

6 January 2006

CIRCULAR LETTER to

♦ **All Local Fixed Telecommunications Network Services (“FTNS”) Licensees and Local Fixed Carrier (“FC”) Licensees;**

Dear Sir/Madam,

Amendment of FTNS or FC Licence for the Operation of Class 1 and/or Class 2 Services

Introduction

In the policy statement entitled “Regulation of Internet Protocol (“IP”) Telephony” which he issued on 20 June 2005 (“June TA Statement”), the TA makes it clear that the existing FTNS or FC licensees will be permitted to operate both Class 1 and 2 services under their existing FTNS or FC licences without the need for them to apply for separate service-based operator (“SBO”) licences. However, certain licence conditions of the FTNS and the FC licences are irrelevant to the operation of Class 2 services. Accordingly, FTNS or FC licensees who wish to operate Class 2 services have to seek licence amendments from the TA.

2. A circular letter was issued on 7 July 2005 (“July Circular Letter”) to all local FTNS and FC licensees to propose licence amendments for the operation of Class 1 and/or Class 2 services, and to solicit views from the concerned licensees. By the deadline of 12 August 2005, a total of 8 submissions were received.

- CM Tel (HK) Limited (“CM Tel”)
- Hong Kong Broadband Network Limited (“HKBN”)
- Hong Kong Cable Television Limited (“HKCTV”)
- Hutchison Global Communications Limited (“HGC”)

- New World Telecommunications Limited (“NWT”)
- PCCW-HKT Telephone Limited (“PCCW-HKTC”)
- SmarTone Services Limited (“SmarTone”)
- Wharf T&T Limited (“WT&T”)

3. Having considered the submissions received, the TA has finalized the licence amendments for the operation of Class 1 and/or Class 2 services. The TA’s comments on the submissions and his final views on the licence amendments are set out in this circular letter. The finalised amendments to the TA Direction on number portability as well as the finalised waiver on preparation of customer charter are attached in Annex A and Annex B respectively.

Replacement of FTNS Licence with FC Licence

Preliminary Views in July Circular Letter

4. For the operation of Class 2 services, the holder of an FTNS licence is required to apply to the TA for the replacement of its licence with an FC carrier licence which has incorporated the appropriate special conditions (“SC”) that waive the applicability of certain licence conditions to the operation of Class 2 services. In the July Circular Letter, SCs of the FC licence for the replacement of FTNS licence were proposed for comments.

Operators’ Submissions

5. NWT and WT&T disagreed to OFTA’s proposal of converting the FTNS licence to an FC licence for the operation of Class 2 services. Instead of converting to an FC licence, WT&T suggested the TA to grant waiver or exemption on relevant licence conditions for the operation of Class 2 services.

6. Some operators considered that the FC licence proposed in the July Circular Letter imposed extra licence obligations as compared to their existing FTNS/FC licence (e.g. SC 7.2(b)¹, SC 7.2(c)², SC 8³, SC 23⁴ and SC 24⁵).

¹ The proposed SC 7.2(b) in the July Circular Letter requires the licensee to provide a copy of the tariff to the TA at least one day before the date on which the tariff becomes effective. In the existing FTNS/FC licences (except PCCW’s FC licence), the licensee is required to provide a copy to the TA on or before the date on which the tariff becomes effective.

7. On the other hand, PCCW-HKTC considered that its existing FC licence imposed extra licence conditions as compared to the FC licence proposed in the July Circular Letter (e.g. SC 3.4 of PCCW-HKTC's FC licence⁶). PCCW-HKTC also requested the TA to review the licence conditions which require licensees to publish tariffs in the Hong Kong Government Gazette, to provide printed telephone directory and to provide directory enquiry services to customers on a free-of-charge basis.

