

Guidelines for Application of Road Opening Authorization and Procedure for Road Opening Works

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Introduction

Under section 14(1) of the Telecommunications Ordinance (“Ordinance”), the Telecommunications Authority (“TA”) may grant authorizations to relevant licensees to open up public roads/streets and unleased Government land to lay underground ducts and telecommunications lines (i.e. road opening). Granting of such authorizations is restricted to fixed network operators (“FNOs”), which include Fixed Telecommunications Network Services (“FTNS”) Licensees, Fixed Carrier (“FC”) Licensees and Unified Carrier Licensees which are authorized to provide fixed services. Under the relevant licence conditions¹ of the FTNS Licence, Fixed Carrier Licence (“FCL”) and Unified Carrier Licence (“UCL”), an FNO is required to coordinate and cooperate with other FNOs authorized to carry out road opening and to comply with any guidelines issued by the TA. This document sets out the principles and criteria of the TA on granting of road opening authorizations, and the procedures to be followed by authorized FNOs when they perform road opening works.

Background

2. In order to minimize environment disruption and to avoid wasteful and uneconomic duplication, network operators are authorized by the TA to carry out road opening only where there is a genuine need. Such an authorization is granted under section 14(1) of the Ordinance and will depend on the scope of service under the licence and road opening works proposed to be carried out. In considering to grant such an authorization, the TA will encourage FNOs to share facilities, in particular ducting, on fair commercial

¹ Please refer to the licence condition on “Requirements for road opening” in FTNS Licence (General Condition 30), FC Licence (Special Condition 15 / 17 in the ex post / ex ante versions) and UCL (Special Condition 16).

and technical terms and conditions. Should FNOs be unable to reach agreement on shared use through commercial negotiation, the TA may intervene to impose terms and conditions if he considers that there is no reasonable alternative. This is particularly important in ‘bottleneck’ situations. In requiring shared use the TA will have due regard to the interests of customers and the FNOs themselves, and to the wider public interest. Section 36AA of Ordinance provides that, in the public interest, the TA may direct a FNO to co-ordinate and cooperate with another FNO specified by the TA to share the use of any facility owned or used by it.

3. In addition to the authorization of the TA and compliance with relevant guidelines issued by the TA, FNOs shall obtain for themselves any approvals required from relevant Government bodies such as the Highways Department before commencing any road opening works.

4. FNOs with road opening authorizations granted should follow the guidelines and requirements as set out in this document so that they may co-ordinate and co-operate among themselves in an efficient and effective manner on road opening. The same guidelines will also apply to laying of cables and ducts (including trenchless technologies) in other ‘bottleneck’ situations. Some examples of bottlenecks are road tunnels, bridges, subways, wayleaves owned by other public utilities, landing points for submarine cables and cable entry points of buildings.

5. An FNO is not in breach of these guidelines if, in the opinion of the TA, that operator has used and continued to make reasonable endeavours to comply with the obligations set out below.

Authorization of Road Opening

6. In general, the TA will grant authorization of road opening to an FNO if it is authorized under its licence to provide fixed services and the provision of fixed services rely on the rolling out of a wireline-based infrastructure². Under such criteria, only FTNS Licensees, FC Licensees and Unified Carrier Licensees which are authorized to provide wireline fixed services are entitled

² See sub-paragraph 7(c) in the Statement on “Licensing Framework for Unified Carrier Licence” issued by the TA on 9 May 2008 (“UCL Statement”).

to apply to the TA for authorization of road opening.

7. Other than the four FNOs licensed in 1995³ and Hong Kong Cable Television Limited (“HKCTV”), which are granted with road opening right in general, local wireline-based FNOs licensed after the full liberalisation of the local fixed telecommunications market in 2003 are required to seek the TA’s approval on a case-by-case basis on road opening works. Upon the implementation of the UCL on 1 August 2008, a streamlined and harmonised procedure for authorization of road opening has been adopted as follows:

- (a) New Unified Carrier Licensees shall seek the TA’s authorization on their initial implementation plan (“master plan”). In this connection, they should provide justifications including information on the technology used for providing wireline-based fixed service that demands road opening and schedule of road opening activities for the initial 3 years. They should file updates to the plan to the TA thereafter as necessary or when required by the TA.
- (b) The four FNOs with their FTNS/FC licences issued in 1995 and HKCTV have been granted a general authorization on road opening. However, this general authorization will cease at the time when their licences expire. When these licensees subsequently take up the replacement UCL when their existing licences expire, they shall follow procedure (a) above.
- (c) Existing FC Licensees who have entered into the market after 1 January 2003 should provide updates to their previously submitted master plan as necessary or when required by the TA until expiry of their existing licences. However, they will no longer be required to seek TA’s approval on road opening works on a case-by case basis. When these licensees take up the UCL for replacement of their existing licences upon expiry or for conversion of their existing licences before expiry, they shall follow procedure (a) above.

