

TELECOMMUNICATIONS ORDINANCE
(Chapter 106)

UNIFIED CARRIER LICENCE

DATE OF ISSUE: 31 MARCH 2009

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KDDI Hong Kong Limited
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of 10th Floor West, Warwick House, Taikoo Place, Quarry Bay, Hong Kong
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(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

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this licence, except as hereinafter provided or unless the context otherwise requires, words or expressions shall have the meanings assigned to them in the Telecommunications Ordinance (Cap. 106) (the “Ordinance”) and, as the case may be, the Interpretation and General Clauses Ordinance (Cap. 1). For the purposes of interpreting this licence, headings and titles shall be disregarded.
- 1.2 This licence shall not be construed as granting an exclusive right to the licensee to provide the service.
- 1.3 This licence replaces any licence or any exemption from licensing, however described, which the Authority may have granted to the licensee for providing the service.
- 1.4 The grant of this licence does not authorize the licensee to do anything which infringes any exclusive licence granted under the Ordinance or any exclusive right to operate and provide telecommunications networks, systems, installations or services granted under any other Ordinance.

2. TRANSFER

- 2.1 The licensee may, only with the prior written consent of the Authority and subject to such reasonable conditions as the Authority thinks fit, transfer this licence or any permission, right or benefit under this licence. In giving his consent the Authority will have regard to such matters as he thinks fit including but not limited to the effect which the transfer will have on market structure and the financial and technical competence and viability of the transferee.

3. INTERNATIONAL CONVENTIONS

- 3.1 The licensee shall at all times perform and observe the requirements of

the Constitution and Convention of the International Telecommunication Union and the regulations and recommendations annexed to it, as are stated to be applicable to Hong Kong, and any other international convention, agreement, protocol, understanding or the like to the extent that the instruments described in this General Condition 3.1 impose obligations on Hong Kong of which the Authority gives notice to the licensee, except to the extent that the Authority may in writing exempt the licensee from such compliance.

- 3.2 Where the Government has been consulted about or is involved in the preparation or negotiation of an international convention, agreement, protocol or understanding or the like or amendments thereto which are on the subject-matter of telecommunications or which relate to another subject-matter but which the Government anticipates could have a material impact on the provision of the service under this licence, the Government will, where practicable, provide the licensee with a reasonable opportunity to make a submission stating its views on the matter.

4. COMPLIANCE GENERALLY

- 4.1 The licensee shall comply with the Ordinance, regulations made under the Ordinance, licence conditions or any other instruments which may be issued by the Authority under the Ordinance.

5. PROVISION OF SERVICE

- 5.1 The licensee shall, subject to Schedule 1 to this licence and any special conditions of this licence relating to the provision of the service, at all times during the validity period of this licence operate, maintain and provide a good, efficient and continuous service in a manner satisfactory to the Authority. The Authority may, on application in writing by the licensee, exempt a part or parts of the service from the requirement of continuous provision.

6. CUSTOMER CHARTER

- 6.1 Unless a waiver in writing is granted by the Authority, the licensee

shall prepare a customer charter which sets out the minimum standards of service to the licensee's customers and gives guidance to the employees of the licensee in their relations and dealings with customers.

7. CONFIDENTIALITY OF CUSTOMER INFORMATION

- 7.1 The licensee shall not disclose information of a customer except with the consent of the customer, which form of consent shall be approved by the Authority, except for the prevention or detection of crime or the apprehension or prosecution of offenders or except as may be authorized by or under any law.
- 7.2 The licensee shall not use information provided by its customers or obtained in the course of provision of service to its customers other than for and in relation to the provision by the licensee of the service.

8. RECORDS AND PLANS OF NETWORK

- 8.1 The licensee shall keep records and plans (including overall network plans and cable route maps) of the telecommunications installation (including radiocommunications installation) and telecommunications nodes and exchanges, if any, provided under this licence and any other details concerning the network as may be reasonably required by the Authority, including but not limited to information from operational support systems, traffic flow information, and database information relating to the manner in which the network treats any communication ("network information").
- 8.2 As required by the Authority, the licensee shall make the network information available, within reasonable time, to the Authority or to a person authorized in writing by the Authority for inspection for the Authority's own purposes.

