2A requirement would be difficult to reconcile with a market-driven approach towards regulations according to which the regulator should look at each case on its merits under the competition provisions of the Ordinance. It considered the SC not necessary as the concerned issues could be dealt with by existing statutory

safeguard in sections 7K, 7L, 7N, 36A, 36B, of the Ordinance.

*Response and consideration*

21. As pointed out in the TA Consultation Paper, the A2A connectivity is an important public-interest objective. In the FMC Statement, the importance of the A2A principle underlying the interconnection regime has been fully explained. A2A connectivity is an important public policy objective that is based upon the long-standing expectation of the public that any telecommunications user can communicate with any other user. The requirement of A2A is an internationally recognised principle and adopted by other administrations. The absence of a universal ability by a telecommunications user to call any other user would severely undermine Hong Kong as a regional telecommunications hub and more importantly as an international finance and commerce centre. The TA will not hesitate to take necessary action to uphold A2A connectivity since it is clearly in the public interest to minimise any adverse impact that a failure to interconnect between two networks may otherwise have on the consumers and the business community. This principle has a customer-oriented focus and is technology neutral<sup>14</sup>. Irrespective of the types of services and networks which they provide and operate and irrespective of the underlying technologies used, the carriers should be obliged to interconnect with one another<sup>15</sup> so that customers can enjoy seamless and transparent access to any other customers or any telecommunications services, regardless of whether the customers or services to be accessed are located on the same or a different network. The A2A principle should not be limited to any specific services, networks or technologies in order that the future development of ubiquitous access to innovative services would not be otherwise restricted. According to the proposed SC3, the A2A requirement embraces both the “customer to customer” and the “customer to service” aspects. The licensee has a duty to ensure A2A for access of any customer to any other customers on the same or other networks. As for the “customer to service” aspect, the A2A requirement is not automatically imposed but will be subject to direction by the TA having regard

---

<sup>14</sup> See paragraph 5 in Statement No. 6 (Revised) on “Interconnection Configurations and Basic Underlying Principles” (18 March 2002) and paragraph 13 in Statement No. 4 (Revised) on “Carrier-to-Carrier Relationship” (18 March 2002) issued by the TA.

<sup>15</sup> It should be noted that such interconnection may be achieved by various configurations, including direct or indirect modes of interconnections between two networks. The TA has never mandated any particular configuration to be adopted by carriers as long as the A2A connectivity is achieved.

to all relevant factors and considerations including the legitimate commercial interest of all the concerned parties related to the interconnection and the public interest.

22. To maintain the A2A connectivity, the TA already stated in the Statement on “Deregulation for Fixed Mobile Convergence” issued on 27 April 2007 that he would continue to adopt a light handed approach to regulatory oversight, while leaving the market to resolve as many issues as it can without regulatory intervention. The A2A principle is expressly stated in the UCL in order to put it beyond doubt that there is a need for the TA to safeguard this immensely important public interest objective. In case of any alleged breach of SC 3, the TA will take into account all relevant considerations including, without limitation, the negotiation that has taken place between the parties, in deciding whether any regulatory intervention is appropriate. Should intervention to achieve A2A be necessary, the TA may issue direction pursuant to section 36B of the Ordinance to a licensee

- (a) requiring the licensee to take such actions as the TA considers necessary in order for the licensee to comply with the proposed SC 3; and/or
- (b) in relation to interconnection on terms and conditions that may be determined pursuant to Section 36A by the TA.

23. Having carefully considered the views and comments of the respondents and having noted the support given by the majority of them, **the TA decides that he will adopt the SC 3 as proposed in the Consultation Paper.**

#### ***Numbering Plan and Number Portability (SC 4)***

24. The proposed SC 4 specifies the requirements to be complied with by a unified carrier licensee in respect of numbering plan and number portability. In particular, the licensee is obliged under the licence condition to facilitate at its own expense Operator Number Portability (“ONP”) and Mobile Number Portability (“MNP”) which will be directed by the TA. In addition, if Fixed-Mobile Number Portability (“FMNP”) is introduced in the future, the TA may direct a unified carrier licensee to also facilitate FMNP at its own expense. The obligation on number portability (“NP”) will be accompanied by the right to have access to the NP databases. Furthermore, the licensee may be directed

to facilitate number porting by such technical arrangement as may be specified by the TA, including the arrangement using a centralised database. Views and comments were invited on the following question.

*Question (3): Do you have any comments on the SC 4 which specifies the requirements in relation to number portability and numbering plan for compliance by a unified carrier?*

*Views and comments*

25. The MNOs (Peoples, CSLNWM, SmarTone) generally supported that all unified carrier licensees should facilitate ONP and MNP at their own expense with accompanying right of access to the ONP and MNP databases. One FNO (WTT) considered that there would be no incentive for operators to facilitate number portability if the existing market-based “users pay” regime is replaced by an obligation-based system. Another FNO (PCCW) suggested that until the issue concerning FMNP is resolved, separate number ranges should still be maintained for fixed line and mobile services and separate databases should continue to be kept for ONP and MNP; correspondingly, the existing rights and obligations pertaining to number porting and existing arrangements for access to the database should be preserved. If a centralized number porting database is required to be set up to handle FMNP, the charging basis should be commercially agreed amongst the operators making use of the database.

26. Regarding the implementation of FMNP, two MNOs (Peoples and CSLNWM), the HKIE and two individuals expressed support. The HKIE considered that sharing of usage between mobile and fixed numbers can promote the efficient use of numbers but it should be considered as the last resort because after FMNP is implemented, one would no longer be able to make use of the number level to differentiate the various services. Two FNOs (NWT and WTT) however submitted that there was no urgency to include the requirement of FMNP under the UCL.

*Response and consideration*

27. The different rights and obligations associated with ONP and MNP among existing operators are purely the result of players entering the market at

different times. For those FNOs licensed after 2000, they are already obliged to facilitate ONP and MNP at their own expense by way of direction by the TA when the licences were granted to them. It is therefore reasonable and logical to align the concerned rights and obligations of the unified carrier licensee with those of the FNOs licensed after 2000. While the TA would encourage the unified carrier licensees and other carrier licensees to negotiate and implement solutions at commercially agreed terms to fulfil the obligation, the TA would consider updating / issuing regulatory guidance on the charging principles if there is such a need. Furthermore, as stated in paragraph 7(b) and affirmed in paragraph 12 above, the existing arrangement of number allocation for fixed and mobile services will be maintained under the UCL until the TA decides otherwise. The TA is open to have further discussion with the operators about the long term technical approach for the implementation of ONP and MNP, including whether separate or unified databases should be kept for ONP and MNP, whether a distributed or centralised configuration should be adopted, and how the industry should prepare for the implementation of FMNP in future.

28. As FMNP will have significant impact on networks and users that may be hard to retract once implemented, the TA has made it clear in the FMC Statement that he will conduct market research to ascertain the consumer demand for FMNP and assess the cost / benefits before deciding whether to implement FMNP. If the TA decides to implement FMNP, he will set up a working group to discuss the technical and operational issues associated with FMNP, including the set up of centralized number portability databases. Although the TA has not yet decided whether to implement FMNP or not, it is reasonable to include on a forward-looking basis the concerned provision as a licence condition in the UCL. If the TA decides to implement FMNP in future, a unified carrier licensee should be obliged to facilitate FMNP at its own expense same as for ONP and MNP and a direction will be issued to the licensee to such effect. Having considered the submissions, **the TA concludes that the SC will be included under the UCL.**

#### ***Tariff Publication (SC 7)***

29. Under the proposed SC 7, the licensee shall publish and charge no more than the tariffs for its service. Publication of tariffs are effected by means of all or some of the specified methods including:

- (1) to publish tariffs in the Hong Kong Government Gazette;

- (2) to provide a copy of tariffs to the TA;
- (3) to place a copy of tariffs in a publicly accessible part of the principal place of business and other business premises of the licensee as specified by the TA;
- (4) to supply a copy of tariffs to any person who may request it at a charge no greater than that which is necessary to cover the reasonable costs of supplying the copy; and
- (5) to publish on the licensee's website.

Subject to the comments received in the consultation, the TA indicated that he might consider waiving some of the said requirements, such as the gazetting of tariffs. Views and comments were invited on the following question.

*Question (4): Do you have any concern if the requirement to publish tariffs in the Government Gazette is waived or abolished for unified carriers and that they should only be required to publish tariffs using all of the Methods (2) – (5) in paragraph 31 (in the TA Consultation Paper) ?*

#### *Views and comments*

30. Ten respondents including the HKTUG and nine operators (AT&T, NWT, WTT, HKBN, PCCW, HKCTV, Peoples, CSLNWM and SmarTone) which gave feedback to the above question unanimously supported removal of the gazetting requirement from the proposed licence condition. Among them, the HKTUG and five operators (AT&T, HKBN, PCCW, CSLNWM and SmarTone) supported that methods (2) – (5) as set out in the proposed SC 7.2 should be sufficient to serve tariff publication purpose. Two of them (AT&T and HKCTV) further recommended that the TA should remove the gazetting requirement from existing carrier licenses as well, while one FNO (WTT) suggested that the requirement for tariff publication should be abolished in both UCL and existing FCLs given that the tariff information was already seamlessly available to customers in the competitive market.

#### *Response and consideration*

31. The TA cannot agree with WTT that the requirement of tariff publication should be abolished all together for either the future unified carrier licensees or existing carrier licensees. For the promotion and protection of customer interests, there is a need to maintain transparency for the pricing

information and the terms and conditions of services provided by licensees. Nonetheless, given the majority support by the respondents, **the TA decides that he will remove the gazettement requirement for tariff publication under the UCL. For effective dissemination of tariff information, methods (2) – (5) will be maintained. The TA also agrees that it is reasonable in principle to align the tariff publication requirement between the unified carrier licensees and existing carrier licensees.** The TA will separately discuss with the existing fixed carrier licensees on how the tariff publication requirement under their individual licences may be revised<sup>16</sup>.

32. Following the existing practice for FNOs, the TA will continue to keep and publish a record of tariffs filed by the unified carrier licensees and existing carrier licensees which are subject to similar tariff publication requirement. To facilitate the public to have user-friendly access to the tariff information published by OFTA on its website, the TA will in consultation with the industry promulgate a specified format and the associated procedure for filing tariffs.

#### ***Ex post Tariff Regulation and Notification of Discounts (SC 8)***

33. This proposed SC is modelled on a corresponding SC in the present ex post FCL under which the licensee is required to notify the TA of discounts to its published tariffs offered for any of the services operated under the licence, other than those services listed in a schedule attached to the licence. Views and comments were invited on the following question.

*Question (5): Do you agree that there is a need to maintain a notification requirement for tariff discounts offered by a unified carrier?*

#### *Views and comments*

34. The views on this question are quite diverse. One FNO (NWT) and

---

<sup>16</sup> After the specified format and the associated procedure for filing tariffs as mentioned in paragraph 32 are put in place, an existing holder of FCL may then return their licences to the TA for amendment so that they may be relieved from the obligation to publish the tariffs in the gazette. For an existing holder of FTNS licence, the tariff publication requirement is specified as a general condition of their licences. In order for the latter to be relieved from the gazettement requirement, it needs to either apply for a FCL from the TA before commencement of the UCL regime or to have its FTNS licence converted to or replaced by UCL after the commencement.

the HKTUG agreed that there was a need to maintain this notification requirement for tariff discounts offered by a unified carrier. Three FNOs (WTT, PCCW and HKCTV) considered that there was no need to maintain this notification requirement or it should only be applicable to the holder of UCL having a dominant position. On the other hand, three MNOs (Peoples, CSLNWM and SmarTone) generally considered that mobile services should be exempted from notification of discounts under SC 8.1.

*Response and consideration*

35. The TA considers that the requirement for notification of discount is an important component of the ex post tariff regulation regime as this enables him to monitor price competition in the market and take appropriate action in a timely manner. It is however necessary to clarify that not all services provided by a licensee would be subject to the notification requirement under the proposed SC. In the Statement dated 13 January 2005<sup>17</sup>, the TA indicated that an exemption approach would be adopted where those services provided under the licence that would be exempt from ex post regulation, particularly the publication and notification requirements, would be specified in a schedule to the licence. The schedule, which is a “negative list”, will initially comprise those services provided under the existing licence that have been found non-dominant by the TA in the past, reflecting the absence of competition concerns. For new licences to be issued in the future, the list will be evaluated on a case by case basis, and the TA has the discretion to amend the schedule from time to time. In exercising the discretion, the TA will give due regard to the public interest within the meaning of the Ordinance. New services introduced by a licensee will not be listed in the schedule unless and until the TA is satisfied otherwise. To be consistent with such a framework, the TA will follow the same approach for services offered by a unified carrier licensee.

36. To conclude, **the TA will maintain SC 8 in the UCL. Consistent with the ex post tariff regulation regime, the services of a unified carrier licensee would be exempted from the notification requirement in accordance with the approach described in the TA’s Statement dated 13 January 2005.**

---

<sup>17</sup> See paragraph 29 of the Statement on “Implementation of ex post Regulation of the Tariffs of PCCW-HKT Telephone Limited under a New Fixed Carrier Licence” issued by the TA on 13 January 2005.

### ***Billing and Metering Accuracy (SC 9)***

37. The TA proposed that billing and metering accuracy, being an important requirement to protect consumer interest, should apply to UCL and a SC modelled on an existing licence condition in the FCL and MCL should be included. Views and comments were invited on the following question.

*Question (6): Do you agree that there is a need to maintain an obligation to ensure billing and metering accuracy by a unified carrier?*

#### *Views and comments*

38. Five respondents including the HKTUG, three MNOs (Peoples, SmarTone and CSLNWM) and one FNO (PCCW) supported the proposed licence condition in general. Among them, one MNO (CSLNWM) considered that there was no need to mandate compliance with the Billing and Metering Integrity Scheme (BMIS) as long as voluntary compliance is working properly. One FNO (WTT) suggested that this licence condition could be dismissed given the abundance of choice of service providers to the consumers, and it also queried the basis for extending this requirement to the billing systems of licensees.

#### *Response and consideration*

39. It is obviously in the interest of the operators to provide accurate billing and metering of service charges so as to instil confidence in their customers when using their services. This is demonstrated by the fact that two fixed carriers and all five mobile carriers have voluntarily participated in the BMIS. Nevertheless, billing and metering accuracy is an important requirement for the provision of a satisfactory level of service, and this requirement should be specified as an obligation for a unified carrier licensee, similar to the existing practice for other carrier licensees. The TA encourages operators to continue to ensure billing and metering accuracy using the self-regulatory approach. Re-introduction of a mandatory billing and metering accuracy scheme pursuant to this licence condition would be considered only when there is a demonstrated failure of the self-regulatory approach or when there is significant public interest to do so. Having considered the comments

received, **the TA will maintain this SC unchanged under UCL.**

*Directory Information and Directory Information Services (SC 11)*

40. Under the proposed SC 11, which was modelled on a similar licence condition in the FCL and MCL, it was proposed that the unified carrier licensee should be obliged to provide printed directory and directory enquiry service (collectively referred to as “directory service” hereafter) for its customers where and as directed by the Authority. Based on the feedback from the industry in the past years, the TA proposed to carry out a comprehensive review on directory service to identify the regulatory changes that might be warranted in the light of the latest market situation. Pending such a review, the TA would maintain the current arrangement under the UCL where directory service should be provided by operators providing fixed services free-of-charge to their customers. Views and comments were invited on the following questions.