8. Under the harmonised and streamlined procedure described in

³ The four FNOs are PCCW-HKT Telephone Limited (“PCCW”), Hutchison Global Communications Limited (“HGC”), Wharf T&T Limited (“WTT”) and New World Telecommunications Limited (“NWT”)

paragraph (7) above, the following conditions will apply for the authorization of road opening granted by the TA to a licensee:

- (a) The authorization is valid throughout the validity period of the licence held by the concerned licensee for all road opening activities proposed in the master plan and subsequent updates. The licensee is not required to apply to the TA for case-by-case approvals of the proposed road opening works;
- (b) The authorization only applies for the deployment of the specific technology to provide public wireline-based service as proposed by the licensee. If the licensee deploys a new technology different from that previously authorized by the TA, it should apply for the authorization of the TA again;
- (c) The authorization only applies for installation and operation of facilities for the provision of services to the public. For the avoidance of doubt, offering services only to the licensee itself or to affiliated companies or entities does not qualify as offering services to the public;
- (d) The licensee shall always observe the road opening coordination procedures (please refer to paragraphs 9 – 26) set out in this document in respect of all proposed road opening works; and
- (e) All proposed road opening works should be completed on or before the specified dates. Extension to the specified dates will be subject to the approval of the relevant authorities.

Road Opening Co-ordination Procedures

9. For the purpose of the following procedure, a “major road opening” is any road opening exceeding 100 metres in length in a “major road”, or exceeding 300 metres in length in any other road, or any road opening across a public road. A “major road” is any of the roads listed in Appendix I of Highways Department’s Guidance Notes No. RD/GN/021. A “minor road opening” is any road opening other than a “major road opening”.

10. Prior to preparing any road opening plan, FNOs are encouraged to check with other FNOs regarding the availability of capacity on existing ducts along the planned route or any alternative route to meet its requirement. Other FNOs should respond to the request within 10 working days⁴. The proposing FNO should check if the road planned to be opened for its duct route was opened in the last twelve months (“overlapped case”) or any portion of the proposed duct route coincides with another duct route plan formerly circulated and registered in the Utility Management System (UMS) of the Highways Department by another operator (“duplicated case”). The FNO should proceed with its road opening project as the First Party on the condition that there is no overlapping or duplication with the road opening projects by other FNOs.

11. In addition to compliance with the works co-ordination requirement by the Highways Department, before an FNO (hereinafter referred to as the “First Party”) submits an application for an Excavation Permit to the Highways Department in accordance with the Land (Miscellaneous Provisions) Ordinance for a “major road opening”, the First Party should circulate the plan to other operators (hereinafter referred to as the “Other Parties”) to see whether they have any requirements on laying ducts and cables along the proposed route. The road opening circulation should provide the Other Parties with the proposed route plan, the target commencement date and the estimated completion date. The target commencement date and the estimated completion date of the road opening work should be less than one year and less than two years from the date of circulation respectively unless the prior approval of the Office of the Telecommunications Authority (“OFTA”) has been obtained. The First Party should also create a new record and input the necessary details in the Road Opening Coordination Summary at OFTA’s web site.

12. Within 10 working days after the road opening circulation, Other Parties should notify the First Party of their requirements so that the latter may incorporate these requirements, where reasonable, in its Excavation Permit application to be submitted to the Highways Department. The First Party should summarize the responses from Other Parties and submit the results of circulation to OFTA and to the Highways Department in its Excavation Permit

⁴ “Working days” do not include “Saturday”, “Sunday” and “Public Holiday”.

application. Other Parties receiving the road opening circulation should also counter-check if the proposed duct route duplicates with their plans formerly circulated for a length exceeding 100 metres in a “major road” or exceeding 300 metres in any other road, or any road crossing of a public road. If there is such duplication, the FNO who circulated earlier than the proposing FNO should remain the First Party and notify the proposing operator accordingly. The proposing FNO should become an Other Party and join the existing road opening project for duplicated sections under this circumstance.