The TA's Final Views

8. Following the enactment of the Telecommunications (Carrier Licences) Regulation (the "CR") (Cap.106V), FTNS licences are no longer issued and are gradually replaced by FC licences. In cases where the FTNS licence expires or where substantial amendment to the FTNS licence is required, it has been the TA's practice to replace the FTNS licence with an FC licence which is in line with the up-to-date licensing regime. Accordingly, the TA is of the view that replacement of an FTNS licence with an FC licence is appropriate for implementing the requirements in the current exercise. The TA takes note of WT&T's suggestion on issuing waiver or exemption on the concerned general conditions ("GCs") for FTNS licensees to operate Class 2 services. However, since the concerned GCs in the FTNS licence do not have provisions for issuing waiver or exemption, the suggestion is not legally viable.

9. Having considered the comments from operators, the TA is of the view that FTNS licensees should be allowed to choose either the *ex post* FC licence proposed in the July Circular Letter or the *ex ante* FC licence which has been issued to local fixed carriers since the full market liberalization in January 2003.

10. In the *ex ante* FC licences issued to CM Tel, HKC Network and TraxComm, the licence condition on "Publication of Accounting Rates and

² The proposed SC 7.2(c) in the July Circular Letter requires the licensee to place a copy of the tariff on its website. In the existing FTNS/FC licences (except PCCW's and Reach's FC licences), such requirement does not exist.

³ The proposed SC 8 in the July Circular Letter specifies the requirement on discount notification. In the existing FTNS/FC licences (except PCCW's and Reach's FC licences), such licence condition does not exist.

⁴ The proposed SC 23 on "Insurance" exists in some FTNS/FC licences only.

⁵ The proposed SC 24 on "Publication of Accounting Rates and Settlement Rates" exists in some FTNS/FC licences only.

⁶ SC 3.4 of PCCW-HKTC's FC licence requires that any amendment to any published tariff for interconnection, which was in force at 1 Dec 2004 and continues in force, must first be approved by the TA in writing.

Settlement Rates” (i.e. SC 24 proposed in the July Circular Letter) does not exist. However, the TA maintains his view that, even if an FTNS licensee opts for the *ex ante* FC licence, this licence condition will be added in their newly converted FC licence since this condition already exists in the current FTNS licences. Settlement rate is included in the licence condition since nowadays settlement rate is more relevant than accounting rate.

11. PCCW-HKTC’s comments as set out in paragraph 7 above are considered irrelevant in this exercise. Nonetheless, the industry may wish to note that the TA has taken on board the relevant issues and addressed them in the FMC Consultation⁷.

Amendments to FC Licence – SC 4 on “Numbering Plan”

Operators’ Submissions

12. No specific comments have been received from operators on the proposed wordings for amending SC 4.

The TA’s Final Views

13. To align the wordings with the SBO licence, the TA finalises the amendments on SC 4 as follows. For easy reference, amendments proposed in the July Circular Letter have been underlined while revisions to the amendments have been bolded and shaded.

[...]

SC 4.4

*The licensee shall, in such manner as the Authority may direct, facilitate the portability of numbers **from the numbering plan of Hong Kong as stipulated in Special Condition 4.1 and** assigned to any customer of any fixed carrier or fixed telecommunications network services licensee or any customer of any licensed internal fixed telecommunications services for carrying real-time voice communications (which may be integrated with other types of communications) which are interconnected with*

⁷ In the Consultation Paper on Revision of Regulatory Regimes for Fixed-Mobile Convergence (FMC Consultation) issued on 21 September 2005, paragraphs 41 – 45 deal with the issue of directory information and paragraphs 49 – 50 deal with the issue of tariffs publication.

systems and services under fixed telecommunications network services licences or fixed carrier licences, 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 fixed carrier or fixed telecommunications network services licensee or any other licensed internal fixed telecommunications services for carrying real-time **voice communications (which may be integrated with other types of communications)** which are interconnected with systems and services under fixed telecommunications network services licences or fixed carrier licences, as the case may be.

[...]

Amendments to FC Licence – SC 10 on “Directory Information and Directory Information Service”

Operators’ Submissions

14. No specific comments have been received from operators on the proposed wordings for amending SC 10.

The TA’s Final Views

15. To align the wordings with the SBO licence, the TA finalises the amendments on SC 10 as follows. For easy reference, amendments proposed in the July Circular Letter have been underlined while revisions to the amendments have been bolded and shaded.

