

**IMPLEMENTATION OF THE FULL LIBERALIZATION OF
THE LOCAL FIXED TELECOMMUNICATIONS NETWORK SERVICES
MARKET
FROM 1 JANUARY 2003**

**STATEMENT OF
THE TELECOMMUNICATIONS AUTHORITY
HONG KONG**

11 January 2002

INTRODUCTION

On 16 October 2001, the Telecommunications Authority (“TA”) issued an industry consultation paper entitled “Implementation of the Full Liberalization of the Local Fixed Telecommunications Network Services Market from 1 January 2003 - Consultation Paper” (the “Consultation Paper”) which invited comments from the industry and any interested parties on the details of the implementation of the policy for full liberalization of the local fixed telecommunications network services (“FTNS”) market in the following areas:

- (a) measures to facilitate the roll-out of new licensees’ local wireline-based fixed networks as soon as practicable;
 - (b) arrangements for granting authorizations under section 14(1) of the Telecommunications Ordinance (Cap 106) (“the Ordinance”) to the new licensees for access to space in buildings and for road opening; and
 - (c) arrangements for licensing existing local wireless FTNS and external FTNS operators to operate local wireline-based fixed networks.
2. A total of twenty-three submissions were received from:
- (a) Asia Global Crossing Limited and Asia Global Crossing Hong Kong Limited (“AGC”)
 - (b) AT&T Asia/Pacific Group Limited (“AT&T”)
 - (c) CLP Telecommunications Limited (“CLPT”)
 - (d) Consumer Council
 - (e) Galaxy Satellite Broadcasting Limited (“Galaxy”)
 - (f) Hong Kong Broadband Network Limited (“HKBN”)
 - (g) Hong Kong Cable Television Limited (“HKCTV”)
 - (h) Hong Kong CSL Limited (“HKCSL”)
 - (i) Hong Kong Telecommunications Users Group (“HKTUG”)
 - (j) Hutchison Global Crossing Limited (“HGC”)

- (k) Hutchison Telephone Company Limited & Hutchison 3G HK Limited (“Hutchison”)
- (l) Mandarin Communications Limited (“SUNDAY”)
- (m) MCI WorldCom Asia Pacific Limited (“MCI”)
- (n) New World Telephone Limited (“NWT”)
- (o) Pacific Century CyberWorks Employees General Union (“PCCW EGU”)
- (p) PCCW-HKT Telephone Limited (“PCCW-HKTC”)
- (q) Peoples Telephone Company Limited (“Peoples”)
- (r) PLDT (HK) Limited (“PLDT”)
- (s) SmarTone Mobile Communications Limited & SmarTone Broadband Services Limited (“SmarTone”)
- (t) Sprint Hong Kong Limited (“SHK”)
- (u) Dr John Ure, Director of the Telecommunications Research Project, University of Hong Kong
- (v) Wharf New T&T Limited (“WNT&T”)
- (w) Dr Xu Yan, Hong Kong University of Science and Technology

The submissions have been posted on the webpage of the Office of the Telecommunications Authority (“OFTA”) at:

http://www.ofta.gov.hk/report-paper-guide/paper/consultation/table_1128.html

SUMMARY

3. Having considered the submissions received, the TA has finalized the details of the implementation of the policy for full liberalization of the local FTNS market. The views and decisions of the TA are set out in this Statement. In summary, the implementation details are as follows:

- As from 1 January 2003, the local and external FTNS market will be fully liberalized. There will be no pre-set limit for the number of licences for the operation of local wireline-based fixed networks¹. The TA will also issue licences for operation from 1 January 2003 of external facilities based on submarine or land cables² to those who may directly invest in cable capacity or acquire capacity through the purchase of Indefeasible Rights of Use (“IRUs”) of cables³;
- The TA considers that the scale of the rollout and investment of the new entrants should best be determined by the market. Therefore no rollout or capital expenditure (capex) commitments in the form of performance

¹ There is already no pre-set limit for the number of licences for the operation of external fixed networks.

