

19 August 2004

**Circular Letter to
All Public Non-Exclusive Telecommunications Service Licensees
for the provision of External Telecommunications Services**

Dear Sir / Madam,

**Higher Financial Penalty to Strengthen Enforcement
Against Evasion of Local Access Charge and Universal Service Contribution**

Under Special Condition (“SC”) 22(1) of the Public Non-Exclusive Telecommunications Service (“PNETS”) Licence for the provision of external telecommunications services (“ETS”), the licensee shall pay such interconnection charges and local access charges (“LAC”) as may be determined by the Telecommunications Authority (“TA”) from time to time under section 36A of the Telecommunications Ordinance (“the Ordinance”) for the delivery of outgoing and incoming external telecommunications traffic. Under SC24(1), the licensee shall pay its relevant share of the Universal Service Contribution (“USC”) to assist PCCW-HKT Telephone Limited or those licensees, to meet their Universal Service Obligations.

Contraventions of SC22(1) and/or SC24(1) are generally dealt with by the imposition of financial penalties and the issue of directions under sections 36C and 36B of the Ordinance. Since 2001, the TA has taken numerous regulatory actions under S36C and S36B against licensees contravening the said licence conditions.

According to the case records of this office, the LAC/USC problem persists and there is no sign of improvement. On the contrary, the number of telephone circuits suspected to be involved in routing unauthorized ETS and subsequently terminated by fixed telecommunications network services (“FTNS”) operators is increasing:

<u>Year</u>	<u>Number of telephone circuits involved in routing unauthorized ETS traffic & terminated by FTNS operators</u>
2001	107
2002	672
2003	1,464
2004 (up to July)	5,153

Recently, the Government received submissions from a Legislative Councillor, FTNS operators and trade union, urging the Government to step up enforcement action, including the increase of financial penalty. They took the view that the malpractice, in the longer term, would not only affect foreign investment incentive in the telecommunications industry in Hong Kong but also jeopardize the telecommunications hub status of Hong Kong as illegal operators cream skim the industry’s profit.

Having taken into account the prevalence of the malpractice and the significant impact on the industry, the TA intends to strengthen enforcement action against evasion of LAC and/or USC. With effect from **19 August 2004**, in addition to the issue of directions, the TA shall adjust the starting point for determining the level of financial penalty for contravention of the related licence conditions to HK\$150,000.00 for the first occasion on which such penalty is so imposed on the licensee concerned ^{Note}¹. The penalty imposed may be adjusted upwards or downwards depending on the circumstances of each case. The “*Guidelines on the Imposition of Financial Penalty under Section 36C of the Ordinance*” issued on 15 April 2002 contains the general aggravating and mitigating factors which the TA may consider in determining the level of financial penalty.

In addition to the adjustment of the starting point for determining the level of financial penalty, the TA may, under section 34(4) of the Ordinance, consider suspension or cancellation of the licence if a licensee has continuously or repeatedly failed to comply with the related licence conditions.

Office of the Telecommunications Authority

Note 1: For the avoidance of doubt, the adjusted starting point shall not apply to cases under investigation before the effective date of 19 August 2004.