[...]

SC10.6

*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 on all customers of all fixed carriers or fixed telecommunications network services licensees **and all customers of ~~or~~ licensed internal fixed telecommunications services for carrying real-time **voice communications (which may be integrated with other*****

types of communications) which are interconnected with systems and services under fixed telecommunications network services licences or fixed carrier licences, except for those customers who request that directory information about them not be disclosed. The licensee shall provide, and regularly update, raw directory information about its customers and customers of licensed internal fixed telecommunications services for carrying real-time voice communications (which may be integrated with other types of communications) which are interconnected with the systems and services under this licence, to each other fixed carrier or fixed telecommunications network services licensee, 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.

[...]

SC 10.9

This Special Condition does not apply to the services where the customers are not assigned with numbers from the numbering plan of Hong Kong as stipulated in Special Condition 4.1. This Special Condition also does not apply to the services described in Schedule [] 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.

SC 10.10

For the purpose of Special Condition 10.6, the licensee shall not be required to ~~contain~~ include in the unified directory database directory information on customers of services provided by other fixed carriers or fixed telecommunications network services licensees or licensed internal

fixed telecommunications services for carrying real-time voice communications (which may be integrated with other types of communications) which are interconnected with systems and services under any fixed telecommunications network services licences or fixed carrier licences, where those services fall within the scope defined in the special condition corresponding to Special Condition 10.9 under the respective licences.

[...]

Amendments to FC Licence – SC 11 on “Emergency Call Services”

Operators’ Submissions

16. PCCW-HKTC suggested that the scope of the proposed SC 11.2 should be restricted to nomadic services only. Otherwise, it might create an unnecessary cost burden for FC licensees.

The TA’s Final Views

17. The TA agrees with PCCW-HKTC that the scope of SC 11.2 should be restricted to nomadic services only.

18. The Hong Kong Police (“HKP”) requested that, for public safety requirement, operators providing IP telephony services (which are potentially nomadic) should be required to provide free of charge to HKP and Fire Services Department the relevant location information of customers calling the emergency service. HKP made a similar request for the IP telephony services provided by the SBO licensees. As the TA already decides that the SBO licence should contain such a licence requirement, he decides that, for public safety and parity reason, SC 11.2 of FC licence should be amended accordingly such that FC licensees providing services which are potentially nomadic will also have a social obligation to provide the location information of customer free of charge to the relevant emergency agencies.

19. Based on the discussions in paragraphs 17 and 18, the TA finalises the amendments on SC 11 as follows. For easy reference, amendments proposed in

the July Circular Letter have been underlined while revisions to the amendments have been bolded and shaded.

SC 11.1

Where the licensee provides the services described in Schedule [], 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, communicate as quickly as practicable with the Hong Kong Police Emergency Centre or other entity as directed by the Authority to report an emergency.

SC 11.2

*Where the licensee provides a public emergency call service pursuant to **Special Condition 11.1 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 Hong Kong Police Emergency Centre or other entity referred to in Special Condition 11.1**, the relevant information relating to the location of a customer calling the emergency service described in Special Condition 11.1 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. 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.*

Amendments to FC Licence – SC 25 on “Compliance with Codes of Practice”

Operators’ Submissions

20. Some operators objected to the proposed SC 25. Their views are summarised as follows.

- PCCW-HKTC submitted that the proposed SC 25 is already covered by other provisions under the Telecommunications Ordinance (the “Ordinance”). It might be unlawful and ultra vires

for the TA to impose a gloss on what the Ordinance already provides and, therefore, any obligation might be considered by the courts to be unlawfully expanding the bounds of the Ordinance.

- HGC submitted that GC 4 already requires the licensees to comply with instruments issued by the TA and therefore SC 25 is redundant. Furthermore, some codes of practice (“CoP”) require voluntary compliance only.
- NWT considered the proposed SC 25 as an attempt by OFTA to expand its powers and jurisdiction beyond the Ordinance into unspecified consumer issues.