² There are currently no restrictions for the submission of applications for licences for the operation of non-cable based external facilities.

³ There will be no distinction drawn between “new” cables and “existing” cables as defined in the “Guidelines for the Submission of Proposals Applying for Fixed Carrier Licences for the Operation of External Fixed Telecommunications Network Services in the Hong Kong Special Administration Region” issued on 18 May 2001.

bonds will be required from licensees that are licensed to operate from 1 January 2003 of local wireline-based fixed networks and/or external facilities. In order to maintain equal treatment between new and existing operators in respect of performance commitments, all performance commitments of existing local and external FTNS operators that will be due on or after 1 January 2003 as initially committed to in the licences granted will be waived;

- The TA has separately issued today a set of guidelines “Guidelines for the Submission of Proposals Applying for Fixed Carrier Licences for the Operation of Fixed Telecommunications Network Services from 1 January 2003 in the Hong Kong Special Administrative Region” (the “Guidelines”) to invite interested parties to submit proposals applying for fixed carrier licences or the extension of scope of services under existing FTNS or fixed carrier licences;
- The TA will not consider granting any fixed carrier licences to operate local wireline-based fixed networks to those applicants who intend to rely primarily on the interconnection with, and access to, the infrastructure of other FTNS or fixed carrier licensees to roll out their networks or provide their services;
- The TA considers that a local wireline-based fixed network licensees should offer services to the public at the wholesale and/or retail level. The TA therefore will not consider granting any fixed carrier licence to applicants who intend to supply transmission facilities primarily to itself or its affiliated companies;
- In considering any proposal applying for fixed carrier licence, the TA will consider, amongst others, the benefit of the proposed network to the community, more specifically the type of services to be offered and the intended coverage areas, the reasonableness of the business plan and the applicant’s financial capability to fulfill the capex requirement. Submissions and representations to the TA in the application will be incorporated into the special conditions and schedules of the fixed carrier licence. Amendments to the scope of the networks and services specified in the schedules will be subject to the approval of the TA;
- The TA maintains that preparatory activities (f), (g) and (h) of the new entrants in 2003 listed in paragraph 15 of the Consultation Paper⁴ should not be allowed before 1 January 2003. However activities other than these three listed in the same paragraph should be allowed in 2002, provided that the new entrants are granted with fixed carrier licences to operate local wireline-based fixed networks from 1 January 2003. When the Moratorium ends after 31 December 2002, the restrictions on activities (f),

⁴ See paragraph 17 of this Statement.

(g) and (h) will be lifted. Whether or not any activities not falling into the scope of activities listed in paragraph 15 of the Consultation Paper can be undertaken by the new entrants within the Moratorium period should be determined on the basis of the same principles and considerations discussed above;

- The TA decides that section 14(1) rights for access to buildings and road opening will be granted to newly licensed local wireline-based fixed network operators on a case-by-case basis. These section 14(1) rights will be granted on the conditions that the respective work will be carried out and completed before a specified date, the extension of which is subject to the approval of the TA. The exercise of the section 14(1) rights are to be for the provision of the services under the licence, which according to the licence conditions, must be offered to the public at the wholesale and/or retail level. The authorization for such rights may be withdrawn if the conditions are not met;
- The TA concludes that local wireless FTNS and external FTNS operators may apply for the extension of the scope of services under their existing licences to operate local wireline-based fixed networks and other forms of FTNS. These applications will be subject to the same licensing criteria set out for applications for new fixed carrier licence;
- The TA also concludes that external FTNS operators may opt to apply for modification of their licences for external facilities for the purpose of constructing and operating their backhaul only. Such a modified external facilities licence does not constitute a licence for the provision of local wireline-based fixed networks. If an external FTNS operator wishes to extend the licence to become a local fixed network operator, it must fulfil the same licensing criteria as for other applications for local fixed network licences;
- The TA considers that mobile network operators should not be licensed to operate local circuits for the operation of their own mobile networks only. They may apply for licences for the operation of local fixed networks for the provision of services to the public in general, and in doing so they must fulfil the same licensing criteria as for other applications.