9. CONTROL OF INTERFERENCE AND OBSTRUCTION

- 9.1 The licensee shall take reasonable measures to install, maintain and operate the service and the network in such a manner as not to cause

any harmful interference or physical obstruction to any lawful telecommunications service, or cause any physical obstruction to the installation, maintenance, operation, adjustment, repair, alteration, removal or replacement of the facilities of any lawful telecommunications or utility service provider.

9.2 The licensee shall take reasonable measures to ensure that the customers of the service do not cause harmful interference to lawful telecommunications services or utility services through use of the service.

9.3 The Authority may give such reasonable directions as he thinks fit to avoid harmful interference or physical obstruction referred to in General Condition 9.1. The licensee shall comply with the directions.

10. RESTRICTIONS ON ATTACHMENT TO PUBLIC BUILDINGS AND TREES

10.1 No part of the network shall be attached to any Government building except with the prior written consent of the Government Property Administrator, or to any tree on any Government land except with the prior written consent of the Director of Agriculture, Fisheries and Conservation, or the Director of Leisure and Cultural Services.

11. COMPLIANCE

11.1 If the licensee employs any person under contract for the purpose of the service, or for the installation, maintenance or operation of the network (a “contractor”), the licensee shall continue to be responsible for compliance with the conditions of this licence, and the performance thereof, by any contractor.

12. REQUIREMENTS OF RADIOCOMMUNICATIONS INSTALLATION

12.1 Each radiocommunications installation operated by or on behalf of the licensee shall be used only at the location and with emissions and at the frequencies and of the classes and characteristics specified in

Schedule 3 to this licence and with such power and aerial characteristics as are specified in that Schedule in relation to the class and characteristics of the emission in use.

12.2 The apparatus comprised in each radiocommunications installation shall at all times comply with such technical standards as may be issued by the Authority.

12.3 The apparatus comprised in a radiocommunications installation shall be of a type approved by the Authority and shall be so designed, constructed, maintained and operated that its use shall not cause any interference to any radiocommunications.

12.4 A radiocommunications installation shall be operated only by the licensee or a person authorized by the licensee. The licensee shall not allow an unauthorized person to have access to the apparatus comprised in a radiocommunications installation. The licensee shall ensure that persons operating each radiocommunications installation shall at all times observe the conditions of this licence.

12.5 The licensee shall not make a change –

- (a) to any radiocommunications installation; or
- (b) of the location of any radiocommunications installation,

without the prior written approval of the Authority.

12.6 If any telecommunications installation (including radiocommunications installation) crosses above or may fall or be blown onto any overhead power wire (including electric lighting and tramway wires) or power apparatus it shall be guarded to the reasonable satisfaction of the owner of the power wire or power apparatus concerned.

13. USE OF FREQUENCIES

13.1 The radiocommunications installation operated by or on behalf of the licensee shall only be operated on such frequencies as the Authority may assign.

14. SAFETY

14.1 The licensee shall take proper and adequate safety measures for the safeguarding of life and property in connection with all installations, equipment and apparatus operated or used, including safeguarding against exposure to any electrical or radiation hazard emanating from the installations, equipment or apparatus operated or used under this licence.

14.2 The licensee shall comply with the safety standards and specifications as may from time to time be prescribed by the Authority and any directions of the Authority in relation to any safety matter.

15. PROHIBITION OF CLAIMS AGAINST GOVERNMENT

15.1 The licensee shall have no claim against the Government in tort or in contract in respect of any disturbance or interruption to any part of the network due to works carried out by or on behalf of the Government which result in disturbance to the network.

16. INDEMNITY

16.1 The licensee shall indemnify the Government against any losses, claims, charges, expenses, actions, damages or demands which the Government incurs or which may be made against the Government as a result of or in relation to the activities of the licensee or any employee, agent or contractor of the licensee in relation to the provision of the service or the installation, maintenance and operation of the network.

17. CONTRAVENTION BEYOND LICENSEE'S CONTROL

17.1 The licensee shall not be liable for any breach of this licence where it is able to demonstrate, to the reasonable satisfaction of the Authority, that the breach was caused by circumstances beyond its control and that it has taken all reasonable steps open to it to rectify that breach.