*Question (7): Do you have any comments on the proposed SC 11 on directory services ?*

*Question (8): Are there any pertinent issues other than those which are already identified to be addressed in a future review of directory services ?*

*Views and comments*

41. The respondent’s views can be basically divided into two camps. One camp which comprises of three MNOs (Peoples, CSLNWM and SmarTone) and the HKTUG agreed with the TA’s proposal. The other camp comprising of three FNOs (NWT, HKBN and PCCW) considered that the discriminatory treatment between FNOs and MNOs on the requirement to provide directory service should be removed. Another FNO (WTT) submitted that the current obligation-based system should be replaced by the “users pay” system and this should also apply to all existing fixed carrier licensees.

*Response and consideration*

42. Provision of directory service is an important element of the public telephone service. The regulatory requirement on printed directory and directory enquiry service has in the past covered the information related to

customers of fixed telephone service only. The public demand for and justification to regulate directory service in respect of mobile customers have not been ascertained. As explained in the TA Consultation Paper, directory service is a complex subject with a dimension of public expectation and universal service obligation<sup>18</sup>. A more thorough review by way of public consultation to gather the views of the industry, the business community and consumers is needed before making any fundamental change to the existing regime. The review will address those issues highlighted in paragraph 41 of the TA Consultation Paper, in addition to any other critical issues that may be identified by the respondents (e.g. need of printed directory, charge for directory enquiry services). The TA intends to carry out such a review and consultation later in the year. Pending the result of the review, **the TA will maintain the status quo under the UCL i.e. fixed services under the UCL would be subject to the requirement for provision of directory service same as the existing arrangement under the fixed carrier licence.**

### *Emergency Call Service (SC 12)*

43. The proposed SC 12 was modelled on an existing licence condition in the FCL and MCL and it sought to impose a mandatory obligation on a unified carrier licensee to provide access to emergency call service free-of-charge to the public if it provides telephony service using numbers in the Hong Kong Numbering Plan. Hitherto the Hong Kong Police Force (“HKPF”) has closely engaged with the industry on how to implement the emergency call service. Following such a practice, the TA proposed that the detailed implementation issues should be left to the licensees and the HKPF when the former set up the emergency call service and connections with the HKPF emergency centre. Views and comments were invited on the following question.

*Question (9): Do you agree that SC 12 should be maintained for all licensees of unified carriers? What are your views on the HKPF’s proposals in paragraph 43?*

---

<sup>18</sup> Under Section 2 of the Ordinance, “operator provided directory enquiries” is part of “basic service” to be provided by a licensee having the USO under Section 35B. In the recent conclusion of a review on the universal service arrangement, the TA has concluded in the TA Statement of 8 June 2007 that the TA will not pursue for the time being the removal of directory enquiry (“DQ”) service from the scope of “basic service” under the USO. Further studies, including survey on the community expectation and usage of DQ service if necessary, are required on the continuation of free DQ service to all customers under SC 10 and GC 25 and as part of the “basic service”.

### *Views and comments*

44. None of the submissions disagreed with the proposed licence condition. In addition, most of the respondents agreed that any implementation of the HKPF's proposals should be subject to further discussion between HKPF and operators. One MNO (SmarTone) expressed reservation about the application of SC 12.4 (on maintaining and providing location information of customers) to mobile service and cautioned that privacy issues related to the provision of customer information might need to be resolved. Two other MNOs (CSLNWM and Peoples) considered that the customer address might not be useful due to the mobility nature of mobile service, and that it was not practical to ensure customers' updating of their location information.

### *Response and consideration*

45. The TA reiterates his view that the detailed implementation of emergency call service should be left to the discussion and on-going review between the operators and the relevant Government agencies. Where necessary the TA would facilitate such discussion and review. As regards the proposed SC 12.4 on maintaining and providing location information of customers, he would like to point out that the requirement is meant to cater for services where the location of customer using the services is potentially nomadic. The concerned licence condition has been discussed extensively in the previous consultation exercises in relation to the regulation of IP Telephony and the creation of the Services-Based Operator ("SBO") licence. At present, guidelines for providing updated location of IP telephony subscribers making emergency calls have been promulgated and followed by the SBO licensees. For public safety requirements, the TA considers that if a unified carrier licensee provides nomadic services, it should also have the same obligation to follow the same guidelines. This will ensure speedy and effective response by the concerned Government agencies upon receiving an emergency call. There are currently no relevant guidelines for providing updated location for customers of mobile services making emergency calls, and any need to issue such guidelines for mobile services pursuant to this licence condition will be subject to further consultation with the relevant Government agencies and the concerned licensees. To conclude, the TA decides that **SC 12 in the present form is appropriate and will be incorporated under the UCL.**

***Performance Commitments – Withdrawal and Return of Frequencies (SC 21) and Rollout of Network (SC 31)***

46. The TA proposed to include two standard licence conditions under UCL to ensure that the licensee would make efficient use of spectrum that it acquired. Under the proposed SC 21, the TA might withdraw any frequency spectrum previously assigned to the unified licensee if he was of the view that the licensee was not making efficient use of that frequency. The proposed SC 31 would specify the network rollout requirements which the licensee might be required to comply with for building wireless infrastructure using the spectrum. Views and comments were invited on the following question.

*Question (10): Do you have any further comments on the proposed SC 21 and 31 requiring the efficient use of frequency and compliance with network rollout plan by the unified carrier licensee?*

*Views and comments*

47. One FNO (WTT) doubted whether the TA should be qualified to define efficient use of spectrum and whether the licensees should be given more discretion as to their network rollout and use of spectrum. Another FNO (PCCW) considered that any possible withdrawal of spectrum rights under the proposed licence conditions would require a clear and predefined set of criteria and the approach should be compatible with future policy directions, while the assumption of rollout requirements would need to be tested. One MNO (SmarTone) considered that the TA should clarify the circumstances under which the TA might exercise his power under the proposed SC 21. One FNO (HKCTV) and one MNO (CSLNWM) presumed this licence condition to be inapplicable to existing carrier licensees and requested clarification.

*Response and consideration*

48. Under section 32G of the Ordinance, the TA has the statutory duty to promote the efficient allocation and use of the radio spectrum as a public resource of Hong Kong. In addition, the TA is empowered under sections 32H(3) and (4) to vary or withdraw assigned spectrum by giving reasonable

notice to the assignee. According to the Spectrum Policy Framework<sup>19</sup> promulgated by the Government in April 2007, the policy inclination is that the said statutory power will be exercised only in exceptional circumstances before the expiry of a spectrum assignment under the Ordinance, including where the public interest or international obligations of the Government so require, there is a serious breach of spectrum assignment conditions or serious interference between legitimate spectrum users has to be resolved or minimized. In addition, the TA has issued a Statement on 31 January 2008 stating the minimum notice periods that he would apply to withdrawal of spectrum assignments. The proposed SC 21 merely sought to reflect the approach that the TA would take under the guidance of the Spectrum Policy Framework. As for the proposed SC 31, the TA would like to clarify that it would apply only to network rollout requirements committed by a carrier licensee at the time when it acquired the spectrum right. As discussed in paragraphs 7(a) and 12 of this Statement, for existing carrier licensees who choose to convert their licences before expiry to UCLs, the TA has decided as a matter of principle that the transfer of spectrum right would be accompanied by the transfer of the associated obligations imposed on the licensee at the time when it acquired the spectrum right. SC 31 merely seeks to reflect such requirements.

49. Having considered the submissions and noting that there is no basic objection by the respondents, **the TA decides to include SC 21 and SC 31 under the UCL.**

***Universal Service Contribution (“USC”) / Universal Service Obligation (“USO”) (SC 22)***

50. Shortly after the conclusion of the FMC review, the TA updated the universal service arrangement in the Statement “Review of the Regulatory Framework for Universal Service Arrangements” issued on 8 June 2007 (“USO Statement”). In that Statement, the TA set out the changes in relation to the scope and funding of USO as well as the calculation and administration of USC. The proposed SC 22 reflected the obligation of unified carrier licensees in accordance with the arrangements as set out in the USO Statement. A variant of SC 22 applicable to a unified carrier licensee which would be appointed by the TA under Section 35B of the Ordinance as a universal service provider (“USP”) was also given in the TA Consultation Paper. Views and comments

---

<sup>19</sup> The document may be downloaded at <http://www.cedb.gov.hk/ctb/eng/legco/pdf/spectrum.pdf>.

were invited on the following question.

*Question (11): Do you have any comments on the latest form of the proposed SC 22 on USC?*

*Views and comments*

51. Other than two FNOs (WTT and HKBN), all other respondents either agreed with or had no objection to the proposed SC 22. Among the latter, one MNO (Peoples) considered that the fee structure of USC is closely related to review of the local access charge (“LAC”) and urged the TA to complete the review of the regulatory arrangement under the FMC context. There was no comment from the respondents on the proposed SC 22 for a USP.

*Response and consideration*

52. In the USO Statement, the TA has pointed out that as communications is essential to social and economic activities for all walks of life, it is important to ensure that affordable basic telephone service will continue to be available to all people in all areas. There is a need to maintain a universal service arrangement for fixed telephone service so that remote and hard-to-reach areas would not be underserved due to economic reason. The TA will however carry out regular reviews of the universal service arrangement so as to cope with the ever changing telecommunications market and any change in public expectation. Regarding the existing level of LAC determined by the TA, it has included an amount of overcompensation for PCCW which is also the only USP so far appointed by the TA. This overcompensation has been used to reduce the cost of meeting the USO of PCCW. In the FMC Statement, it has been concluded that the existing LAC arrangement will be maintained, but there is a scope of de-regulating the level of LAC in due course when sufficient competition restraints on LAC are seen. Since the existing level of LAC is set by a determination, the issue requires separate proceedings. In the mean time, the TA will continue to monitor the market including the effect of FMIC deregulation on the competitive landscape for LAC.

53. Having considered the submissions and noting that the majority respondents expressed support or no objection to the SC 22, **the TA will maintain this SC on USC unchanged under the UCL. The variant of SC 22**

**on USO will also be adopted and applied to the UCL of a USP.**

*Insurance (SC 24)*

54. The proposed SC was modelled on an existing SC in the FCLs issued after 2000 and sought to impose a requirement for the unified carrier licensee to maintain a valid insurance policy during the licence period. Views and comments were invited on the following question.

*Question (12): Do you agree that the proposed SC 24 on the maintenance of a valid insurance policy is a reasonable requirement for a unified carrier?*

*Views and comments*

55. There was no objection to the proposed licence condition, except three FNOs (NWT, WTT and PCCW) and one MNO (CSLNWM) who considered that insurance was merely a commercial issue and it was not appropriate to be included as a licence obligation. Among them, one FNO (NWT) urged the TA not to impose a mandatory amount of insurance even if the licence condition was maintained.

*Response and consideration*

56. The proposed SC 24 has been applied to all new FNOs licensed after 2000 and has been complied with by the concerned operators without problem. Although the TA accepts that insurance is a commercial issue, he also considers that the licence obligation is a reasonable requirement commensurate with the right of a unified carrier licensee which is permitted to install, maintain and operate telecommunications facilities (wired or wireless) on lands and in buildings for which the risk of third party liabilities should be properly provided for. **The TA maintains that this SC should be applied for all unified carriers.**

*Use of Public Facilities for Provision of Services (SC 25)*

57. The proposed SC 25 requires the licensee to comply with any guideline or CoP which may be issued by the TA for providing practical guidance to the licensees in respect of the use of public facilities in providing

service under the licence. Views and comments were invited on the following question.

*Question (13): Do you have any comment on the proposed SC 31 which shall be complied with by a unified carrier making use of public facilities to provide services under its licence?*

*Views and comments*

58. There is no disagreement in the submissions on the proposed licence condition. One MNO (CSLNWM) submitted that the TA should carry out appropriate industry consultation before issuing any guidelines or CoP. Furthermore, it also asked the Government to provide for a “level playing field” between the FNOs and MNOs in relation to the provision of public wireless local area network services covering public streets and unleased Government land.

*Response and consideration*

59. The TA notes that there is no objection to the proposed SC and therefore **decides that it will be included under UCL**. The TA will carry out appropriate consultation with the industry for any new or updated guidelines or CoP to be issued by the TA under this licence condition for use of public facilities for provision of service by the operators. Regarding the concern expressed by one MNO (CSLNWM) in relation to the provision of public wireless local area network services, the TA would like to make reference to paragraph 33 in the Statement “Use of Public Payphone Kiosks on Public Streets and Unleased Government Lands for the provision of Public Wi-Fi Service” issued on 15 February 2008, which stipulates clearly that “if MNOs are interested to provide public Wi-Fi service, they may apply to the TA for amendment of their Mobile Carrier Licences (MCLs) incorporating the necessary licensing provisions so that they may offer public Wi-Fi service as well”.

***Provision of Information to Customers (SC 30)***

60. The proposed SC was modelled on an existing licence condition in the SBO Licence and Class Licence for Offer of Telecommunications Services

under section 8(1)(aa) of the Telecommunications Ordinance (“section 8(1)(aa) Class Licence”), and it requires the licensee to provide or make available a minimum set of information (including the name of licensee, licence number, instructions on how to use the service and tariffs) to customers in offering services to them. Views and comments were invited on the following question.

*Question (14): Do you agree that the proposed SC 30 on the provision of information to customers is a reasonable requirement for a unified carrier licensee?*

*Views and comments*

61. The views of the respondents were diverse. The HKTUG supported the proposed licence condition and considered it a reasonable requirement. Two MNOs (People and SmarTone) and one FNO (HKBN) basically agreed to the SC, and one of them (SmarTone) considered that the proposed SC 30 should only apply when the customer entered into contract with the licensee and there was no need to provide the licensee number to the customer as long as the name of the licensee was provided. On the other hand, one FNO (WTT) objected to the licence condition for application to carriers but supported its application on SBO licensees as the latter could exit the market easily. Another FNO (PCCW) considered the SC unnecessary given that sufficient consumer safeguards were already provided under customer charter, tariff publication requirement, service contracts and evolving dispute resolution system. An MNO (CSLNWM) also questioned the need of the SC.