POLICY OF FULL LIBERALIZATION OF THE LOCAL FTNS MARKET

4. The implementation of the full liberalization of the local FTNS market from 1 January 2003 (the “full liberalization”) follows the liberalization policy announced in May 1999 to license the operation of additional wireline-based fixed networks when the moratorium (the “Moratorium”) ends on 31 December 2002.

Licensing additional local wireline-based fixed networks

5. NWT submitted that the full liberalization should be conditional upon three measures of effective competition: the full re-balancing of local telephony tariff, the establishment of an effective interconnection regime and the capturing of sufficient market share by the “first wave” entrants, namely NWT, HGC and WNT&T. It argued that the latter two have not yet been satisfactorily achieved and hence the licensing of additional local wireline-based fixed networks should be postponed. PCCW EGU submitted that there are already 10 local FTNS operators in Hong Kong. The Government should not license any more operators, otherwise it may lead to fierce competition and cause market disorder, merging and winding-up of companies, salary cuts, layoffs and degradation of telecommunications service quality. PCCW-HKTC, HGC and HKCSL shared similar views that further public consultation and detailed cost-benefit analysis are necessary before the TA should finalize the details in light of the great significance of the liberalization.

6. The full liberalization policy announced in May 1999 was formulated after due consideration of all comments from two rounds of public consultations, namely “1998 Review of Fixed Telecommunications” conducted in April 1998 and September 1998 respectively. This consultation therefore does not and should not seek to re-open the issue of full liberalization in 2003.

Performance Commitment

7. Several submissions commented on the need for performance commitments for the new entrants. SmarTone, MCI, CLPT, AT&T, PLDT and SHK supported the proposal in the Consultation Paper that no performance commitments from the new entrants should be required when the market is fully liberalized. SmarTone further added that the lifting of performance commitment requirements from new entrants would give them advantage over existing FTNS operators who have performance commitments stretching beyond 1 January 2003. To restore the fairness, SmarTone submitted that performance commitment requirements from existing FTNS operators should be waived.

8. On the other hand, PCCW-HKTC alleged that the TA’s plan to require no performance commitments from new entrants appears to have reversed the Government policy of encouraging facilities-based competition for local network development. Both PCCW-HKTC and HGC considered that, without network roll-out performance commitments, new entrants would simply take advantage of existing telecommunications infrastructure, providing network services by resale instead of making investment to roll out their own networks. New entrants without investment commitments would operate to skim revenues from the profitable sectors only, without bringing the benefits of competition to the general public, particularly those outside core areas. AGC submitted that, without performance commitments, new entrants would be given significant advantages over existing FTNS operators who have made substantial

investment in the telecommunications industry in Hong Kong. HKBN foresaw that the lack of performance commitments may attract irresponsible new entrants messing up the in-building access mechanism and engaging in leasing reserved space and in-building infrastructure to other operators without offering genuine telecommunications services. NWT and HKTUG also advocated that performance commitments from new entrants should be required. PCCW-HKTC and HGC pushed this idea further by advocating that the commitments should be of substantial scale or comparable to those of the existing wireline-based FTNS operators. HGC also proposed that operators without such commitments should not be granted fixed carrier status, any privilege to interconnect with fixed carriers, and any rights to gain access to buildings and for road opening to construct telecommunications infrastructure.

9. The TA considers that it is misconceived to equate the proposed policy of requiring no performance commitments from new entrants with giving up the policy to encourage facilities-based competition. The Government's policy is and will continue to be promoting investments in telecommunications infrastructure and facilities-based competition. The TA believes that the development of infrastructure should be market driven when the market is fully open. The requirement for performance commitments is a means to ensure that, when only a limited number of operators can be licensed, those granted with the privilege of a network licence will roll out their networks as proposed in the applications. When the limit on the number of licences is lifted, operators can enter the market freely to capture any market opportunities that are unattended to or not well-addressed. Under this situation, there would be different investment plans targeting different sectors or using different technologies. These investment plans might well have to be modified after licensing to cope with changes in the market. It would be quite impossible for the Government to dictate, through licensing criteria and licence conditions (backed up by performance bonds), the minimum scale of investment of every player. The TA considers that imposing the requirement for performance commitments or dictating the scale of infrastructure investment of new entrants would be arbitrary and in effect create unnecessary barriers to entry.