The TA’s Final Views

21. The TA does not agree that the proposed SC 25 expands the TA’s power beyond the Ordinance or is unlawful. 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 SCs, consistent with the Ordinance and not inconsistent with the prescribed GCs. The proposed SC25 provides that the TA may issue CoP or guideline for the purpose of providing guidance to the licensees on matters relating to telecommunications services. It is without prejudice to the generality of the provisions of the Ordinance and is not inconsistent with the prescribed GCs. Notwithstanding the reserve power under the proposed SC25, the TA will continue to adopt a light-handed approach in regulation of telecommunications services. The TA encourages operators to self-regulate their activities. All existing voluntary CoP shall continue to be voluntary. The TA will only exercise the reserve power and issue mandatory CoPs when industry self-regulation fails or in case it does not live up to the expectation of the general public. The TA will carry out such consultation as is reasonable in all the circumstances of the case before issue of such mandatory CoPs. When issuing such CoPs, care will also be taken to ensure that the CoPs will cover matters concerning with telecommunications services, instead of issues unrelated to telecommunications or otherwise unspecified. As such, the TA maintains his view that SC 25 should be retained in the amendments to the FC licence (please refer below for the finalised wordings).

SC 25.1

Without limiting or affecting in any way the licensee's obligations under any other licence 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; and

(c) the protection and promotion of the interests of consumers of telecommunications goods and services.

SC 25.2

Before issuing any code of practice or guideline referred to in Special Condition 25.1, the Authority shall carry out such consultation as is reasonable in all the circumstances of the case.

Amendments to FC Licence – SC 26 on “Backup Power Supply”

Operators' Submissions

22. PCCW-HKTC did not agree that the bar on providing service should be imposed as a licence condition. Instead, it suggested amending the CoP on backup power supply (“UPS”) to the effect that the obligation to provide UPS applies when the service is supplied to households with lifeline users as well as senior citizens. PCCW-HKTC explained that senior citizens are just as much at risk as lifeline users when having to make telephone calls during power outages.

The TA's Final Views

23. The TA maintains his view that the requirement should be imposed as a licence condition as the TA considers that this is a basic obligation that licensees must observe. The CoP on UPS, which specifies the manner of how UPS should be provided, will be revised and updated to cope with the new development. In this respect, the TA has issued an industry consultation on the subject on 31 October 2005.

24. The TA takes note of PCCW-HKTC's view that some senior citizens may be subject to as much risks as lifeline users are in the event of an emergency. In fact, senior citizens may, depending on their own needs and expectations, choose to install lifeline devices in order to summon assistance in the event of an emergency. In the circumstances, those senior citizens who have installed lifeline devices will be provided with UPS under SC 26, such that service continuity will be maintained during power outage.

25. The TA recognises that licensees may have practical difficulty in knowing, on an ongoing basis, whether their customers will use their services for lifeline purposes. To comply with the licence condition, all licensees should check with the customers before or upon subscription of services whether the services will be used by lifeline users and whether there will be any lifelines devices connected to their services. If the reply is in the affirmative, they have to ensure that UPS is available as stipulated in SC 26 before providing the services to or signing service agreements with the customers. Some amendments have been made to SC 26 to state clearly this obligation. The TA will make this clear in the consumer education materials that he is going to publish. To avoid any potential disputes with the customers after services are subscribed to, licensees should consider requiring the customers to confirm in writing (for example by signing a printed form) whether the services will be used by lifeline users. The licensees should also affix a label onto the wall socket panel or any equipment installed on the customer's premises, or take other reasonable steps (such as a cautionary remark in telephone bills) to remind the customers that the service is without UPS and is therefore not suitable for connection to lifeline devices. OFTA is prepared to provide further guidance on this by issuing the necessary consumer education material, guidelines or CoP.

26. Please refer below for the finalised wordings of SC 26. For easy reference, amendments to SC 26 have been bolded and shaded.

SC 26.1

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.

SC 26.2

Where no backup power supply is available in such manner as described in SC 26.1, the licensee is deemed to have complied with SC 26.1 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.**

SC 26.32

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.