*Response and consideration*

62. The proposed licence condition has been included in the existing SBO Licence and the section 8(1)(aa) Class Licence and is being complied with by the concerned licensees without problem. This licence condition is intended to enhance customer protection by requiring the operators to provide essential information to customers when they subscribe to the services provided by the operators. The TA considers that the requirement is reasonable and the level of protection for customers of unified carrier licensees should be on par with that for customers of SBO licensees and section 8(1)(aa) class licensees. As the information specified under the licence condition may be provided or made available to customers in an appropriate manner to be decided by the operators,

this requirement should not be onerous. Therefore, **the TA maintains that this SC is appropriate and will be incorporated under the UCL.**

### *Disposal of Assets (SC 32)*

63. The SC sought to harmonise the obligation under two slightly different licence conditions in FCLs and MCLs. Where a unified carrier licensee wished to dispose of more than 15% (the triggering threshold) of the net asset value for the relevant asset under the licence, it would be required to seek prior consent from the TA if any one of the following conditions is satisfied: (1) it has a dominant position in a telecommunications market; (2) it is a USP; or (3) it has acquired spectrum rights to provide mobile or wireless carrier services subject to the payment of spectrum utilization fee (“SUF”). Views and comments were invited on the following question.

*Question (15): Do you have any comments on the applicability criteria and triggering threshold for the prior consent under the proposed SC 24 on disposal of assets ?*

### *Views and comments*

64. Two MNOs (CSLNWM and SmarTone) supported or showed no objection to the licence condition. One FNO (PCCW) agreed that it would be appropriate to standardize the existing triggering threshold for the FCL and MCL but doubted the purpose and need of such a licence condition in a market-driven and highly competitive market.

### *Response and consideration*

65. The TA considers that this licence condition is necessary to ensure that any disposal of assets by a unified carrier licensee who satisfies with any of the conditions listed in paragraph 63 above would not affect the continued fulfilment of its licence obligations and commitments during the term of its licence. Similar licence condition has been complied with by existing FNOs and MNOs for years without problem. Based on these considerations, **the TA decides that the SC will be included in the UCL.**

### *Access to Building (SC 33)*

66. The proposed SC was modelled on an existing licence condition in wireline-based FNOs licensed after 2003 and it sought to impose a licence requirement in the UCL not to prevent fair, non-discriminatory and orderly access to buildings and to comply with relevant guidelines or CoPs that might be issued by the TA. Views and comments were invited on the following question.

*Question (16): Do you agree that building access requirements should be specified under the UCL similar to the licence conditions of some existing FC licensees?*

*Views and comments*

67. The HKTUG, one FNO (PCCW) and two MNOs (Peoples and CSLNWM) supported the inclusion of the SC under UCL. Among them one MNO (CSLNWM) urged the TA to reconsider the granting of authorization for land and building access under section 14(1) of the Ordinance to ensure that all carriers, including those licensed under UCL, be treated equally in the FMC environment. One FNO (NWT) requested the TA to clarify the “technology” justifying the grant of building access right. One FNO (WTT) objected to the proposal that licensees had to comply with guidelines or CoP issued by the TA in relation to the proposed SC. Two FNOs (HKBN and HKCTV) considered that building access right should not be granted on case-by-case basis as it would incur administrative burden and affect the efficiency of network deployment.

*Response and consideration*

68. In the FMC Statement, the TA concluded that the building access rights to be granted under the UCL would follow the same existing principles depending on the nature of the particular installation. In other words, the rights of building access would be granted to a carrier providing fixed service subject to matters including the technology it would use (whether it was a wired or wireless technology) for an installation in a building, whether the installation would be for serving the residents and occupants of that building and whether there were difficulties in obtaining building access agreements from the property management companies or building developers. The TA did

not see the need for carriers providing mobile services to be entitled to building access right and the current legislation would prevail unless and until legislative amendment to section 14(1) was made. The TA maintains the same view that he has expressed in the FMC Statement.

69. As discussed in paragraph 11 of this Statement, having considered the concern raised by FNOs, the TA is prepared to grant blanket authorization on building access to a unified carrier licensee which meets the criteria as specified in that paragraph.

70. For carriers which may be granted with building access right, the TA has explained in paragraph 11 of this Statement why they should be required to comply with any guidelines or CoP that may be issued by the TA and the circumstances under which such guidelines or CoP will be issued. To conclude, **the TA considers that the requirements under this SC are reasonable and appropriate for a unified carrier licensee granted with building access right and the SC will be included under UCL.**

#### *Payment of Spectrum Utilization Fee (Original SC 34, New SC 29)*

71. This proposed SC was modelled on a similar licence condition in MCLs and it required a unified carrier to pay SUF, where applicable and as required under the Ordinance, for spectrum assigned to it. Views and comments were invited on the following question.

*Question (17): Do you have any comments on a standard obligation under the UCL to pay SUF as required under the Ordinance ?*

#### *Views and comments*

72. Except for two FNOs (NWT and PCCW) which considered that the proposed licence condition unnecessary as it duplicated the obligation under Section 32I of the Ordinance, there was no objection from other respondents.

#### *Response and consideration*

73. This SC is based on a standard obligation imposed on MNOs which are required to pay SUF for use of spectrum to provide service under their

existing licences. The TA considers it reasonable to include the same requirement under UCL for a unified carrier licensee to pay the required SUF as required by law. **The TA will therefore include the licence condition under UCL.**

*Use of Frequencies in IBCCDS (Original SC 35, New SC 34)*

74. This proposed SC was modelled on an existing licence condition in FCLs issued after 2003 and it required the licensee to use only such frequency channels as might be assigned by the TA for service operated over In-building Coaxial Cable Distribution System (“IBCCDS”). Views and comments were invited on the following question.

*Question (18): Do you agree that a standard obligation should be added under the UCL to ensure the efficient use of frequencies in IBCCDS?*

*Views and comments*

75. One FNO (PCCW) and one MNO (Peoples) supported the proposed licence condition, and other respondents expressed no objection.

*Response and consideration*

76. In the light of the general support received, **the TA will include this SC as a standard obligation under the UCL** to ensure that frequency channels in IBCCDS can be shared for use among telecommunications and broadcasting operators without interference to one another.

*Service Contracts and Dispute Resolution (SC 36)*

77. Under the proposed SC, licensees shall comply with the CoPs issued by the TA in respect of the requirements to apply in the contracting of telecommunications services to customers, and such requirements included the format and terms and conditions of the service contracts, and the submission of consumer disputes for handling under an independent dispute resolution scheme which might be approved by the TA. Although the proposed SC was intended to provide a more formal framework for the improved handling of contractual disputes, the TA Consultation Paper made it clear that the industry

would be encouraged to continue tackling these issues voluntarily and there would be no need for the TA to issue any CoPs under this SC if a self-regulatory regime driven and supported by the industry was running efficiently and effectively. Views and comments were invited on the following questions.

*Question (19): Do you agree that the TA should introduce a licence condition in the UCL to enable the issue of codes of practice in respect of customer contracts and dispute resolution issues? If yes, what is the appropriate scope of the licence condition?*

*Question (20): Do you consider that the licence condition should be applicable to all types of carrier licences in general or only to the UCL?*

#### *Views and comments*

78. Among the submissions received, the HKTUG and the CC supported the proposed licence condition. The HKTUG considered that it should be applicable to all types of carrier licence. HKBN agreed to the proposed SC 36 provided that the TA would carry out consultation in case of issuing any CoPs. HKCTV considered that there were already established channels inside and outside Hong Kong's judicial system for resolving disputes between a telecommunications service provider and the end-user. Peoples considered that any dispute resolution outside the judicial system should be on a voluntary basis. Another MNO (CSLNWM) and three FNOs (NWT, WTT and PCCW) objected to the proposed SC. One FNO (NWT) considered that the proposed SC would turn the existing voluntary CoPs into mandatory ones and non-compliance with the latter would result in possible breaches of licence condition. Another FNO (WTT) considered that the TA has already established various guidelines and CoPs, and has already been heavily involved in monitoring the market together with the CC, so there should be no need for more scrutiny from the TA. If this licence condition was introduced, it submitted that the condition should apply to UCL only. Yet another FNO (PCCW) considered that there would be no need for this SC since section 6D of the Ordinance already permits the TA to issue guidelines in relation to any aspect of the Ordinance and the TA has expressed a preference for industry self-regulation and voluntary measures to tackle contractual issues. It submitted that should the TA decide to impose such a requirement then it

should be applicable to all types of licences for fair play.

*Response and consideration*

79. The rationale of a more formal framework for handling consumer complaints and contractual disputes under this proposed SC has been explained in paragraphs 54-56 of the TA Consultation Paper. Consistent with the light-handed approach in regulating the telecommunications sector, the TA encourages the industry to tackle consumer disputes under a voluntary, self-regulatory approach as far as possible. In fact, to assist the industry to appreciate the value of a long term customer complaint settlement scheme (CCSS), OFTA has been discussing with various operators for the launch of a pilot programme for CCSS. The first-hand experiences drawn from the pilot programme will be shared with the industry through an industry workshop. OFTA also plans to kick off discussions with the industry over the development of a voluntary code of practice on contracts and contract terms.

80. All the abovementioned effort demonstrates that the TA has every intention to assist the industry to develop an efficient and effective self-regulatory regime that can improve the handling of customer complaints and contractual issues. The proposed SC 36 merely seeks to provide a formal, and binding framework should industry self-regulation fail to materialise. Any CoPs that are to be issued by the TA pursuant to SC 36 will go through the consultation process following the requirement set out in the proposed licence condition itself.

81. The introduction of SC 36 to the telecommunications licensing regime represents a significant step forward in terms of the regulatory authority actively engaging the industry players to work on improving the handling of customer complaints and contractual issues. Whilst some operators have expressed the view that there are already channels inside and outside the judicial system to handle customer complaints on telecommunications matters, the fact remains that the complaint figures remain consistently high, and there is expectation from the general public that more should be done to improve the situation. The industry will be applauded for their effort if they commit themselves to establishing a self-regulatory regime that offers fairer contract terms and a better dispute resolution channel to their customers.

82. Having considered the submissions made on SC 36, **the TA has decided to include the licence condition under UCL**. However the TA would reiterate that the preference will always be for the industry to develop a self-regulatory regime so as to obviate with the need for the TA to enforce the licence condition.

### *Other Special Conditions*

83. Other than the common set of SCs, the TA has proposed that other SCs will be included in a UCL due to :

- specific services provided by an applicant which call for specific obligations;
- specific commitments of an applicant which constitute the relevant considerations of the TA in granting a new UCL to the applicant; or
- obligations in an existing carrier licence which the TA considers it would be in public interest to maintain under the UCL. The UCL may be issued for replacement of the existing carrier licence which expires, or for conversion of the existing carrier licence before expiry to UCL.

Views and comments were invited on the following question.

*Question (21): Do you have comments on any other SCs that should be applied for unified carriers?*

### *Views and comments*

84. One FNO (PCCW) and one MNO (CSLNWM) suggested that all holders of UCL should be subject to the same standard set of SCs. The FNO further submitted that if a requirement was already largely covered by one of the GCs, the Ordinance, statements of the TA or a CoP, it should not be necessary for the same requirement to be included as a SC within the UCL. Another FNO (WTT) objected to the proposed SC 5 (Accounting Practices), SC 10 (Provision of Service), SC 13.2 and 13.3 (Records and Plans of the Network), SC 15 (Changes to the Network) and considered that under SC 29 (Publication of Accounting Rates and Settlement Rates), the identity of the concerned operator should not be disclosed. Another MNO (SmarTone) wished to clarify that SC 29 would not be applied to competitive services.

### *Response and consideration*

85. The TA agrees that the obligations of UCL carriers should be harmonised as far as possible by adopting a common set of SCs. However, to ensure that our licensing framework is effective, relevant and proportionate, there is also genuine need to include other SCs in a UCL due to the specific circumstances as given in paragraph 83. The TA does not see any overlap of the proposed SCs with the Ordinance or the proposed GCs under UCL. Moreover, the TA would like to point out that any statement issued by the TA serves merely to provide regulatory guidance on how he would exercise his powers under the Ordinance. Such statements cannot substitute the conditions that may be attached to the licence by the TA nor the obligation of the licensees thereunder.

86. As for the objection to the proposed SC 5, SC 10, SC 13.2 and SC 13.3 raised by WTT, no concrete justification has been given. The TA considers that these SCs are requirements which have all been applied to FCLs and partly to MCLs (for SC 5 and SC 10). The TA does not see any valid reason why they should not continue to apply under UCL.

87. The TA has however re-considered the need for the proposed SC 29. As the market for the external telecommunications services (“ETS”) is highly competitive, the need for him to publish information obtained from an ETS licensee on accounting rates and settlement rates should be rare. If there is a need for obtaining and publishing information on these specific aspects in future, the request may be made by the TA under SC 6 (Requirement to Furnish Information to the Authority). **Therefore, the TA has decided not to incorporate the proposed SC 29 under the UCL.**

### *Other Comments*

88. Two external FTNS operators (AT&T and PACNET) have made some suggestions for the TA to review the licensing regime on a forward-looking basis. AT&T drew reference to the experience in other jurisdictions that the combination of multiple licences into a unified licence would be accompanied by incorporation of all the compliance requirements from several licences and it cautioned against the occurrence in Hong Kong of

any unintended increase in compliance obligations. In contrast, PACNET submitted that it should be timely to carry out a fundamental review of the role and objectives of carrier licensing. Such a review should examine whether there is a continuing need for licences to be issued at all in a fully liberalized environment. A general statutory authorization to engage in telecommunications provision, subject to the imposition of an appropriate set of duties, might be an equally effective but more efficient way of regulating carriers' activities. Such an approach has been adopted in a number of comparable jurisdictions.

89. The TA welcomes the above suggestions. He is satisfied that all the SCs that he has proposed for the UCL are relevant and are required to meet the need for the current market environment. Nearly all of the proposed SCs are based on adaptation of licence conditions in the existing FCLs and MCLs, which were devised only a few years ago and which are constantly updated to reflect the prevailing market situations. The TA will continue to review the licence obligations to make sure that they remain updated and relevant. Regarding the possibility of a general authorization scheme for the provision of public carrier services, this is a complicated subject requiring detailed study, analysis and consultation. The TA understands that the concept of a general authorization scheme has been introduced elsewhere under specific political-economic environment. The inputs by the two respondents in the preceding paragraphs should give him food for thought. The TA will conduct a study on the various issues associated with a general authorization scheme, including the costs and benefits of introducing a general authorization scheme vis-a-vis the existing licensing system as well as the implications on the necessary legislative changes and practical administration aspects. Subject to the outcome of the study, the TA will consider whether there is any merit to consult the industry and the public on the introduction of a general authorization scheme for public carrier services in Hong Kong.