10. The TA considers that it is important that any artificial and unnecessary barriers to entry should be minimized to allow FTNS operators with a genuine plan to invest in network infrastructure to enter the market freely so as to bring the benefit of enhanced competition to the public. The TA will evaluate the applications for fixed carrier licences and only those meeting the licensing criteria will be approved. The TA will consider the merits of the applications, including the benefit that the proposal would bring to the community. The TA will assess the intended coverage of the network, the services to be offered, the reasonableness of the business plan (including the capex requirement to implement the network coverage and services proposed) and whether or not the applicant has the financial capability available to fulfill such capex demand. Submissions and representations to the TA in the application will be incorporated into the special conditions and schedules of the fixed carrier licence. The services proposed in the application will be incorporated into the schedules to the licence on the scope of service. Amendments to the scope of the networks and services specified in the schedules will be subject to the approval of the TA.

11. Those intending to take the advantage of being a fixed wireline-based network licensee for “self-provision” but not offering service to the public would create unnecessary burden on the limited resources (e.g. space for network rollout) and therefore should be discouraged. Thus the TA would not consider licensing an applicant whose primary purpose of obtaining the fixed carrier licence is to provide circuits to serve itself or its affiliated companies. The licensee will be bound by licence conditions to publish tariffs and make the services under the licence available to the public, at the wholesale level and/or the retail level. For example, a mobile network operator intending to “self-provide” its links between the base stations and mobile switching centres without the intention of offering leased circuit services to the public would not be licensed. Likewise, an external telecommunications service provider or Internet service provider intending to self-provide its own external circuits without offering international capacity to the public would not qualify for the licence.

12. The present five wireless FTNS operators have the milestones under their performance bonds due in February and March 2003 with a minor exception⁵. Some external FTNS operators have milestones under their performance bonds due beyond 1 January 2003. It is worth mentioning that most of the performance commitments under the first batch of licences issued in 2000 are to be fulfilled before 2003. Recently, various wireless FTNS operators have applied to the TA for different extent of relaxation to their performance bonds. The TA agrees that it is justified to treat new entrants and existing FTNS operators equally in respect of performance commitment requirements when the market is fully liberalized. The TA has therefore decided that, along with the decision to have no performance commitments required for new entrants who will enter the FTNS market from 1 January 2003, all performance commitments of existing FTNS operators that will be due on or after 1 January 2003 as initially committed to in the licences granted will be waived. However commitments which will be due on or before 31 December 2002 under the originally issued licences will have to be adhered to and any request for extension or modification of these would only be considered by the TA on a case by case basis depending on the merits of the individual requests.

Interconnection

13. Notwithstanding the absence of requirements for performance bonds under the licence, the TA agrees that the policy of promoting investment in network infrastructure should be reflected in the licensing criteria for the 2003 entrants. The 2003 entrants would be expected to roll out their own infrastructure as far as possible and should not rely primarily on interconnection with, or access to, the infrastructure of other operators to provision their services. The TA will not consider granting any licences to operate local wireline-based networks to those applicants who intend to rely primarily on interconnection with, or access to, other operators’ infrastructure to roll out their networks or provision their services. Having said that, the TA is mindful that some

⁵ except the last milestone under the performance bond of Hua Nan-Teligent Co. Ltd. for the access to buildings which is due in March 2004.

essential facilities are by nature “bottlenecks” given the constraints in duplicating the facilities e.g. local loops and cable landing stations. Interconnection to, or sharing of, such facilities is still required, otherwise competition would be delayed. The right of a licensee to seek a determination on interconnection is given in the law. Section 36A of the Ordinance allows any licensee to seek a determination by the TA on the terms and conditions of interconnection. The TA will follow the published set of principles in deciding whether to accept requests for interconnection determination, and if accepted, in making the determination. The submission of PCCW-HKTC proposing to impose a requirement such that licensees committing to invest less than the current FTNS licensees should not be allowed to seek a determination would amount to pre-empting the TA’s discretion under section 36A of the Ordinance. The TA does not favour this approach.