13. If the First Party considers that it is not reasonable to entertain the requests made by Other Parties, it should notify Other Parties within 10 working days from the date of receiving the requirements from the Other Parties and give reasons why it is considered not reasonable to do so. The concerned parties should proceed to resolve any difficulty. After having agreed on the technical design, the concerned parties may then proceed to negotiate a commercial agreement on the sharing of the relevant expenses.

14. The concerned parties should endeavour to resolve any technical or commercial dispute among themselves in the first instance, but if they are not able to do so within 28 working days of the First Party giving notification of its intention for the proposed road opening or before the target commencement date (whichever is the earlier), any party may write to OFTA seeking for mediation on the dispute. If the dispute cannot be resolved within 14 days, the concerned parties may request the TA to follow the “Road Opening Dispute Resolution Procedure” as stipulated in Annex 1.

15. The correspondence referred to in paragraphs 10 - 14 should be delivered using the most expeditious means of delivery reasonably practicable and the receiving operator should acknowledge receipt of the correspondence on the day of receipt. For correspondence received after normal working hours, the receiving FNO should acknowledge receipt of the correspondence on or before the next working day. The receiving FNOs could also keep track of any new records in the Road Opening Coordination Summary at OFTA’s web site. All correspondence in relation to the procedure given under paragraphs 11 - 14 should be copied to OFTA for information.

16. The First Party must submit the road opening plan of the co-ordinated projects to the UMS of Highways Department within 2 working days after the

completion of road opening circulation and resolution of related technical / commercial issues with Other Parties. The submission should be accompanied with correspondences to verify that the co-ordination procedures in accordance with these guidelines have been satisfactorily completed. A copy of the approved Excavation Permit should be copied to OFTA for records. For any delay of the project, the First Party is responsible for giving explanation and providing relevant information and evidence to all participating operators about the reasons of the delay.

17. For road opening within Tsing Ma Control Area (TMCA) boundary, the First Party should apply for a Road Works Permit in accordance with the Tsing Ma Control Area (General) Regulation. For road opening beneath expressways, the First Party should apply for an Expressway Works Permit in accordance with the Road Traffic (Expressway) Regulations. These applications should be provided with correspondence showing that the co-ordination with Other Parties has been duly completed.

18. All excavation works for duct laying should commence within one year from the date of road opening circulation. If the First Party fails to do so for whatever reason, it should provide to the satisfaction of OFTA the detailed explanation and the revised commencement date. In the absence of such an explanation, OFTA may allow another operator who subsequently circulates the duplicated duct route to proceed with its road opening works according to the co-ordination procedures given in paragraphs 10 - 20. Under such circumstance, the First Party will no longer assume the leading role for the concerned duct route plan.

19. In the course of providing information as envisaged by these guidelines, each FNO may charge the requesting party so as to be fairly compensated for the reasonable relevant costs incurred in the provision of that information, in accordance with the relevant licence conditions.

20. In order to minimise road opening, the First Party may allow Other Parties who have not notified their requirements during the circulation to join the project if the work on the project has not yet started and their requirements are considered technically feasible by the First Party for accomplishment. In such cases, Other Parties should submit full justification to the First Party to explain the reasons for late participation and reach commercial agreement with

the First Party. If necessary, any party may seek assistance from OFTA.

21. “Minor road opening” is to be co-ordinated through the established procedure of Excavation Permit application by the Highways Department without following the procedures given in paragraphs 10 - 20.

Waiver

22. The First Party may request OFTA to waive the requirements specified in paragraphs 10 - 20 in case of a need for “urgent” road openings. A typical list of “urgent” road openings is shown in Annex 2A. The First Party may also request for a waiver from OFTA for a particular road opening exercise where it considers that it would be inappropriate to involve Other Parties. Full justifications in writing should be given in either case. OFTA may grant a waiver to the First Party after consultation with the Highways Department. Such waiver is expected to be granted only in exceptional circumstances. In this paragraph, “urgent” road openings are those road openings which are not “emergency” road openings and for the execution of which, OFTA, having regard to the justifications given by the network operator, does not require the operator to comply fully with the requirements specified in paragraphs 10 - 20. Urgent applications of Excavation Permit are handled by the Highways Department according to their established procedures and guidelines.

23. Requests to waive the requirement specified in paragraphs 10 - 20 for “emergency” road opening are to be dealt with directly by the Highways Department in accordance with the criteria defined in their Permit System. A typical list of “emergency” road openings is shown in Annex 2B.