90. Having fully considered the views and comments expressed by the respondents to the proposed SCs, **the TA has slightly revised the common set of SCs with the changes summarised in Annex A. The TA will adopt the revised set of SCs as given in Annexes B and C for granting of any UCL.**

## **INTERCONNECTION REGIME**

91. In the TA Consultation Paper, the TA proposed that the following interconnection regime should apply to unified carrier licensees:

**(a) Carrier to Carrier Interconnection**

In accordance with the conclusion reached by the TA in the FMC Statement, the present regulatory guidance for fixed-mobile interconnection charge (“FMIC”) in favour of the “mobile party’s network pays” (“MPNP”) model will be withdrawn subject to a 2-years transition period commencing from 27 April 2007. After the transition period, there would be no pre-set regulatory guidance for the interconnection charging arrangements between fixed and mobile carriers. On the other hand, the existing arrangement for fixed-fixed interconnection charge (“FFIC”) and mobile-mobile interconnection charge (“MMIC”) will remain unchanged i.e. operators are free to set FFIC and MMIC commercially subject to observance of such regulatory guidance remaining in force<sup>20</sup>. In general, unified carrier licensees would be free to negotiate interconnection agreements with other carriers in accordance with the prevailing regulatory guidance. During the transition period, the TA will treat a unified carrier licensee providing a fixed service as a fixed carrier, and a unified carrier licensee providing a mobile service as a mobile carrier. For converged service provided under the UCL, the TA will decide on a case-by-case basis whether the service is primarily a fixed or a mobile service if the TA considers it necessary to intervene in interconnection matters between a unified carrier licensee and other carriers.

**(b) Carrier to Service Provider Interconnection**

The existing arrangements in relation to interconnection charges between carriers and service providers, including local access charges, and access charge or origination charge for interconnection necessary for the provision of international call forwarding service, shall continue to be applicable for a unified carrier licensee depending on

---

<sup>20</sup> At present, the TA has given regulatory guidance on FFIC based on a symmetric and reciprocal calling party’s network pays (“CPNP”) mechanism as specified in the TA Statement, Interconnection and Related Competition Issues Statement No. 7 (Second Revision) “Carrier-to-Carrier Charging Principles”, 18 March 2002.

the services it provides. A unified carrier licensee providing a fixed service will be entitled to such interconnection charges as for a fixed carrier, and a unified carrier licensee providing a mobile service will be entitled to such interconnection charges as for a mobile carrier. For converged service provided under the UCL, the TA will decide on a case-by-case basis whether the service is primarily a fixed or a mobile service if the TA considers it necessary to intervene in interconnection matters between a unified carrier licensee and service providers.

Views and comments were invited on the following question.

*Question (22): Do you have any comments on the interconnection regime for a unified carrier, including the arrangement during the transition period before the withdrawal of existing regulatory guidance on FMIC ?*

*Views and comments*

92. One FNO (WTT) submitted that if the TA should intervene in interconnection matters between a unified carrier licensee and other carriers or between a unified carrier licensee and service providers, the TA should clarify the circumstances under which the TA would intervene, the expected time taken to make any determination and what criteria to be used in deciding whether a service is primarily fixed or primarily mobile. Another FNO (PCCW) considered that a unified carrier licensee providing a fixed service should be entitled to such interconnection charges as for a fixed carrier at present, and a unified carrier licensee providing a mobile service will be entitled to such interconnection charges as for existing mobile carriers. For converged services provided under the UCL, it suggested that the TA should leave the interconnecting parties to determine the appropriate interconnection charges through negotiation.

93. Three MNOs also gave their comments. One MNO (CSLNWM) considered that the TA should provide specific guidance on how to classify converged services for the purpose of interconnection. Another MNO (Peoples) considered that the existing regulatory guidance for FMIC (before withdrawal in April 2009) should not be applicable to any fixed and/or unified carriers which were licensed during the 2-year transition period. These carriers

do not have any legacy rights and therefore they do not need any transition period. The third MNO (SmarTone) requested that the TA should provide guidance on FMIC as soon as possible so as to facilitate commercial negotiation and minimize uncertainties on FMIC.

*Response and consideration*

94. The TA would like to reiterate the conclusion that he has reached in the FMC Statement i.e. the issue of any replacement regulatory guidance for FMIC after the transition period is neither necessary nor appropriate at this stage (please see paragraphs 60-65 of the FMC Statement). The TA believes that with the deregulation of the existing FMIC arrangement, the market players should be given the opportunity to negotiate and agree on any replacement model for the existing MPNP scheme without premature regulatory intervention. Nevertheless, the TA will continue to monitor market developments and will re-consider the need for regulatory guidance should market conditions change or the TA is convinced that market force would not be able to produce acceptable solutions to the detriment of public interest.

95. As explained in the FMC Statement, the transition period is intended to provide a smooth phasing-out of the existing FMIC arrangement, in particular for the existing FNOs to adjust their business plans to cope with the impact of the regulatory changes. While in principle the current regulatory guidance in favour of MPNP remains applicable for the FMIC during the transition period, it is indeed questionable whether fixed carriers or unified carrier licensees providing fixed services entering the market during the transition period should need such a transition period for business adjustment. Nevertheless, less than 12 months are left before the transition period expires and there is no new FNO providing local fixed services entering the market in the past year. Should the TA find it necessary to intervene in the interconnection of any new fixed entrants with other carriers between now and April 2009, the TA will consider on a case-by-case basis whether the existing FMIC should be applicable to them as for carriers licensed before April 2007.

96. Before the end of the expiry of the transition period in April 2009, there may be a need for the TA to classify a converged service either as a fixed or mobile service under the UCL. In doing so, the TA will need to take into account the detailed characteristics (such as the technology used and the degree

of mobility) of a service in deciding whether a service is primarily a “fixed” or “mobile” service. If necessary, the TA will consider issuing guidelines on this aspect after consultation with the industry.

97. A unified carrier licensee will be free to negotiate and reach commercial agreements with other carriers on interconnection matters. Should the TA consider it necessary to intervene in interconnection matters between a unified carrier licensee and other carriers (who may or may not be a unified carrier licensee), the TA will take into account the prevailing regulatory guidance given in TA Statements on interconnection issues which remain in force at the particular time. Such intervention will only be made as a “last resort” to protect public and consumer interests, and it may be requested by either of the interconnecting parties or initiated by the TA on public interest ground. The terms and conditions for interconnection with a unified carrier may be subject to a determination made by the TA under section 36A of the Ordinance. Such proceeding will be in accordance with the established arrangement set out in the “Procedures for Making Determinations on the Terms and Conditions of Interconnection under Section 36A of the Telecommunications Ordinance” published by the TA.

98. In conclusion, having considered the submissions on the various aspects related to interconnection matters, **the TA will adopt the approach as summarised in paragraph 91.**

### **GENERAL APPROACH OF GRANTING UCL**

99. When the unified carrier licensing regime is in place, the TA will use the UCL as the single licensing vehicle for any fixed, mobile and converged services in lieu of the existing fixed and mobile carrier licences. In accordance with the migration arrangement proposed in the SCED Consultation Paper and the relevant provisions under the Regulation, the TA will not issue FCL, FCRL, MCL and MCRL to new entrants or to existing licensees whose licences expire and who require replacement licences. Instead, the UCL will be issued for new applications and replacement of the existing carrier licences upon their expiry. In addition, any existing FCL, FCRL, MCL or MCRL holder may apply to the TA, on a voluntary basis, for conversion of its licence while it remains valid to UCL. As described in the TA Consultation Paper, there would

be different scenarios of granting a UCL and they included:

- (1) New application for a UCL
- (2) Replacing an existing carrier licence upon its expiry by a UCL
- (3) Conversion of an existing carrier licence to a UCL without change in scope of service
- (4) Conversion of existing carrier licence(s) to a UCL for other cases

100. In accordance with the proposal made in the SCED Consultation Paper, the period of validity for a UCL under the above scenarios would be set as follows for the different scenarios above.

Table 1 – Period of validity for a UCL to be granted under different scenarios

<b>Scenarios</b>	<b>Period of Validity for UCL</b>
New application	15 years
Replacing an existing carrier licence upon its expiry	15 years
Conversion of an existing carrier licence before expiry – no change in scope	Same as remaining term of the existing carrier licence
Conversion of existing carrier licence(s) before expiry - other cases	15 years

101. The scope of service for a UCL will depend on the proposal of an applicant or an existing licensee which applies to have its existing carrier licence replaced by or converted into UCL. The scope of service for an individual licensee will be specified in the schedule(s) to the licence. If the licensee wishes to operate other types of services not covered by its initial application, it may subsequently apply to the TA to expand the scope of service.

102. Rights in relation to spectrum, number, road opening and building access (please refer to paragraph 7 of this Statement) may be granted to a unified carrier licensee according to the types of services authorized under the UCL. Existing rights in a carrier licence to be replaced by or converted into UCL may or may not be maintained depending on the scenario of granting the UCL:

- (a) Replacing an existing carrier licence upon its expiry - Rights under the original licence will not by default be carried over to the new UCL. In particular, there is no legitimate expectation for any right of

renewal or right of first refusal of any spectrum assignment which has expired. The TA will take guidance from the Spectrum Policy Framework in deciding whether to assign the same or varied radio frequencies under the new UCL.

- (b) Conversion of an existing carrier licence before expiry without change in scope – Rights under the original licence will basically be transferred to the UCL but the applicability of such rights will not extend beyond the remaining periods of the original licence. In particular, the granting of UCL shall not operate to extend the period of spectrum assignment under the original licence.
- (c) Conversion of existing carrier licence(s) before expiry for other cases – Rights under the original licence will not by default be carried over to the new UCL. The only exception is the right to use spectrum assigned under the original licence(s). However, the granting of UCL shall not operate to extend the period of spectrum assignment under the original licence. If there are rights to use different bands of spectrum assigned under the original licence(s), these spectrum rights may continue to apply under the UCL but these transferred rights shall not extend beyond the remaining period of the original licence(s).

103. There will be a common set of basic obligations under the UCL for all licensees by means of the same GCs prescribed under the Regulation and a common set of SCs as given in Annexes B and C. Specific obligations may be imposed on a licensee depending on the scenario of granting the UCL :

- (a) New application – Any additional SCs which may be prescribed by the TA in accordance with the application proposal of the applicant.
- (b) Replacing an existing carrier licence upon its expiry – Any SCs in the original licence which should be maintained in the new UCL and any additional SCs which may be prescribed by the TA in accordance with the application proposal of the applicant.
- (c) Conversion of an existing carrier licence before expiry without change in scope of service – Any SCs in the original licence which should be

transplanted to the new UCL. In case of any conflict between the transplanted SCs and the common SCs in Annexes B and C and the policy intention is that the former should be maintained under the UCL, then the former should in general take precedence.

- (d) Conversion of existing carrier licence(s) before expiry for other cases – Any SCs in the original licence which should be transplanted to the new UCL and any additional SCs which may be prescribed by the TA in accordance with the application proposal of the applicant. In case of any conflict between the transplanted SCs and the common SCs in Annexes B and C, and the policy intention is that the former should be maintained under the UCL, then the former should in general take precedence.

The TA invited views and comments regarding the above general approach of granting a UCL under different scenarios.

*Question (23): Do you have any comments on the general approach of granting UCLs under different scenarios as depicted in paragraphs 69 – 81 (of the TA Consultation Paper)?*

#### *Views and comments*

104. One FNO (PCCW) considered that the same set of obligations should be applied for all four scenarios of granting UCL. One MNO (CSLNWM) also expressed similar concern on the application of differential SCs to different UCLs. Another FNO (WTT) suggested that UCL should be granted only to carriers who wish to provide both fixed and mobile services and FMC services. It considered that all existing FCL, FCRL, MCL and MCRL should remain available to those carriers who wish to continue to provide services under the current scope of their licences and on existing terms. Other respondents raised no objection to the TA's proposal.

#### *Response and consideration*

105. The TA would like to clarify that the migration arrangement for existing carrier licences to the new unified carrier licensing regime will be specified by the SCED in the Regulation and the TA will have to implement the

arrangement once it comes into operation. As the UCL is a more flexible and streamlined licensing vehicle that can cover existing services which may be authorised under the four existing types of carrier licences (FCL, FCRL, MCL and MCRL) and that there would be a common set of rights and obligations for different operators providing carrier services under UCL, it is the Government's decision to migrate the existing carrier licences to UCLs once the unified licensing regime is in place. Nevertheless, the Government is mindful that operators may need time to adapt to this regulatory regime. Existing carrier licences would therefore be allowed to remain in force until they expire while conversion of existing carrier licences before their expiry to UCLs will entirely be on a voluntary basis.

106. The TA does not agree that UCL should be restricted to the provision of both fixed and mobile services and/or converged services only. An operator should be given the flexibility to operate any combination of fixed, mobile and converged services under UCL according to its business plan. As explained above, the TA will implement the migration arrangement provided under the Regulation so that after the UCL is created, UCL will be issued in lieu of the existing four types of carrier licences (FCL, FCRL, MCL and MCRL), with the exception of a MCL which the TA has committed to grant in November 2008 to the successful bidder of the spectrum in the 850 MHz band to provide CDMA2000 service<sup>21</sup>. The retention of the four existing types of fixed and mobile carrier licences in addition to the new UCL would only complicate the administrative arrangement and defeat the purpose of unifying the rights and obligations for the provision of public carrier services.

107. Under the UCL, obligations of licensees are harmonised by imposing the same set of GCs and common SCs. The reason for imposing additional SCs is to cater for different commitments made by or required for a licence applicant in accordance with the services it operates or rights acquired (such as spectrum right) under the licence. In the case of conversion / replacement of an existing carrier licence to UCL, existing obligations under the existing licence need to be carried over to the new UCL to ensure that the prior

---

<sup>21</sup> The auction for the concerned spectrum bands has been conducted in October 2007 and the successful bidder (PCCW-HKT Telephone Limited) will be awarded with a mobile carrier licence on 20 November 2008. For details please refer to the "Auction of Spectrum in the 850 MHz Band (825 - 832.5 MHz paired with 870 - 877.5 MHz) to Enable the Provision of CDMA2000 Service - Information Memorandum" issued by the TA on 31 August 2007 ([http://www.ofta.gov.hk/en/3g-licensing/CDMA2000\\_im\\_20070831.pdf](http://www.ofta.gov.hk/en/3g-licensing/CDMA2000_im_20070831.pdf)) and the notices issued by the TA on the auction results (<http://www.ofta.gov.hk/en/3g-licensing/licensing850mhz.html>).

commitments under the original licences, which may be commensurate with the rights to be transferred, are still honoured. For such conversion / replacement, the TA will carefully examine on a case-by-case basis whether any SCs to be transplanted are truly required. For example, the proposed arrangement for replacement of the four fixed licences issued in 1995 upon their expiry in 2010 and the conversion of the existing 2G / 3G mobile carrier licences have been described in detail in the TA Consultation Paper and will be discussed in the paragraphs below.

108. Having considered the submissions, **the TA concludes that the general approach of granting UCLs under the different scenarios as described in paragraphs 99 – 103 will be adopted.**

## **REPLACEMENT OF THE FOUR FIXED CARRIER LICENCES ISSUED IN 1995**

109. In the TA Consultation Paper, the TA proposed to issue UCL to replace the four FCLs of PCCW-HKT Telephone Limited<sup>22</sup> (“PCCW”), Hutchison Global Communications Limited (“HGC”), New World Telecommunications Limited (“NWT”) and Wharf T&T Limited (“WT&T”) (hereafter referred to as “the 1995 FC licensees”) which will expire in June 2010<sup>23</sup>. Assuming that the four 1995 FC licensees will submit applications to the TA for replacement of their FCLs by UCLs, certain rights and obligations under their original licences will be maintained in the new UCL.