14. Based on the above considerations, new entrants from 1 January 2003 would not have access to, and co-location at, the incumbent’s exchanges for Type II interconnection as of right, but requests for such access and co-location may be granted on a case-by-case basis, depending on the merits of the requirements and the constraints in the exchanges concerned.

15. Submissions from Consumer Council, Hutchison, Peoples, Dr John Ure and Dr Xu Yan have raised comments in relation to interconnection charging principles between fixed carriers, interconnection principles between fixed and mobile carriers, and furthermore the convergence of fixed and mobile regulatory regime. The TA considers that these submissions are outside the context of this consultation exercise and should be dealt with separately at the appropriate time. As a matter of fact, the TA Statements Nos. 4, 5, 6, 7 (revised) and 8 that relate to fixed carrier interconnection are under review and the industry and the public have supplied valuable comments in response to the consultation paper published in September 2001. A TA Statement concluding this consultation is expected to be published in early 2002.

The Implementation

16. The current telecommunications regulatory framework has already included all the necessary elements to implement the full liberalization of the FTNS market. The TA will adhere to the liberalization policy to license the operation of additional local wireline-based fixed networks from 1 January 2003 and the operation from 1 January 2003 of external facilities based on submarine or land cables. All restrictions relating to the submission of applications for fixed carrier licences effective from 1 January 2003 will be lifted. Thus licences may be granted to those who have directly invested in cable capacity, or acquired capacity through the purchase of IRUs of cables. No distinction between “new” cables and “existing” cables (as defined in the “Guidelines for the Submission of Proposals Applying for Fixed Carrier Licences for the Operation of External Fixed Telecommunications Network Services in Hong Kong Special Administration Region” issued on 18 May 2001) will be drawn. For all fixed carrier licences issued for operation from 1 January 2003, there will be no preset limit of the number of licences and no performance commitments.

PREPARATORY WORK ALLOWED BEFORE 2003

17. In paragraph 15 the Consultation Paper, the TA has identified the following eight types of preparatory activities:

- (a) Recruitment of staff, planning and design of network, acquisition and taking delivery of cables and equipment;
- (b) Negotiation and entry into contracts of interconnection, supply of services (e.g. database dipping services for number portability) and facilities (e.g. cables), and other commercial and cooperation matters for the operation of wireline-based fixed network from 1 January 2003;
- (c) Negotiation and entry into contracts with companies having ducts, or the space for laying ducts (e.g. utility companies, Mass Transit Railway Corporation, Kowloon Canton Railway Corporation, etc.) for leasing the ducts for occupation after the end of 2002, or leasing the space for laying ducts after the end of 2002;
- (d) Participation from 2002 in road opening coordination of the OFTA and Highways Department to coordinate, and obtain approval for, road opening work after the end of 2002;
- (e) Participation in road opening projects of licensed local wireline-based fixed network operators in 2002 such that the projects would include the requirements of the new entrants, although the ducts so provided for the new entrants shall not be occupied until 1 January 2003;
- (f) Construction of ducts across public streets or unleased Government land;
- (g) Installation of telecommunications cables across public streets or unleased Government land; and
- (h) Operation of the wireline-based fixed networks.

18. In the Consultation Paper, the TA put forward his preliminary views that only those activities of (f), (g) and (h), which are activities of construction of ducts and installation of telecommunications cables across public streets or unleased Government

land, and operation of the wireline-based fixed networks, should not be allowed before the Moratorium ends.

19. Submissions responding to the proposed arrangement for preparatory activities, with a few exceptions as stated below, generally agree with the view of the TA. MCI went further by submitting that the TA should allow external FTNS operators to build, but not operate, their backhaul links with immediate effect.