Amendments to FC Licence – New Schedule to be Added in FC Licence for the Operation of Class 1 and/or Class 2 Services

Operators' Submissions

27. No specific comments have been received from operators on the proposed wordings of the new schedule.

The TA's Final Views

28. To align the wordings with the SBO licence, the TA finalises the new schedule as follows. For easy reference, the new schedule proposed in the July Circular Letter are underlined while revisions to the proposal are bolded and shaded.

SCHEDULE []

DESCRIPTION OF SERVICES REFERRED TO IN SPECIAL CONDITIONS 10 AND 11

An internal telecommunications service

(a) for carrying real-time voice communications (which may be integrated with other types of communications) which is capable of allowing customers to make and receive calls 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.

Amendments to TA Direction Issued under SC 4 of FC Licence to Waive the Port-in and Port-out Requirement on Class 2 Services

Operators' Submissions

29. PCCW-HKTC considered that the definition for “Class 2 service” proposed in the amendments to the TA direction might be inadequate. It suggested defining “Class 2 service” more clearly and restrictively. Otherwise, fixed operators might evade their responsibility of implementing the port-in and port-out requirements even for their conventional fixed telephony services. However, no concrete suggestion has been received from operators on the proposed wordings for amending the TA direction.

The TA's Final Views

30. Regarding PCCW-HKTC's concern about the evasion of responsibility of implementing the port-in and port-out requirements for conventional fixed telephony services, the TA would like to clarify that, under the technology-neutral regime, the regulatory framework of Class 1/2 services should apply to all services operated under the FC licence (including but not be limited to IP telephony services and conventional fixed telephony services). In other words, if a fixed operator declares its conventional fixed telephony services as “Class 2 services”, it should no longer be required to implement the port-in and port-out requirements, even though the services are in fact conventional fixed telephony services. As such, PCCW-HKTC's concern about evasion of responsibility is not valid and the TA does not consider that there is any need to define “Class 2 service” more restrictively. Having reviewed the proposed definition of “Class 2 service”, the TA maintains his view that the definition is in line with the June TA Statement and is adequate.

Accordingly, the TA adopts the amendments as proposed in the July Circular Letter, with some wordings aligned with the SBO licence. The finalised amendments to the TA direction are attached in Annex A. For easy reference, amendments proposed in the July Circular Letter have been underlined while revisions to the amendments have been bolded and shaded.

Waiver on Preparation of Customer Charter for Class 2 Services

Operators' Submissions and the TA's Final Views

31. No specific comments have been received from operators on the proposed waiver on preparation of customer charter for Class 2 services. As such, the TA adopts the wordings as proposed in the July Circular Letter. For the finalised waiver, please refer to Annex B.

Other Comments

32. In its submission, HKCTV requested for a formal public consultation on the proposed amendments. However, the TA does not consider that a public consultation is necessary given all the licence requirements for the provision of IP telephony services have in general been set out in the June TA Statement and all the existing FTNS or FC licensees who may be affected have been duly consulted in accordance to section 6C of the Ordinance.

33. In response to HKCTV's request for clarification, the TA would like to clarify that the finalised amendments to the FC licence and the TA direction on number portability are applicable to Class 1 and 2 services as well as hosting services to SBO licensees.

34. Application for licence amendments should be addressed to the undersigned. For the avoidance of doubt, FTNS/FC licensee has the obligation of complying with its existing licence conditions in full for its local telephony services unless:

- (i) its licence has been properly amended to waive the applicability of certain licence conditions to the operation of Class 2 services; and

- (ii) it has declared that its service is Class 2 service in all marketing materials for the service it offers.

35. For your information, the TA has finalised the SBO licensing framework today. The form of the SBO Licence together with the GCs to be imposed under the Licence is published in the Gazette today. The following documents can also be downloaded from our website at <http://www.ofta.gov.hk/>:-

- the TA Statement on SBO Licence
- the SBO licence
- the guidelines for the application for SBO Licence and the relevant application form

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Helen Lai', written over a horizontal line.

(Helen Lai)

for Director-General
of Telecommunications

Enclosure (Annexes A and B)