110. Specifically, it was proposed that the following rights in relation to use of radio spectrum, numbers, road opening and building access under the existing licences of the four FNOs would be transferred to UCL as follows:

- (a) All existing spectrum assignments under the existing licences of the four 1995 FC licensees would be carried over to the new UCLs,

---

<sup>22</sup> The FTNS licence of PCCW was replaced by a FCL on 14 January 2005 with the same expiry date as the original FTNS licence.

<sup>23</sup> PCCW’s licence will expire on 28 June 2010, HGC’s on 29 June 2010, NWT’s on 19 June 2010 and WT&T’s on 26 June 2010. Apart from these four licences, the FCL of Reach Networks Hong Kong Limited, Reach Cable Networks Limited and Reach Global Services Limited (collectively referred to as “Reach”) will also expire on 28 June 2010. The arrangement for replacement of Reach’s licence will not be discussed in detail here, but will be handled according to the general approach described in this Statement.

subject to review by OFTA on any alternative use of the frequencies and the need of variation / withdrawal for the frequency assignments.

- (b) All existing numbers and codes under the Hong Kong Numbering Plan allocated to the four 1995 FC licensees would continue to be allocated to the respective licensees if they are granted with UCLs.
- (c) The four 1995 FC licensees would continue to be entitled to road opening, but the prior blanket authorization would be replaced by an approval procedure same as the one adopted for new FNOs licensed after 2003.
- (d) The four 1995 FC licensees would continue to be entitled to building access right, but the prior blanket authorization issued to the four licensees would be replaced by an approval procedure same as the one adopted for new FNOs licensed after 2003.

111. Under the UCL, any unified carrier licensee has the obligation to facilitate ONP and MNP (and FMNP if it is introduced in the future) at its own expense. When the four 1995 FC licensees draw out the UCLs in June 2010, their existing right under their FCLs to levy MNP charges would no longer be applicable under the new UCLs.

112. The TA had examined the existing SCs in the FCLs of the four 1995 FC licensees to ascertain whether there was a need to retain any of them in the UCLs to be granted for replacement of the FCLs. The TA considered that there was no SC in the FTNS licences of HGC, NWT and WTT that would need to be retained in the new UCLs which might be granted to them. For PCCW, the following obligations under its existing FCL were proposed to be retained under the replacement UCL:

- (a) Universal Service Obligation (*SC 1*) – to be subsumed under a special SC 22 of the UCL applicable for any Universal Service Provider (“USP”) as set out in Annex C;
- (b) Amendment to interconnection tariffs (*SC 3.4*) – to be subsumed under SC 3 of the UCL as set out in Annex B;
- (c) Use of Payphone Kiosks for Provision of Services (*SC 25*) – to be incorporated as an additional SC in the UCL

113. Regarding the proposed arrangement for replacement of the four FCLs issued in 1995, the following specific question was asked in the TA Consultation Paper.

*Question (24): Do you have any comments on the proposed arrangement of replacement of the four FCLs issued in 1995, in particular on the preservation of existing rights and obligations under the new UCLs proposed to be granted for replacement of the licences ?*

*Views and comments*

114. HKBN objected to preservation of existing rights and obligations of the four FC licenses in general under their replacement UCLs. Three of the four 1995 FC licensees (WTT, HKCTV and PCCW) objected to the TA's proposal of replacing the blanket authorization given to them in respect of road opening and building access by a case-by-case approval. Among them, one FNO (PCCW) saw a need for USP to have such rights on an automatic basis. One FNO (WTT) objected to the obligation under the UCL to facilitate ONP and MNP at its own expense, while another FNO (PCCW) held similar view that the four FC licensees should continue to be entitled to levy a charge for providing ONP and MNP. On the other hand, one MNO (Peoples) considered that the rights to levy MNP charges on MNOs by the FC licensees should be removed immediately under the FMC regulatory framework. Two MNOs (CSLNWM and SmarTone) basically agreed to the TA's proposal, and one of them (SmarTone) considered that it would still be necessary to preserve the status quo for the ex ante tariff approval requirement for interconnection services provided by PCCW. PCCW gave the specific comments that the licence conditions added to PCCW's ex post FCL should not be mechanically inherited by PCCW in its future UCL. In particular, it considered that the SC 25 in its existing FCL was entirely unreasonable since no other operator was subject to this obligation.

*Response and consideration*

115. The TA considers that the existing rights of the four 1995 FC licensees (spectrum, numbering, road opening and building access) should be preserved as far as is necessary in order that they may continue to provide a good, efficient and continuous service. According to the TA's proposal, such

rights have already been aligned with new fixed carriers licensed after 2000 in order that there may be a level playing field for all carrier licensees providing fixed carrier services after June 2010. On the other hand, and specifically for PCCW, certain special obligations under its existing licence will continue to be relevant and should therefore be maintained in the UCL.

116. Regarding the comments on withdrawing the blanket authorization on road opening and building access for the four 1995 FC licensees, the TA has already addressed such concerns in paragraphs 10-11 of this Statement. Specifically, he will further streamline the procedure for granting approval of road opening and he will grant blanket authorization for building access to any unified carrier licensee meeting the specified criteria. The new approaches would be applied to all unified carrier licensees and existing FNOs. There should thus be minimal impact to the four FC licensees in respect of the road opening and building access practices when their existing FCLs are replaced by UCLs in June 2010.

117. Regarding the charges for ONP and MNP, the TA considers that the existing right of the four 1995 FC licensees to levy charges on facilitating number portability is purely a legacy issue. The concerned rights and obligations should be harmonised with other operators when the existing licences are replaced by UCLs. Under the UCL, the TA will require all unified carrier licensees to facilitate ONP and MNP at their own expense. Nevertheless, it is up to the licensees to implement and agree on solutions at commercially agreed terms to fulfil the obligation. If necessary, the TA would consider updating / issuing regulatory guidance on the cost recovery principles for facilitating number portability under the UCL. As regards the existing right of the four FC licensees to levy MNP charges on MNO, the TA would like to make clear that the right will cease when their existing licences expire in June 2010 and, under the UCL granted to replace the expired licences, they will be required to facilitate ONP and MNP at their own expense.

118. As regards PCCW's comments on the transplantation of certain existing SCs under its FCL to UCL, the TA does not agree that there is a mechanical inheritance of licence conditions by PCCW. In transplanting any existing licence conditions in the FCL of PCCW to the UCL, the TA has critically examined the need to do so and retained only those obligations which will remain relevant to PCCW under the UCL. In fact, in paragraph 88 of the

TA Consultation Paper, the TA already indicated that in granting the UCL, relevant updates would be made to the concerned SCs in order to reflect the latest regulatory regimes. Regarding the SC which deals with USO, the TA notes that PCCW does not have any adverse comment on the proposed SC22 (please refer to the detailed discussion in paragraphs 51 – 55 of this Statement).

119. The SC which deals with the use of payphone kiosks for provision of public Wi-Fi service was added as recently as August 2007 to PCCW's FCL with PCCW's consent in order to allow PCCW to provide public Wi-Fi service. In its submission, PCCW argued that it should not be singled out for more onerous treatment and that this requirement should be imposed on all unified carrier licensees requiring them to open up access to their payphone kiosks as well. It should be noted that in paragraph 31 of his Statement on "Use of Public Payphone Kiosks on Public Streets and Unleased Government Lands for the provision of Public Wi-Fi Service" issued on 15 February 2008, the TA already states that "apart from PCCW, some other FNOs also operate payphone kiosks for the provision of public payphone service on public streets and unleased Government land. The TA is prepared to render his support to any public payphone operator who is interested to make use of its own payphone kiosks for public Wi-Fi service following the same arrangements for PCCW". Similar SC will be attached to the licence of any other network operator establishing and operating payphone kiosks if it uses its payphone kiosks for the provision of public Wi-Fi service.

120. As explained in paragraphs 88 and 89 of the TA Consultation Paper, the existing SC3.4 was specifically added in the *ex post* FCL granted to PCCW in January 2005 in order to preserve the *status quo* for the *ex ante* tariff approval requirement for interconnection services provided by PCCW then in existence. Because the present regulatory guidance for FMIC in favour of the MPNP model will be withdrawn on 27 April 2009, the TA will remove the item related to the FMIC from Schedule 7 to the existing *ex post* licence of PCCW on that day. The item should therefore also logically disappear from the relevant schedule to the UCL to be granted to PCCW on 29 June 2010. As the *ex post* regime has been in place for three years, there may be need for a review of the existing SC 3.4 but until the TA decides to embark on such a specific review he does not intend to remove the SC from the future UCL to be granted to PCCW at this juncture.

121. In conclusion, after considering the comments given by the FNOs and MNOs, **the TA concludes that the arrangement as described in paragraphs 109 - 112 should be adopted for granting of UCLs to replace the four FCLs issued in 1995, except that the revised approach of granting authorization for road opening and building access (see paragraphs 10-11 of this Statement) would apply.**

## **CONVERSION OF EXISTING MOBILE CARRIER LICENCES**

122. The MCLs of MNOs providing 2G services have just been renewed in 2005 and 2006, while the the MCLs of MNOs providing 3G services will not expire until 2016. These licensees may however voluntarily apply for conversion of their existing MCLs to UCLs once the new unified carrier licensing regime has been implemented. If a MNO would submit an application to the TA for conversion of its existing licence (before expiry) into UCL, the TA proposed that he would handle such an application in accordance with the general approach described under the scenario of “Conversion of existing carrier licence into UCL without change in scope” in paragraph 102 of this Statement. In granting the UCL under this case, certain rights and obligations under the original licence would be transferred to the new UCL.

123. The rights in relation to spectrum and numbers under the original MCL will be transferred to the UCL as follows:

- (a) All existing spectrum assignments under the original MCL would be carried over to the new unified carrier licence, with the same remaining periods of validity for the assignments.
- (b) All existing numbers and codes under the Hong Kong Numbering Plan allocated to the MNO would continue to be allocated to the licensee if it is granted with a UCL.

124. Same as the existing practice, rights of road opening and building access which the MNOs are not currently entitled to will not be granted to the licensee which continues to provide mobile services only under the new UCL. Under the unified licensing regime, all unified carrier licensees are required to facilitate MNP and ONP (and FMNP if it is introduced in the future) and such

obligation is accompanied by the right of access to all number porting data (including both fixed and mobile numbers). This right of access to number porting databases will be made available to the MNOs under the new UCL.

125. The TA had reviewed the existing SCs in the issued MCLs and the MCL to be granted for CDMA 2000 service and proposed that certain existing obligations in relation to the use of spectrum should be maintained in the UCLs which might be granted for conversion of the MCLs. The relevant SCs to be transplanted should include the following and they should take precedence in general where there is conflict with the common SCs in Annexes B and C:

- (a) Payment of Spectrum Utilization Fees (*SC 2 in all MCLs*)<sup>24</sup>
- (b) Performance Bond (*SC 3 in 3G / CDMA2000 MCLs*)
- (c) Disposal of Assets (*SC 4 in all MCLs*)<sup>25</sup>
- (d) Accounting Practices (*SC 7 in all MCLs*)<sup>26</sup>
- (e) Open Network Access (*SC 12 in 3G/2G MCLs*)
- (f) Anti-Avoidance Provisions (*SC 13 in 3G/2G MCLs*)
- (g) Compliance with Auction Rules (*SC 20 in 3G MCLs and SC 19 in CDMA2000 MCL*)
- (h) Ownership and Control of the Licensee (*SC 21 in 3G MCLs*)

126. The TA invited views and comments on the above proposed conversion arrangement by the following specific question.

*Question (25): Do you have any comments on the proposed arrangement of conversion of the existing MCLs, in particular on the transplanting of legacy rights and obligations to the new UCLs proposed to be granted for conversion of the licences ?*

*Views and comments*

---

<sup>24</sup> This SC on “Payment of Spectrum Utilization Fees” in the existing MCLs conflicts with the proposed SC 34 under the UCL and in this case the legacy obligation shall take precedence.

<sup>25</sup> This SC on “Disposal of Assets” in the existing MCLs conflicts with the proposed SC 32 under the UCL and in this case the legacy obligation shall take precedence.

<sup>26</sup> This SC on “Accounting Practices” in the existing MCLs for 2G and 3G mobile services conflicts with the proposed SC 5 under the UCL and in this case the legacy obligation shall take precedence.

127. One FNO (HKBN) disagreed and considered it unfair that existing rights and obligations of the MCLs could be preserved for UCL replacement. Another FNO (PCCW) did not agree that the existing holders of MCLs should be required to inherit any of their existing obligations upon taking up the new UCLs. In addition, it considered that the four FNOs licensed in 1995 should be entitled to levy a charge for providing ONP and MNP. One MNO (Peoples) basically supported the TA's proposal of voluntary conversion to UCL. Two MNOs (CSLNWM and SmarTone) considered that the TA should remove the Open Network Access ("ONA") requirement for MNOs providing 2G and 3G services. One of them (CSLNWM) objected to not granting rights of road opening and building / land access to UCL holders providing mobile services only.

#### *Response and consideration*

128. The TA considers that if the existing MNOs apply for conversion of their MCLs to UCLs without change in scope, there should be no impact on their continued operation of the same mobile service using the same spectrum assignments under UCL over the remaining terms of their existing licences. Therefore, the TA considers it fair and reasonable that their associated rights and obligations for operating the mobile service should be transferred when they take up the UCL. Regarding the comments by the FNOs on number portability charges, even though the MCLs are converted into UCLs, the four FNOs licensed in 1995 are entitled to levy charges for facilitating MNP to them until the FCLs of the four FNOs are replaced by UCLs when such legacy right will no longer apply (see paragraph 117 above).

129. As already explained in the TA Consultation Paper, certain obligations under the MCLs associated with the use of spectrum to provide mobile services, such as the ONA requirement, should be maintained and transferred to the UCLs. This will ensure efficient use of spectrum as a scarce public resource and that the prior commitments of the licensees are still honoured. As regards the granting of road opening and building access rights to unified carriers providing mobile services, the TA has already concluded in the FMC Statement that such rights will not be granted to operators providing

mobile services only. The same existing principles of granting the concerned rights will apply for operators licensed under the UCL.

130. Having considered the submissions, **the TA concludes that the arrangement as described in paragraphs 122 – 125 should be adopted for granting of UCLs for conversion of MCLs without change in scope to UCLs.**

### **IMPLEMENTATION OF UCL**

131. Subject to the enactment of the Regulation, the TA will take the following steps to implement the unified carrier licensing regime:

- (a) to publish a set of application guidelines for UCL;
- (b) to invite the four 1995 FC licensees to apply for UCLs for replacement of their existing licences which will expire in 2010; and
- (c) to invite the existing MCLs and other FCLs to apply for conversion of their licences to UCLs.