20. AT&T, MCI, Galaxy, CLPT, HKBN, WNT&T & HKCTV welcomed the arrangement to let new entrants undertake the necessary preparatory works for network roll-out so as to facilitate the operation of new competitive local wireline-based fixed networks as soon as practicable when the Moratorium ends. CLPT urges OFTA to facilitate comprehensive preparatory works of new entrants to ensure the speedy realization of customer benefits arising from full liberalization.

21. WNT&T and HKCTV considered that existing licensees could be burdened by incorporating new entrants' requirements in 2002. Therefore they suggested that detailed arrangements should be worked out to avoid such burden. HKCTV further suggested that the new entrants should be required to pay the licence fee for the year 2003 before they are permitted to engage in the allowable preparatory works in 2002.

22. HKBN was concerned that a new entrant who has been granted a franchise for other types of public utility services (such as the franchise to supply power or gas) might make use of the authorization under its existing franchise to construct ducts for telecommunications cables, or even install telecommunications cables, across public streets or unleased Government land. HKBN suggested that the TA should monitor closely the activities of such new entrants.

23. NWT submitted that the most appropriate course is not to allow new entrants to undertake any preparatory work before 1 January 2003. If the TA chooses to allow such work, he should take effective measures to ensure that the new entrants do not abuse the permission provided.

24. HGC objected to the proposal to allow new entrants to participate in road opening projects in 2002 saying that could frustrate the plans of the existing operators to deploy their networks in 2002 by creating gridlock in the current industry processes, and by the time when the existing operators seek regulatory intervention, they would have already suffered irreparable harm and loss of time. PCCW-HKTC shared similar view on this and objected to permitting new entrants to participate in road opening projects in 2002. PCCW-HKTC considered that road opening rights should only be granted to those who have agreed to undertake substantial network roll-out commitments.

25. PCCW-HKTC also considered that to enter into a contract with parties whose "carrier" status is not yet effective in 2002 will impose significant risk on PCCW-HKTC's commercial operations and therefore PCCW-HKTC should not be

required to invest in its network and operational systems to accommodate unlimited numbers of “will be” carriers until post January 2003. PCCW-HKTC had concern that utility companies with franchise for non-telecommunications services may lay ducts for the use of their affiliated carrier licensees but would not provide similar arrangements for other telecommunications licensees. In the event of a determination being required over the provision of duct space or space for laying ducts by a utility company (which is not a licensee under the Ordinance), PCCW-HKTC was doubtful as to whether the TA would have any jurisdiction over the utility company.

26. The TA re-iterates that new entrants’ fixed carrier licences granted in 2002 will not allow them to offer service before 1 January 2003. Accordingly, they should not engage in the construction and operation of telecommunication ducts and cables across public streets and unleased Government land, or operate any wireline-based fixed networks, in 2002.

27. The TA sees general support to allow these preparatory works as listed in paragraphs (a) to (c). Nevertheless, there are two major concerns that need to be addressed here.

28. In respect of the concern that utility companies may make use of their road opening rights to construct cable ducts across public streets or unleased Government land for telecommunications cables, the road opening licences granted to utility companies by the concerned authorities are for the specific purpose of installation or maintenance of utility assets under their respective franchises, but not for telecommunications. The TA is mindful that the utility assets may include optical fibres for signal transmission for the purported purpose of utility service provisioning and monitoring, but the optical fibres may subsequently be deployed from 1 January 2003 for telecommunications services. If the redeployment of the utility assets is just for the affiliated telecommunications carrier of the utility company, the TA will consider if the affiliated licensee would be in breach of any fair competition provisions in the legislation or the licence in accepting the preferential treatment from the utility company. The TA would consider if the preferential treatment would prevent or substantially restrict competition in the telecommunications market before taking a decision. The affiliated licensees are not allowed to enter into any exclusive or restrictive agreement with the utility companies to access any space or facilities of utility assets properly authorized for telecommunications purpose. The affiliated telecommunications licensees will have to take measures directed by the TA to avoid breaches of the fair competition provisions.

