

**Telecommunications Ordinance
(Chapter 106)**

**Notice
Pursuant to Section 36C
of the Telecommunications Ordinance**

Interpretation

In this Notice, unless the context otherwise requires,

“Authority” means the Telecommunications Authority;

“ETS” means external telecommunications services;

“LAC” means Local Access Charge;

“Licence” means the Public Non-Exclusive Telecommunications Service Licence (Licence No. 551) granted by the Authority to the Licensee;

“Licensee” means Mountain Telecom International Limited;

“Numbering Plan” means the Numbering Plan for Telecommunications Services in Hong Kong issued by the Authority;

“OFTA” means Office of the Telecommunications Authority; and

“USC” means Universal Service Contribution.

Background

2. Information has been received by OFTA that the Licensee had provided an international calling card service via 3193 9595 and 3406 5678 not in conformity with the Numbering Plan as made or approved by the Authority. The Authority has conducted investigations and has invited the Licensee to make representations as part of the investigations.

3. Having considered the findings of the investigations, the Authority is satisfied that the Licensee has failed to comply with the Numbering Plan for accepting and routing ETS calls, by using in the provision of its services the said

numbers 3193 9595 and 3406 5678 (for fixed network service), instead of a proper access code with leading digits “15xx” / “16xx” or “30(5-9)x” (for ETS or IDD type of service) under the Numbering Plan, in breach of Special Condition (SC) 13 of the Licence which provides that,

“The licensee shall conform to any numbering plan made or approved by the [Telecommunications] Authority and any code or practice or directions given by the [Telecommunications] Authority in respect of the numbering plan.”

4. Further, the Licensee has not paid the relevant LAC which should have been paid in respect of the ETS calls routed through the numbers specified in paragraph 3 nor any USC payable for its ETS service (during the period when the said numbers were used by the Licensee for providing ETS), in breach of SC 22(1) and 24(1) of the Licence which provides that:

“22(1) For the delivery of outgoing and incoming external telecommunications traffic..., the licensee shall pay such interconnection charges and local access charges as may be determined by the [Telecommunications] Authority from time to time under section 36A of the [Telecommunications] Ordinance...”

“24(1) ...the licensee shall pay ... its relevant share of the Universal Service Contribution to assist the PCCW-HKT Telephone Limited, or those licensees, to meet their Universal Service Obligations”.

Notification

5. The Authority, in exercise of his power under section 36C of the Telecommunications Ordinance,

having been satisfied that the Licensee has failed to comply with SC 13, 22(1) and 24(1) of the Licence;

having also been satisfied the Licensee has been afforded reasonable opportunity in accordance with section 36C(7) of the Telecommunications Ordinance to make representations and *having considered* all representations made before the Authority decides whether or not to impose the financial penalty;

having been satisfied that the Licensee has been afforded reasonable opportunity of complying with the requirements of SC13, 22(1) and 24(1) of the Licence;

hereby exercises his power under section 36C of the Telecommunications Ordinance and *gives notice* to the Licensee requiring it to pay to the Government by 6 October 2003 a financial penalty of HK\$150,000.00.

6. In imposing the financial penalty, the Authority has noted that, subject to section 36C(3B), the maximum penalty that he is empowered under section 36C to impose on the second occasion of imposing such penalty is HK\$500,000.00 and has also considered the following relevant factors:

- (a) the nature and seriousness of the breach;
- (b) the Licensee is under the obligations to comply with the licence conditions but has failed to take reasonable measures to comply with SC13, 22(1) and 24(1);
- (c) the Licensee was imposed a financial penalty for similar breach on 26 July 2002; and
- (d) the duration of the breach.

and *is satisfied* that the financial penalty of HK\$150,000.00 is, in all the circumstances of the case, proportionate and reasonable in relation to the contravention concerned.

7. This Notice will be made public.

(M H Au)
Telecommunications Authority
22 September 2003