**Office of the Telecommunications Authority**

9 May 2008

**List of Common Special Conditions in the UCL**

<b>SCs Adopted</b>		<b>Changes from Original Proposal in TA Consultation Paper</b>
SC1	Compliance with Codes of Practice	No change
SC2	Purchase of Assets	
SC3	Requirements for Interconnection	
SC4	Numbering Plan and Number Portability	
SC5	Accounting Practices	
SC6	Requirement to Furnish Information to the Authority	
SC7	Tariffs	Original SC 7.2 (a) deleted
SC8	Notification of Discounts	No change
SC9	Billing and Metering Accuracy	
SC10	Provision of Service	
SC11	Directory Information and Directory Information Service	
SC12	Emergency Call Service	
SC13	Records and Plans of the Network	
SC14	Network Location	
SC15	Changes to the Network	
SC16	Requirements for Road Opening	
SC17	Requirements of Installation of Lines or Cables	
SC18	Works in Public Streets	
SC19	Interference with Works of Others	
SC20	Licensee to Alter Network On Notice	
SC21	Withdrawal and Return of Frequencies	
SC22	Universal Service Contribution / Universal Service Obligation	
SC23	Circumstances outside Licensee's Control	
SC24	Insurance	
SC25	Use of Public Facilities for Provision of Services	
SC26	Location Services	
SC27	Provision of Service to Suspected Stolen Radiocommunications Apparatus	
SC28	Backup Power Supply	

<b>SCs Adopted</b>		<b>Changes from Original Proposal in TA Consultation Paper</b>
SC29	Payment of Spectrum Utilization Fee	Same as original SC 34 Original SC 29 deleted
SC30	Provision of Information to Customers	No change
SC31	Rollout of Network	No change
SC32	Disposal of Assets	No change
SC33	Access to Buildings	No change
SC34	Channels Within In-Building Coaxial Cable Distribution Systems	Same as original SC 35
SC35	Interpretation	Same as original SC 37
SC36	Service Contracts and Dispute Resolution	No change

Sample for Reference

**TELECOMMUNICATIONS ORDINANCE  
(Chapter 106)**

**UNIFIED CARRIER LICENCE**

DATE OF ISSUE: [ ]

[Company Name]

.....

of [Address]

.....

(the “licensee”) is licensed, subject to the following conditions set out in this licence-

- (a) to provide a public telecommunications network service (the “service”), the scope of which is described in Schedule 1;
- (b) to establish and maintain a telecommunications network (the “network”) described in Schedule 2 to provide the service;
- (c) to possess and use the radiocommunications installations described in Schedule 3 to provide the service; and
- (d) to deal in, import and demonstrate, with a view to sale in the course of trade or business, such apparatus or material for radiocommunications as may be necessary to supply customers of the service.

## **GENERAL CONDITIONS**

[The General Conditions of UCL are prescribed by the Secretary for Commerce and Economic Development under the amended Telecommunications (Carrier Licences) Regulation (Cap 106V)]

## **SPECIAL CONDITIONS**

### **1. COMPLIANCE WITH CODES OF PRACTICE**

1.1. The licensee shall comply with such guidelines or codes of practices which may be issued by the Authority as in his opinion are suitable for the purpose of providing practical guidance on any particular aspect of any conditions of this licence.

1.2 Without limiting or affecting in any way the licensee's obligations under any other Condition, the licensee shall comply with any code of practice or guideline which may be issued by the Authority from time to time for the purpose of providing practical guidance to the licensee in respect of:

- (a) the provision of satisfactory service;
- (b) the protection of customer information;
- (c) the protection and promotion of the interests of consumers of telecommunications goods and services; and
- (d) calling line identification and other calling line identification related services.

1.3 Before issuing any code of practice or guideline referred to in Special Condition 1.2, the Authority shall carry out such consultation as is reasonable in all the circumstances of the case.

1.4 Without limiting the generality of Special Condition 1.2(d), the code or practice or guideline issued under that Special Condition may require the licensee to validate the calling line identification against the authenticated customer in order to prevent fraud and spam.

### **2. PURCHASE OF ASSETS**

2.1 If a licensee is (1) in a dominant position in the relevant

telecommunications market within the meaning described in section 7L of the Ordinance; or (2) subject to a universal service obligation specified under the Ordinance, the Government may elect to take over the licensee's undertaking and purchase all or part of its assets if any of the following circumstances occur –

- (i) this licence expires;
- (ii) this licence is revoked;
- (iii) the licensee goes into liquidation; or
- (iv) the licensee ceases to carry on business,

provided that if the Government elects to do so, it shall give notice in writing not later than 90 days in advance of the expiry of this licence, or immediately upon revocation of this licence or within a reasonable time of the happening of the events at Special Condition 2.1(iii) or 2.1(iv).

2.2 The selling price shall be agreed between the Government and the licensee on the basis of the fair market value of those assets at the time of acquisition determined on the basis that this licence remains in force and that the network is continuing to be used for the provision of the service. If no agreement can be reached between the Government and the licensee, the matter shall be settled by arbitration in accordance with the provisions of the Arbitration Ordinance (Cap. 341).

2.3 For the purpose of Special Condition 2.1,

- (1) where the licensee is in a dominant position in the relevant telecommunications market, the undertaking and assets of the licensee shall be the relevant undertaking and assets of the licensee in relation to its dominant position in that relevant telecommunications market;
- (2) where the licensee is subject to a universal service obligation, the undertaking and assets of the licensee shall be the relevant undertaking and assets of the licensee in relation to its operation that is subject to the universal service obligation.

### **3. REQUIREMENTS FOR INTERCONNECTION**

- 3.1 The licensee shall interconnect its service and network with the services and networks of other unified carriers, mobile carriers, fixed carriers or fixed telecommunications network services operators licensed under the Ordinance and, where directed by the Authority, interconnect its service and network with telecommunications networks and services of a type mentioned in section 36A(3D) of the Ordinance. The licensee shall interconnect its service and network with the services and networks of other interconnecting parties under this Special Condition to ensure any-to-any connectivity, i.e. any customer in any one network can have access to any other customer in any interconnecting network and, where directed by the Authority, to any service offered in any interconnecting network.
- 3.2 The licensee shall use all reasonable endeavours to ensure that interconnection is effected promptly, efficiently and on terms, conditions and at charges which are based on the licensee's reasonable relevant costs attributable to interconnection.
- 3.3 The licensee shall provide facilities and services reasonably necessary for the prompt and efficient interconnection of the service and the network with the telecommunications networks or services of the other entities referred to in Special Conditions 3.1. Such facilities and services include –
- (a) carriage services for the delivery of codes, messages or signals or other communication across and between the interconnected networks;
  - (b) those necessary to establish, operate and maintain points of interconnection between the licensee's network and the networks of the other entities, including, without limitation, the provision of sufficient transmission capacity to connect between the licensee's network and networks of the other entities;

- (c) billing information reasonably required to enable the other entities to bill their customers;
- (d) facilities specified by the Authority pursuant to section 36AA of the Ordinance; and
- (e) ancillary facilities and services required to support the above types of interconnection facilities and services.

#### **4. NUMBERING PLAN AND NUMBER PORTABILITY**

- 4.1 The licensee shall comply with the numbering plan made or approved by the Authority and any directions given by the Authority in respect of the numbering plan.
- 4.2 The licensee shall at the request of the Authority or otherwise consult the Authority about the arrangements for the allocation and reallocation of numbers and codes within the numbering plan.
- 4.3 Where requested by the Authority, the licensee shall prepare and furnish to the Authority proposals for developing, adding to or replacing the numbering plan relating to the service.
- 4.4 The licensee shall, in such manner as the Authority may direct, facilitate the portability of numbers assigned to any customer of any unified carrier licensee, fixed carrier or fixed telecommunications network service licensee, mobile carrier licensee, services-based operator, mobile virtual network operator or any other licensee, as the case may be, so that any number so assigned may be used by that customer should it cease to be a customer of any such entity and become a customer of any other unified carrier licensee, fixed carrier or fixed telecommunications network service licensee, mobile carrier licensee, services-based operator, mobile virtual network operator or any other licensee, as the case may be.
- 4.5 Directions by the Authority under Special Condition 4.4 include reasonable directions concerning,

- (a) compliance with Special Condition 4.4 by the licensee at the licensee's own expenses, or by equitably sharing all relevant costs associated with providing portability of numbers as between the licensee, any other unified carrier licensee, fixed carrier or fixed telecommunications network services licensee, mobile carrier licensee, services-based operator, mobile virtual network operator or any other licensee, as the case may be; and
- (b) facilitation of portability of numbers through such technical arrangement (including but not restricted to a centralized database) as may be specified by the Authority, in co-operation with other parties sharing or maintaining the technical arrangement at such costs as may be directed under Special Condition 4.5(a).

4.6 For the purposes of this Special Condition, "portability of numbers" means the function of the network and the service which enables a customer of the service of a unified carrier licensee, fixed carrier or fixed telecommunications network services licensee, mobile carrier licensee, services-based operator or mobile virtual network operator to become a customer of another unified carrier licensee, fixed carrier or fixed telecommunications network services licensee, mobile carrier licensee, services-based operator or mobile virtual network operator or any other licensee, as the case may be, without changing the number assigned to that customer.

## **5. ACCOUNTING PRACTICES**

5.1 Where directed by the Authority in writing, the licensee shall implement such accounting practices as specified by the Authority. Such accounting practices are to be consistent with generally accepted accounting practices, where applicable, and may include (but are not limited to) accounting practices which allow for the identification of the costs and charges for different services or types or kinds of services.

## **6. REQUIREMENT TO FURNISH INFORMATION TO THE**

## **AUTHORITY**

- 6.1 The licensee shall furnish to the Authority, in such manner and at such times as the Authority may request in writing, such information relating to the business run by the licensee under this licence, including financial, technical, and statistical information, accounts and other records, as the Authority may reasonably require in order to perform his functions under the Ordinance and this licence. Information referred to in this condition includes but is not limited to such information as is listed in Schedule 4.
- 6.2 Subject to Special Condition 6.3 the Authority may use and disclose information to such persons as the Authority thinks fit.
- 6.3 Where the Authority proposes to disclose information obtained and the Authority considers that the disclosure would result in the release of information concerning the business or commercial or financial affairs of a licensee which disclosure would or could reasonably be expected to adversely affect the licensee's lawful business or commercial or financial affairs, the Authority will give the licensee a reasonable opportunity to make representations on the proposed disclosure before the Authority makes a final decision whether to disclose the information.

## **7. TARIFFS**

- 7.1 The licensee shall publish and charge no more than the tariffs for the service operated under this licence. The tariffs shall include the terms, as defined under section 7F(2) of the Ordinance, for the provision of the service.
- 7.2 Publication of a tariff shall be effected by –
- (a) publication in the website of the licensee on or before the date on which the tariff becomes effective;
  - (b) the Authority receiving a copy of the tariff on or before the date as specified by the Authority;

- (c) placing a copy of the tariff in a publicly accessible part of the principal place of business and other business premises of the licensee as specified by the Authority; and
- (d) supplying a copy of the relevant details to any person who may request it, at a charge no greater than is necessary to recover reasonable costs of making and supplying the copy.

7.3 The Authority may by direction in writing, for such period and on such conditions as the Authority may determine, direct that either one or any combination of Special Condition 7.2(a), (b), (c), and (d), either completely or as to particular obligations imposed under them, shall not apply to the licensee.

## **8. NOTIFICATION OF DISCOUNTS**

8.1 The licensee shall notify the Authority of any discount to its published tariffs offered for any of the services operated under this licence, other than those services listed in Schedule 6.

8.2 Notification of a discount shall be effected upon the Authority's receipt of a copy of the discount to a tariff, including such information prescribed in Schedule 5, at least one day before the discount becomes effective.

8.3 The Authority may publish any discount that the licensee notifies under Special Condition 8.1 after the discount becomes effective, if the Authority considers that it is in the public interest to do so.

8.4 For the purposes of this Special Condition, "discount" means the amount of any payment, credit, rebate, waiver, allowance, gift, or other benefit, directed to a customer, other than:

- (a) an amount in repayment of an amount overpaid to the licensee by that customer;

- (b) an amount in settlement of a disputed amount billed to that customer by the licensee;
- (c) an amount payable pursuant to a service level or service quality obligation of the licensee to the customer; or
- (d) the amount payable by a customer upon termination of service to that customer.

## **9. BILLING AND METERING ACCURACY**

- 9.1 The licensee shall take all reasonable steps to ensure that any metering equipment and billing system used in connection with the service is accurate and reliable.
- 9.2 At the written request of the Authority or at regular intervals to be specified by the Authority, the licensee shall conduct tests on its metering equipment and billing system to assess its accuracy, reliability and conformity to the technical standards, if any, specified by the Authority. The licensee shall submit the test result to the Authority within 14 days after the date of the relevant test or such other longer period as the Authority may determine.
- 9.3 The licensee shall keep such records of any metering equipment and billing system in such form as may be specified by the Authority and shall supply such records to the Authority as soon as reasonably practical following a written request from the Authority.

## **10. PROVISION OF SERVICE**

- 10.1 The licensee shall, subject to Schedule 1 and any special conditions of this licence relating to the provision of the service, provide the service on its published terms and conditions and at the tariff published in accordance with Special Condition 7 (as applicable) and at the discount notified to the Authority in accordance with Special Condition 8 (as applicable), on request of a customer whether or not the customer intends the service to be available for its own use or

intends to utilize the service to provide a lawful telecommunications service to third parties.

10.2 Subject to Schedule 1 and any special conditions relating to the provision of the service, the licensee shall comply with a customer request for the service as tariffed by the licensee in accordance with Special Condition 7 where the service can reasonably be provided by the licensee to the customer utilizing the licensee's network in place at the time of the request.

10.3 The licensee shall not unreasonably delay or refuse to provide the service, or impose onerous conditions on the provision of the service, to any customer who owns or operates apparatus of a type which is approved by the Authority and conforms with the technical and performance standards specified in Schedule 3 to this licence. In particular (but without limiting the generality of the foregoing), the licensee shall not discriminate against any customer whose apparatus was acquired other than from the licensee.

## **11. DIRECTORY INFORMATION AND DIRECTORY INFORMATION SERVICE**

11.1 For the purposes of this Special Condition –

(a) “directory information” means information obtained by the licensee in the course of the provision of services under this licence concerning or relating to all or any of the name, address, business and telephone numbers of each of its customers; and

(b) “raw directory information” means the licensee's directory information held in a basic format for the purpose of Special Condition 11.6, 11.7 and 11.8 relating to customers other than customers who request that directory information about them not be disclosed.

11.2 This Special Condition applies only in respect of standard printed directories and other directory databases and services which include all

of the names of a licensee's customers listed in English language in alphabetical order, or in Chinese language in order of the number of strokes, or in such other language in an appropriate order as is kept by the licensee, and does not apply to classified directories where customers are listed by business or trade category or to other business or specialised directories.