- 17.2 Where the circumstances referred to in General Condition 17.1 are such that there is an outage or interruption in the service affecting a significant number of the licensee's customers for a period of more than 7 days, the licensee shall provide the Authority with a full report in writing detailing the reasons for the breach and indicating when, or if, it will be able to continue to provide the service.
- 17.3 If the Authority is, after considering a report provided under General Condition 17.2, of the reasonable belief that the licensee would be able to provide the service within a reasonable period of time despite the circumstances outlined in that report, the Authority may direct that the licensee recommence the service within such reasonable period as the Authority may in writing direct. The licensee shall comply with such direction.

18. PUBLICATION OF LICENCE

- 18.1 The licensee, or the Authority, may at their discretion make the terms and conditions of this licence, including any specific conditions, publicly available in any manner they think fit.

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 of 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.

31. ROLLOUT OF NETWORK

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

1. Subject to General Condition 1.4 and Clause 4 of this Schedule 1, all external telecommunications services between fixed points capable of being provided utilising the network, other than telecommunications services the subject of an exclusive licence issued under the Ordinance, a deemed licence, a public radiocommunications service licence, a mobile carrier licence, a radio paging system licence, a service subject to licensing under any other Ordinance, a fixed carrier (restricted) licence, or a satellite broadcasting service under a satellite television uplink and downlink licence.

2. For the purpose of this licence,

a “fixed point” means a network termination point and shall include such area within the immediate vicinity of such a point as the Authority may direct in writing, either generally or specifically, to allow limited mobility for access to that point in such manner as the Authority may approve in writing not inconsistent with Clause 1 of this Schedule 1; and

an “external” telecommunications service means a service for communications
 - (a) between one or more points in the Hong Kong Special Administrative Region and one or more points outside the Hong Kong Special Administrative Region; and
 - (b) between two or more points outside the Hong Kong Special Administrative Region but routed in transit via the Hong Kong Special Administrative Region.

3. The licensee may establish and maintain an external telecommunications circuit based on an external cable network or non-cable based external network at the Hong Kong end. For the purpose of this Schedule,

“external cable network” means a network comprising a physical wireline system of overland cables or submarine cables, including without limitation the capacity under any right of use over such cables connecting one or more points in the Hong Kong Special Administrative Region and one or more points outside the Hong Kong Special Administrative Region;

“non-cable based external network” means a network based on satellite or other forms of wireless transmission connecting one or more points in the Hong Kong Special Administrative Region and one or more points outside the Hong Kong Special Administrative Region.

4. (a) Nothing in this licence authorizes the licensee to provide any internal telecommunications service or circuit. However, the licensee may provide its customers with access to the internal telecommunications services or circuits lawfully operated in the Hong Kong Special Administrative Region. For the purpose of this Clause,

an “internal” telecommunications service means a service for communications between points within the Hong Kong Special Administrative Region.

- (b) For the avoidance of doubt, Clause 4(a) of this Schedule 1 does not prevent the licensee from establishing or maintaining backhaul facilities used for the sole purpose of carrying the licensee’s own external telecommunications services.

- (c) For the purpose of this clause, a “backhaul facility” means a telecommunications circuit for connection between any of the following points within the Hong Kong Special Administrative Region:

- (i) a cable landing point;
- (ii) a cable landing station;
- (iii) a satellite earth station;
- (iv) an external microwave link transmitting and receiving station;
- (v) a point of interconnection with a local network; and

- (vi) any other facility with a similar purpose to a facility identified in paragraphs (i) to (v), whether developed before or after the date of this licence

A “telecommunications circuit” includes any means of telecommunications capable of facilitating such a circuit.

SCHEDULE 2

DESCRIPTION OF NETWORK

1. All such telecommunications installations established, maintained, possessed or used whether owned by the licensee, leased, or otherwise acquired by the licensee for the purpose of providing the public external telecommunications network services specified in Schedule 1.

SCHEDULE 3

TECHNICAL PARTICULARS OF RADIO STATIONS FOR THE PROVISION OF THE SERVICE

Location

Frequency

Class and Characteristics of Emission

Power

Aerial characteristics

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

1. The service, the scope of which is described in Schedule 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.

(Mrs. Marion Lai)
Telecommunications Authority

Date: 31 MARCH 2009