Road Opening Restriction Periods

24. Highways Department normally will not permit openings within the specified time, which is shown in Annex 2C, after completion of road works. FNOs should keep this in mind when they plan their cable and ducting networks. In particular, if any FNO decides not to join in a road opening exercise in the first place but subsequently applies to the Government for road opening along the same route within the road opening restriction period, it will

need to provide OFTA with full justification on why an exception to this rule would be warranted.

Other Bottleneck Situations

25. For other bottleneck situations, the same procedures as specified in paragraphs 10 - 20 should be followed before the First Party may approach the relevant authorities or responsible persons for the necessary wayleaves to lay its cable or ducts.

Co-ordination Meetings

26. FNOs should co-ordinate among themselves in routine road opening and other related activities. The monthly Road Opening Coordinating Committee convened by the Highways Department is a convenient forum for this purpose. OFTA will also convene regular meetings to facilitate the co-ordination and liaison among the FNOs and to provide guidance as new situations arise.

Amendment of the Guidelines

27. TA reserves the right to amend this document as and when necessary. TA may consult the relevant interested parties before amending this document.

Office of the Telecommunications Authority
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Road Opening Dispute Resolution Procedure

Where called on by one, or all of the parties to a road opening dispute, the TA intends to operate in a manner that encourages a timely resolution of disputes between licensees. As stated in paragraph 14 of the Guidelines, it is the TA's intention to attempt to resolve disputes by informal processes, for example, conciliation or mediation where possible. In agreeing to conciliate or mediate negotiations between licensees, consideration will be given to the extent to which the licensees have attempted to resolve disputes in the first instance through commercial negotiation.

2. Should it prove necessary to resort to formal determination to settle an issue, the TA proposes that the following procedures should apply:

- (a) parties concerned will be given the opportunity to agree to a factual presentation of the issue within a reasonable period of time. If there is no agreement on the factual presentation of the issues, each party will be required to provide a summary of its view of the issue for resolution;
- (b) each party will be given the opportunity to present its case in support of the stance taken by it in negotiation - a detailed factual statement in support of its position will be required. Submissions to the TA will be treated as confidential where appropriate;
- (c) submissions will be exchanged, with each party being given the opportunity to comment on the other's position;
- (d) if appropriate, the TA may seek independent expert advice;
- (e) subject to the timely provision of information by the parties, and the complexity of the issues, the TA would aim to make a final determination within four to six weeks of commencing consideration of the issues; and
- (f) parties concerned will be given a reasonable period within which they

have the opportunity to reach an alternative commercial solution acceptable to the TA.

3. TA will make determinations based on his analysis of the facts, the presentations and submissions made and any independent advice received. The parties will need to provide the TA with ‘hard’ supporting information/data in making their submissions.

4. TA shall make such determinations as he thinks fit, and not simply seek to compromise between the respective positions. TA may accept all of one party's submission if it is considered to result in the right outcome. If the TA considers that the public interest could be better served by doing so, he could reject all submissions and adopt a determination which was not somewhere in-between them, but rather, was to one or other side of either proposals put forward by the parties in dispute.

5. TA may modify, revise, shorten, or adjust the above procedure if it is proper and fair to do so in light of all the circumstances of the case and in particular having regard to the complexity and issue of the case in order to achieve a speedy and fair solution of the dispute.

List of Urgent Works applicable for “Urgent” Road Openings

1. Urgent utility diversion work as requested by Government departments or utility undertakings to facilitate their road work or utility work.
2. Rectification of defective reinstatement of road pavement.
3. Urgent work to rectify settled / protruding utility pit / manhole / joint-box cover.
4. Follow-up work related to emergency work.
5. Trial holes excavation to determine underground condition for facilitating the implementation of any urgent work on this list.
6. Repair work on damaged telecommunication plant to prevent or put an end to a major interruption of services.

List of Emergency Works applicable for “Emergency” Road Openings

1. Any works to locate and repair of missing / broken manhole / pit cover.
2. Emergency repair of telephone / telecommunication cables.
3. Removal and / or replacement of poles and installations when knocked down or damaged which post immediate danger to the public.

Road Opening Restriction Periods

Under Pedestrianization Scheme		Not under Pedestrianization Scheme	
Footway	Carriageway/Emergency Vehicular Access	Footway	Carriageway/Emergency Vehicular Access
2 years	<ul style="list-style-type: none"> ◆ 3 years for colour asphalt resurfacing or colour dressing ◆ 5 years for reconstruction with paving blocks 	1 year	<ul style="list-style-type: none"> ◆ 1 year for asphalt resurfacing ◆ 5 years for newly constructed or re-constructed