11.3 Subject to compliance with the Personal Data (Privacy) Ordinance (Cap. 486), General Condition 7 and any applicable law, the licensee shall –

(a) where and as directed by the Authority, publish or arrange at least biennially for the publication of directory information in a printed or other form approved by the Authority, relating to customers, other than customers who request not to be included in a directory to be published (“the printed directory”); and

(b) where and as directed by the Authority, establish, maintain and operate, or arrange for the establishment, maintenance or operation of a telecommunications service whereby customers may, upon request, be provided with directory information other than that of customers who request the information relating to them not to be disclosed (“the telephonic directory service”).

11.4 The printed directory and the telephonic directory service provided under Special Condition 11.3 shall be made available free of charge, unless approved otherwise by the Authority, to all of the licensee's customers and shall be provided in a manner satisfactory to the Authority.

11.5 The licensee is permitted to make commercial arrangements with one or more of the other licensees who have the obligation to provide directory information, to co-operate in the provision jointly by them of either or both of the printed directory and the telephonic directory service which the licensee is required to provide under Special Condition 11.3.

11.6 The licensee's printed directory shall be a unified printed directory and

the licensee's telephonic directory service shall be a unified telephonic directory service and shall utilise a unified directory database, containing directory information as directed by the Authority, except for those customers who request that directory information about them not be disclosed. Subject to compliance with the Personal Data (Privacy) Ordinance (Cap. 486), General Condition 7 and any applicable law, the licensee shall, as directed by the Authority, provide, and regularly update, raw directory information, for which the licensee will be able to impose a reasonable charge, if applicable, to fairly compensate it for providing the raw directory information. The licensee shall endeavour to agree with each of the other licensees on a reasonable mode of exchange and transmission format for the raw directory information.

- 11.7 Where the licensee is unable to agree with another licensee pursuant to Special Condition 11.6 on what amounts to fair compensation for provision of, or the reasonable mode of exchange and transmission format of, raw directory information, the matter at issue may be referred by either licensee to the Authority for determination. The licensee shall pay to the Authority, as he may require, any costs or expenses incurred by the Authority, including, without limitation, staff costs and expenses, and the financing of liabilities paid out of the Telecommunications Authority Trading Fund in respect of such a determination or determination process.
- 11.8 Except with the prior written approval of the Authority, the licensee shall not make use of raw directory information provided by another licensee other than for discharging its obligations under this Special Condition.
- 11.9 This Special Condition does not apply to the services described in Schedule 7 provided that -
- (a) the licensee (and where appropriate its agents, contractors and resellers) declares such service, in all promoting, marketing or advertising materials concerning such service, as a "Class 2 service" (where the materials are in English text) (or "第二類服務" where the materials are in Chinese text); or

- (b) the licensee complies with such conditions as may be specified by the Authority in a direction that may be issued by the Authority.

## **12. EMERGENCY CALL SERVICE**

- 12.1 Where the licensee provides the services described in Schedule 7, the licensee shall provide a public emergency call service by means of which any member of the public may, at any time and without incurring any charge, by means of compatible apparatus connected to the network of the licensees, communicate as quickly as practicable with the Hong Kong Police Emergency Centre or other entities as directed by the Authority to report an emergency.
- 12.2 The licensee shall not charge for the use of the public emergency services described in Special Condition 12.1.
- 12.3 Unless otherwise directed by the Authority, emergency messages sent by a person using compatible apparatus connected to the network of the licensee shall be treated by the licensee on an equal basis irrespective of whether or not such apparatus has been registered as that of a customer of the licensee.
- 12.4 Where the licensee provides a public emergency call service pursuant to Special Condition 12.1 and the location of the customer making the call is potentially nomadic, the licensee shall in such manner as may be specified by the Authority maintain the most up-to-date location information of customers and provide free of charge to the Police Force, the Fire Service Department and other relevant Government agencies handling the emergency call service the relevant information relating to the location of a customer calling the emergency service described in Special Condition 12.1 for the sole purpose of responding to that call and (as appropriate) identification that the location of the customer making the call is potentially nomadic. Unless otherwise directed by the Authority, the licensee shall provide a mechanism whereby the customers can update their location information and remind the customers to update their location information whenever

they change the location from which the service is used.

### **13. RECORDS AND PLANS OF THE NETWORK**

13.1 The Authority may disclose the network information in accordance with section 7I(3) of the Ordinance.

13.2 The licensee shall, at the reasonable request of any other licensee under the Ordinance if so authorized by the Authority, give reasonable access to its network information for the facilitation of network planning, maintenance and reconfiguration required for the purposes of Special Condition 3 and section 36AA of the Ordinance. The licensee shall be permitted to charge the requesting party so as to be fairly compensated for the reasonable relevant costs incurred in the provision of such network information.

13.3 Where the licensee and any other licensee that has requested access to the network information in accordance with Special Condition 13.2 are unable to agree what amounts to reasonable access (including confidentiality requirements and fair compensation for the reasonable relevant costs incurred) or a reasonable request, the matter at issue may be referred by either the licensee, the other licensee to the Authority for determination. The licensee shall pay to the Authority, as he may require, any costs or expenses incurred by the Authority, including, without limitation, staff costs and expenses, and the financing of liabilities paid out of the Telecommunications Authority Trading Fund in respect of such a determination or determination process.

### **14. NETWORK LOCATION**

14.1 The licensee shall obtain the consent in writing of the Director of Lands before the commencement of any installation works for its network under, in, over or upon any unleased Government land.

14.2 The licensee shall keep accurate records of the location of the network installed under, in, over or upon any land.

- 14.3 The licensee shall record the information referred to under Special Condition 14.2 on route plans drawn on an Ordnance Survey Map background of a scale to be determined by the licensee in consultation with the Director of Highways and the Director of Lands.
- 14.4 The licensee shall, at the request of the Director of Highways, the Director of Lands, the Authority or any person who intends to undertake works in the vicinity of the network and who is authorized to do so by the Director of Highways, the Director of Lands or the Authority, provide free of charge information about the location of the network in diagrammatic or other form. The licensee shall make trained staff available on site to indicate the location and nature of the network to the Director of Highways, the Director of Lands, the Authority or any person authorized by the Director of Highways, the Director of Lands or the Authority.
- 14.5 The licensee shall mark or otherwise identify every wire laid or telecommunications installation installed by the licensee or any contractor on its behalf throughout the course of the wire, or at the location of the installation, so as to distinguish it from any other wire or telecommunications installation laid or installed in Hong Kong.
- 14.6 The licensee shall provide, at such intervals as the Authority may determine, distinguishable surface markers of the underground position of the network.

## **15. CHANGES TO THE NETWORK**

- 15.1 For the purposes of this licence, a change in the network is a material change where the implementation of the change would result in the network no longer being in compliance with any relevant technical standard which the Authority has power to issue.
- 15.2 The licensee shall notify the Authority of any proposals for material changes to the network and provide him with such information as the Authority reasonably requires.

15.3 The licensee shall not, without the prior consent in writing of the Authority, make any material changes which might reasonably be anticipated by the licensee to affect -

- (a) any telecommunications service or installation connected to the network;
- (b) a person producing or supplying telecommunications apparatus for connection to the network;
- (c) a licensee under the Ordinance;
- (d) a licensee under the Broadcasting Ordinance (Cap. 562); or
- (e) a customer or a consumer of goods and services provided by any person or entity,

if the change is in the opinion of the Authority likely to require modifications or replacements to, or cessation in the production or supply of any of the telecommunications apparatus involved, or if the proposed alteration would require substantial network reconfiguration or rerouting.

15.4 The licensee shall prepare and publish, after consultation with the Authority, its procedures for consulting with and giving notice to persons likely to be affected materially by changes to its network which are required to be notified in accordance with Special Condition 15.2 and any other changes required to be notified pursuant to any technical standard which the Authority has power to issue. Subject to approval of the Authority, the notification procedures to each of the classes of persons likely to be affected under Special Condition 15.3 may differ having regard to the practicality and costs of notifying them.

## **16. REQUIREMENTS FOR ROAD OPENING**

- 16.1 The licensee shall co-ordinate and co-operate with any other unified carrier licensee, fixed carrier or fixed telecommunications network services licensee under the Ordinance and any other authorized person in respect of road openings and shall, after being consulted by the Authority, comply with any guidelines issued by the Authority.

## **17. REQUIREMENTS OF INSTALLATION OF LINES OR CABLES**

- 17.1 The network, or any part of it, if installed under, in, over or upon any public street or other unleased Government land, shall be at such depth, course, route and position as may be determined by the Director of Lands or the Director of Highways.
- 17.2 Without prejudice and in addition to the provisions of any law or Ordinance, in the course of providing, establishing, operating, adjusting, altering, replacing, removing or maintaining the network for the purposes of this licence, or any part of it, the licensee shall –
- (a) exercise all reasonable care, and cause as little inconvenience as possible to the public and as little damage to property as possible; and
  - (b) make good any physical damage caused to any person having a lawful interest in the land or being lawfully thereon and reinstate the land within a reasonable time in good and workmanlike manner. When it is not practicable to make good any damage or to reinstate the land to the condition in which it existed prior to the damage, the licensee shall pay, promptly and fully, compensation for any damage caused to any person having an interest or right in the land affected.

## **18. WORKS IN PUBLIC STREETS**

- 18.1 Where in the course of installing or maintaining the network the licensee needs to open or break up any public street the licensee shall –

- (a) apply to the Director of Highways or the Director of Lands for permission to open or break up the public streets;
- (b) complete the works for which the licensee has opened or broken up the public street with all due speed and diligence, fill in the ground and remove all construction related refuse caused by its works;
- (c) maintain the site of the works in a safe manner including the fencing of the site and the installation of adequate warning lighting at night; and
- (d) reinstate the street immediately after the completion of the works to the satisfaction of the Director of Highways or the Director of Lands.

18.2 If the licensee fails, within any period specified by the Director of Highways or the Director of Lands, to observe any of the requirements of Special Condition 18.1, the Director of Highways or the Director of Lands may take action to remedy the failure. The licensee shall reimburse the Government any such sum as may be certified by the Director of Highways or the Director of Lands to be reasonable cost for executing any works under the terms of this Special Condition 18.2.

## **19. INTERFERENCE WITH WORKS OF OTHERS**

19.1 Where in the course of installing or maintaining the network, the licensee after obtaining the approval of the Director of Highways breaks up or opens any public street it shall not remove, displace or interfere with any telecommunications line, any gas pipe or water pipe or main or any drain or sewer or any tube, casing, duct, wire or cable for the carriage of electrical current and ancillary installations installed by any other person without that other person's consent.

19.2 In the case where the other person holds a licence under the Land

(Miscellaneous Provisions) Ordinance (Cap. 28), any consent referred to in Special Condition 19.1 is refused, or cannot be obtained for any reason, the licensee may request the consent to proceed from the relevant authority in accordance with the terms of any licence issued to such other person under the Land (Miscellaneous Provisions) Ordinance, if any.

## **20. LICENSEE TO ALTER NETWORK ON NOTICE**

20.1 The licensee shall, within such reasonable time and in such manner as may be directed by notice in writing by the Director of Highways or the Director of Lands, and at its own expense, alter the course, depth, position or mode of attachment of any apparatus forming part of the network.

20.2 Where the Director of Highways or the Director of Lands gives a direction under Special Condition 20.1, Special Condition 18 shall apply as if such alteration were part of the installation or maintenance of the network.

## **21. WITHDRAWAL AND RETURN OF FREQUENCIES**

21.1 Without prejudice to the generality of section 32H of the Ordinance, the Authority may by notice in writing withdraw any frequency previously assigned to the licensee if in the opinion of the Authority the licensee is not making efficient use of that frequency or in exceptional circumstances including where the public interest or international obligations of the Government so require, there is a serious breach of spectrum assignment conditions or serious interference between legitimate spectrum users has to be resolved or minimised.

21.2 The licensee may, subject to prior consent of and conditions specified by the Authority, return any frequency previously assigned to it.

## **22. UNIVERSAL SERVICE CONTRIBUTION**

- 22.1 Where directed by the Authority, the licensee shall pay to one or more fixed carrier licensees or unified carrier licensees or other licensees with a universal service obligation, as the case may be, its relevant share of the universal service contribution to assist those licensees to meet their universal service obligations, if any.
- 22.2 Any universal service contribution shall be subject to periodic review by the Authority as to description and quantum and the licensee shall pay its relevant share of such universal service contribution as the Authority may direct following a review. On the completion of an periodic review, the Authority may supply the licensee such information as the Authority is reasonably able to supply, and subject to any duty of confidentiality, as to the basis on which the universal service contribution is calculated.
- 22.3 For the purpose of this Special Condition 22, the following definitions shall apply –
- (a) Universal service contribution is that sum calculated in accordance with a formula adopted periodically by the Authority, to ensure that any licensee with a universal service obligation (referred to as “universal service provider” in this Special Condition), receives a fair contribution from other licensees as specified by the Authority for serving customers with basic service whom would otherwise not be served because it is not economically viable to do so but who are required to be served under the universal service obligation.
  - (b) Universal service obligation is the obligation by a licensee to provide, maintain and operate the relevant network in such manner as to ensure that a good, efficient and continuous basic service is reasonably available, subject to the Ordinance and the conditions of its licence, and to provide that basic service in such manner.

## **23. CIRCUMSTANCES OUTSIDE LICENSEE'S CONTROL**

23.1 For the avoidance of doubt, General Condition 17.1 of the licence shall apply to these special conditions and the Authority may at his discretion, and on such conditions as he thinks fit, extend any time period within which the obligations of the licensee under these special conditions may be met.

23.2 In exercising his discretion under Special Condition 23.1 with respect to any of the special conditions of the licence, the Authority shall take into account including, without limitation, whether circumstances are such that it would be unreasonable to require compliance by the licensee with the relevant special condition.

## **24. INSURANCE**

24.1 Throughout the currency of this licence, the licensee shall have and maintain a valid insurance policy with a reputable insurance company to cover its third party liabilities in respect of personal injury, death and damage to property, arising out of or in connection with the installation, maintenance and operation of the network or provision of the service. The amount of insurance shall be at least HK\$10,000,000 per occurrence or such sum as the Authority may notify in writing in future.

## **25. USE OF PUBLIC FACILITIES FOR PROVISION OF SERVICES**

25.1 Without limiting or affecting in any way the licensee's obligations under any other condition of this licence, the licensee shall comply with any guidelines or codes of practice which may be issued by the Authority from time to time for the purpose of providing practical guidance to the licensee in respect of the use of Government facilities as well as facilities on Government property and unleased Government land for the provision of services under this licence.

## **26. LOCATION SERVICES**

26.1 Without affecting the generality of General Condition 7, “information of a customer” referred to in General Condition 7.1 and “information provided by its customers or obtained in the course of provision of service to its customers” referred to in General Condition 7.2 shall include any information concerning the locations of customers obtained in the course of provision of the service.

26.2 Where the licensee provides services to customers using the information concerning the locations of the customers obtained in the course of provision of the service, the licensee shall ensure that –

- (a) no such services are provided without the prior consent of the relevant customers; and
- (b) the customers are capable of suspending the use of the information from time to time.

## **27. PROVISION OF SERVICE TO SUSPECTED STOLEN RADIOCOMMUNICATIONS APPARATUS**

27.1 The licensee shall, where directed by the Authority, refuse to provide the service to any person who possesses or uses a radiocommunications apparatus which is stolen or suspected stolen goods.

## **28. BACKUP POWER SUPPLY**

28.1 The licensee shall conform to any guideline or code of practice issued by the Authority in respect of the provision of backup power supply to the service.

28.2 Unless there is backup power supply available in such manner as may be specified by the Authority to maintain continuity of the service

without any deterioration in quality of the service during interruption of mains power supply on the customer's premises, to the network, or to any system or equipment delivering the service to the customer, the licensee shall not provide the service to users whose "lifeline devices" are connected to the service.

28.3 Where no backup power supply is available in such manner as described in Special Condition 28.2, the licensee is deemed to have complied with Special Condition 28.2 if –

(a) the customers have, before or upon subscription of service, confirmed that the Service will not be used by lifeline users or connected with lifeline devices; and

(b) the licensee has affixed a label to the wall socket panel or any equipment installed on the customers' premises or taken other reasonable steps to remind the customers that the service is not suitable for connection to lifeline devices.

28.4 In this Special Condition, a "lifeline device" means a medical alarm or any other device for an elderly, infirm or invalid to summon assistance in the event of an emergency without having to dial manually the telephone number of the emergency service.

## **29. PAYMENT OF SPECTRUM UTILIZATION FEE**

29.1 The licensee shall pay spectrum utilization fees ("SUF") for spectrum assigned to the licensee as designated by the Authority by order and at such level or according to the method of determining the SUF as prescribed by the Secretary by regulation. The licensee shall pay the SUF to the Authority during the period while the licence remains in force. If the licensee fails to make the concerned payment when due, the Authority may charge interest on any overdue amount from the date on which the relevant amount is due until the date of actual payment (both days inclusive) at a rate determined by the Authority to compensate it for the payment being overdue.

### **30. PROVISION OF INFORMATION TO CUSTOMERS**

30.1 Without prejudice to the other terms and conditions of this licence, the licensee shall provide or make available the following information to the customers when the services are offered –

- (a) Name of the licensee;
- (b) Licence number of the licensee under this licence;
- (c) Customer service hotline number(s);
- (d) Where applicable, the access code(s) or number(s) (including any access password) used for obtaining the services;
- (e) Instructions on how to access the services;
- (f) The tariffs under which the services are offered; and
- (g) The duration or validity period of the services offered.

### **36. ROLLOUT OF NETWORK**

36.1 Save with the prior approval of the Authority in writing, the licensee shall roll out the network to achieve a coverage not less than, and at a time not later than, what is specified in the following parts of its application for this licence dated [ ]:

[relevant parts of the applications to be listed]

*[The need and wording of this special condition will be decided on a case-by-case basis after reviewing the applicant's application.]*

### **32. DISPOSAL OF ASSETS**

32.1 If a licensee is (1) in a dominant position in the relevant telecommunications market within the meaning described in section 7L of the Ordinance; or (2) subject to a universal service obligation

specified under the Ordinance; or (3) required to pay spectrum utilization fee as prescribed under the Ordinance for the provision of mobile or wireless carrier services under this licence, unless with the prior written consent of the Authority (which consent shall not be unreasonably withheld or delayed), the licensee shall not during the validity period of this licence dispose or agree to dispose of any interest (as determined in accordance with Special Condition 32.2) in the assets or undertaking of the licensee which, cumulatively with the value of any and all disposals or agreements to dispose of interests in those assets or undertaking prior to the disposal or agreement in question and after the date of issue of this licence, exceeds 15% as at the date of the disposal or agreement in question of the net asset value of the licensee (as determined in accordance with Special Condition 32.2).

32.2 The value of any interest or undertaking, and the net asset value, of the licensee shall be determined by a certified public accountant (practising) (being one who has the qualifications as prescribed under the Professional Accountants Ordinance (Cap. 50)) as may be nominated, or whose appointment by the licensee is agreed in writing, by the Authority.

32.3 In the event of any dispute between the Authority and the licensee as to the value of the interest, undertaking or the net asset value referred to in Special Condition 32.1, the matter shall be settled by arbitration in accordance with the provisions of the Arbitration Ordinance (Cap. 341).”

32.4 For the purpose of Special Condition 32.1,

- (1) where the licensee is in a dominant position in the relevant telecommunications market, the interest in the assets or undertaking of the licensee shall be the relevant interest in the assets or undertaking of the licensee in relation to its dominant position in that relevant telecommunications market;
- (2) where the licensee is subject to a universal service obligation, the interest in the assets or undertaking of the licensee shall be the

relevant interest in the assets or undertaking of the licensee in relation to its operation that is subject to the universal service obligation;

- (3) where the licensee is required to pay spectrum utilization fee as prescribed under the Ordinance for the provision of mobile or wireless carrier services under this licence, the interest in the assets or undertaking of the licensee shall be the relevant interest in the assets or undertaking of the licensee in relation to its operation that is subject to the payment of spectrum utilization fee for the provision of mobile or wireless carrier services under this licence.

### **33. ACCESS TO BUILDINGS**

- 33.1 The licensee shall not enter into any agreement, arrangement or understanding, whether legally enforceable or not, with any person, or receive any unfair advantage from a business carried on by it or any other person (whether associated or affiliated with it or not), which, in the opinion of the Authority, has or is likely to have the purpose or effect of preventing or restricting fair and non-discriminatory access to any buildings for the installation, operation or maintenance of any cables, equipment or network for the provision of service similar to the service by other operators licensed by the Authority.
- 33.2 The licensee shall comply with any guidelines or codes of practice that may from time to time be issued by the Authority for the facilitation and coordination of fair, non-discriminatory and orderly access to buildings for the installation, operation or maintenance of any cables, equipment or network for the provision of the service and other services similar to the service by other operators licensed by the Authority
- 33.3 Without prejudice and in addition to Section 18 of the Ordinance and General Condition 9, the licensee shall not, in providing, establishing, operating, adjusting, altering, replacing, removing or maintaining any telecommunications line or telecommunications installation in, over or

upon any land for the purposes of this licence, obstruct, interfere with, or cause or permit damage to, any other telecommunications line or telecommunications installation, or means of telecommunications or telecommunications service or any gas or water pipe or main or any drain or sewer or any tube, casing, duct, wire or cable for the carriage of electrical current.

#### **34. CHANNELS WITHIN IN-BUILDING COAXIAL CABLE DISTRIBUTION SYSTEMS**

- 34.1 Subject to Special Conditions 34.2, 34.3, 34.4, 34.5, 34.6 and 34.7, the service operated over the in-building coaxial cable distribution systems (“IBCCDS”) of the network shall use only such channels as may from time to time be assigned by the Authority and for such purposes and under such conditions as may be specified by the Authority by notice in writing to the licensee.
- 34.2 The licensee shall accept that regulation of the use of channels within the IBCCDS of the network by the Authority is necessary because of the limitation in the number of channels available and the existence of competing demand for the channels.
- 34.3 The Authority may at any time, by giving not less than 12 months’ notice in writing to the licensee, require it upon such date as may be specified in the notice to cease using any channel previously assigned to it to carry the service, if having given the licensee sufficient opportunities to make representations, the Authority forms the opinion that the licensee is not making efficient use of that channel.
- 34.4 The Authority may at any time, by giving not less than 12 months’ notice in writing to the licensee, require it upon such date as may be specified in the notice to vary the purposes for which and the conditions under which the channels are to be used.
- 34.5 The Authority may at any time, by giving not less than 12 months’ notice in writing to the licensee, require it upon such date as may be specified in the notice to cease using any channel previously assigned

to it by the Authority to carry the service and to use such new channel at its own expenses as the Authority may assign.

34.6 The licensee shall comply with any notice that may from time to time be issued by the Authority under this Special Condition 34.

34.7 The licensee shall comply with the guidelines and codes of practice issued by the Authority from time to time on the use of the IBCCDS channels.

### **35. INTERPRETATION**

35.1 For the avoidance of doubt and for the purposes of these Special Conditions –

“mobile virtual network operator” means the holder of public non-exclusive telecommunications services licence for provision of mobile virtual network operator services;

“services-based operator” means the holder of a service-based operator licence.

35.2 Any reference to an ordinance or a regulation, whether the word is used by itself or as part of any title to an ordinance or a regulation, shall mean that ordinance or regulation for the time being in force as well as any modification or substitution of that ordinance or regulation, in whole or in part, and all subsidiary legislation, regulations, directions, codes of practice and instruments made under that ordinance or regulation and for the time being in force.

35.3 The singular includes the plural and vice versa.

### **36. SERVICE CONTRACTS AND DISPUTE RESOLUTION**

36.1 The licensee shall comply with all codes of practice issued by the Authority from time to time in respect of the requirements to apply in the contracting of telecommunications services to end users.

36.2 The contracting requirements referred to in Special Condition 36.1 may include the following –

- (a) the style, format and structure of service contract documentation;
- (b) the manner of entering into and terminating service contracts;
- (c) the information to be included in or in connection with service contracts and the performance of the services;
- (d) the submission of disputes between end users and the providers of telecommunications services to independent dispute resolution, pursuant to a scheme approved by the Authority; and
- (e) other terms and conditions or provisions for the protection of the interests of end users.

36.3 Before issuing any code of practice for the purposes of Special Condition 36.1, the Authority shall carry out such consultation as is reasonable in the circumstances.

**SCHEDULE 1**  
**SCOPE OF THE SERVICE**

**SCHEDULE 2**  
**DESCRIPTION OF NETWORK**

**SCHEDULE 3**  
**TECHNICAL PARTICULARS OF RADIO STATIONS FOR**  
**THE PROVISION OF THE SERVICE**

## **SCHEDULE 4**

### **REGULATORY ACCOUNTING AND INFORMATION PROVISION REQUIREMENTS**

1. Accounting information according to the practices as directed by the Authority under Special Condition 5 for each service provided under this licence or as specified by the Authority.

## **SCHEDULE 5**

### **TERMS OF DISCOUNT TO PUBLISHED TARIFFS**

1. Prices of service after discount.
2. Duration of discount.
3. Duration of offer.
4. General description of promotion plan including but not limited to eligible customers and tie-in period.
5. Conditions governing premature termination.
6. Others as specified by the Authority.

**SCHEDULE 6**

**EXEMPTION FROM NOTIFICATION OF DISCOUNTS UNDER  
SPECIAL CONDITION 8.1**

**SCHEDULE 7**  
**DESCRIPTION OF SERVICES**  
**REFERRED TO IN SPECIAL CONDITIONS 11 AND 12**

An internal telecommunications service

- (a) for carrying real-time voice communications (which may be integrated with other types of communications) to and from parties assigned with numbers from the numbering plan of Hong Kong as stipulated in Special Condition 4.1; and
- (b) to which customers are assigned numbers from the numbering plan of Hong Kong as stipulated in Special Condition 4.1 by the licensee.

\*\*\*\*\*

**Special Condition 22 on Universal Service Obligation  
under the UCL applicable to a Universal Service Provider**

**22. UNIVERSAL SERVICE OBLIGATION**

- 22.1 As required by the Authority pursuant to Section 35B of the Ordinance, the licensee shall provide, maintain and operate the network to the satisfaction of the Authority in such manner as to ensure that, subject to Special Conditions 22.2 and 22.3, a good, efficient and continuous basic service is reasonably available, subject to the Ordinance, to all persons in Hong Kong.
- 22.2 The Authority may, subject to such conditions as he thinks fit, including but not limited to conditions as to duration, exempt the licensee from all, or part of, the universal service obligation with respect to in a specified area, or areas if he is reasonably satisfied that the basic service in that area, or areas, is, or is capable of being met by any other fixed carrier or unified carrier licensee and that in the circumstances it would be unreasonable or unnecessary for the licensee to be required to also provide the basic service.
- 22.3 The licensee shall supply the basic service to any person, on its usual terms and conditions, within a reasonable period of a request for basic service at the tariff as published in accordance with Special Condition 7<sup>27</sup>.
- 22.4 For the purpose of this Special Condition 22, the following definitions shall apply –
- (c) Universal service contribution is that sum calculated in accordance with a formula adopted periodically by the Authority, to ensure that any licensee with a universal service obligation (referred to as “universal service provider” in this Special Condition), receives a fair contribution from other licensees as

---

<sup>27</sup> This refers to the specific SC under the UCL on “Tariffs”.

specified by the Authority for serving customers with basic service whom would otherwise not be served because it is not economically viable to do so but who are required to be served under the universal service obligation.

- (d) Universal service obligation is the obligation by a licensee to provide, maintain and operate the relevant network in such manner as to ensure that a good, efficient and continuous basic service is reasonably available, subject to the Ordinance and the conditions of its licence, and to provide that basic service in such manner.

22.4 The licensee is entitled to receive its relevant share of a universal service contribution to assist it in meeting its universal service obligation and the licensee shall pay its relevant share of a universal service contribution to any other universal service provider as the Authority may direct. Any such universal service contribution shall be subject to periodic review by the Authority as to description and quantum. On the completion of a periodic review, the Authority may supply the licensee such information as the Authority is reasonably able to supply, and subject to any duty of confidentiality, as to the basis on which the universal service contribution is calculated.

22.5 Subject to the formula adopted by the Authority, if the external telecommunications services of the licensee, where it has a universal service obligation, are provided to other parties by the licensee on wholesale level and the external telecommunications services are then provided to customers by such other parties on retail level:

- (a) the relevant wholesale revenues of the licensee in relation to the provision of its external telecommunications services to non-associated or non-affiliated companies shall be considered as relevant revenues in the calculation of universal service contribution;
- (b) the relevant retail revenues of the associated or affiliated companies of the licensee in relation to the provision of the licensee's external telecommunications services to customers

directly connected to the licensee shall be considered as relevant revenues in the calculation of universal service contribution;

- (c) the relevant wholesale costs of the licensee in relation to the provision of its external telecommunications services to both (i) associated or affiliated companies; and (ii) non-associated or non-affiliated companies, shall be considered as relevant costs in the calculation of universal service contribution; and
- (d) the relevant retail costs (excluding the wholesale price received by the licensee) of the associated or affiliated companies of the licensee in relation to the provision of the licensee's external telecommunications services to customers directly connected to the licensee shall be considered as relevant costs in the calculation of universal service contribution.

22.6 For the purpose of Special Condition 22.5, the licensee shall provide information in relation to the provision of the licensee's external telecommunications services (including but not limited to the relevant traffic statistics, the relevant cost and revenue information as mentioned in Special Condition 22.5).

22.7 The licensee shall be jointly and severally liable for the acts and conducts of the affiliated or associated companies (as mentioned in Special Condition 22.5), in relation to the provision of the licensee's external telecommunications services to customers, under this licence and the Ordinance.

\*\*\*\*\*