29. The TA has also the jurisdiction to direct the sharing of telecommunications facilities used by any licensee under section 36AA of the Ordinance. Thus even when the ducts were built and owned by the utility companies, the TA has the power to direct sharing of those ducts which are used by its affiliated telecommunications operators which are licensees under the Ordinance.

30. With regard to the deployment of utility assets for telecommunications, the TA considers that any deployment should be authorized by the relevant regulators under the appropriate ordinances and regulations. The utility companies should clear the proposed deployment with the relevant regulators before doing so.

31. In the case of leasing or selling dark fibres to licensed carriers where the lessors or the sellers do not engage in any lighting up of (connection of electronics equipment to) the fibres for telecommunications usage (the lighting up being done under licence by the lessors or buyers as carriers), fixed carrier licences are not required for the lessors or the sellers. The lessors or the sellers are treated as contractors to the fixed carrier licensees for the supply of the dark fibres. For the avoidance of doubt, the lighting up of fibres for public telecommunications services do require appropriate licences under the Ordinance depending on the scope of telecommunications services to be offered.

32. Another concern is the entering into contracts with new entrants whose “carrier status” is not yet effective in 2002. The fixed carrier licences to be granted to new entrants in 2002 are carrier licences. The licence will specify that services will not be offered before 1 January 2003, but the licensee will be allowed to proceed with all the activities described in paragraphs (a) to (c). Given such certainty and the known restrictions applicable to them in 2002, the TA considers that proper commercial terms in the contracts would be able to bind the new entrants participating the projects and safeguard the interests of the other parties to the contracts.

33. For preparatory works in paragraphs (d) and (e), i.e. participation in road opening coordination and road opening projects in 2002, the TA considers that no fixed carrier licensee status or road opening right within 2002 is required as long as the new entrants do not take part in any road opening civil works. The TA sees no dispute on this from the comments and the respondents were primarily concerned about the lack of performance commitments to bind the new entrants to undertake their responsibilities seriously in 2003. The matter on performance commitment requirement has been covered earlier. At present there is a road opening coordination procedure administered by OFTA. The OFTA will continue to facilitate efficient operation of the coordination procedures to ensure that the participation of the new entrants in 2002 would not unduly slow down the process.

34. Based on the considerations above, the TA concludes that, other than activities (f), (g) and (h) listed in paragraph 15 of the Consultation Paper which should not be allowed before 1 January 2003, the other activities listed in the same paragraph should all be allowed, provided that the new entrants are granted with fixed carrier licences to operate local wireline-based fixed networks from 1 January 2003. When the Moratorium ends after 31 December 2002, the restrictions on activities (f), (g) and (h) will be lifted. Whether or not any activities not falling into the scope of activities listed in paragraph 15 of the Consultation Paper can be undertaken by the new entrants should be determined based on the same principles and considerations discussed above.

RIGHTS TO ACCESS TO BUILDINGS AND ROAD OPENING

35. Access to common parts in buildings and road opening may be authorized pursuant to section 14(1) of the Ordinance by the TA for the purpose of establishing fixed telecommunications network services. Currently, the five wireline-operators, HGC, HKCTV, NWT, PCCW-HKTC and WNT&T are granted with road opening rights whereas FTNS operators not authorized to operate local wireline-based fixed networks, i.e. the wireless FTNS operators and external FTNS operators, are not granted with road opening rights. In the Consultation Paper, the TA proposed that the section 14(1) rights for access to building and road opening should only be granted to new entrants on a case-by-case basis.

36. NWT, WNT&T and Galaxy supported the granting of section 14(1) rights to new entrants on case-by-case basis. NWT also requested the TA should only permit a “second wave” entrant to deploy facilities for its “private use” where the applicant demonstrates that comparable facilities cannot be obtained, on reasonable prices, from PCCW-HKTC or a “first wave” entrant (i.e. HGC, NWT and WNT&T).

37. HKTUG agreed with the proposed approach for building access but considered that a better approach would be to encourage at least one alternative service provider to develop a blockwiring system for each building. SHK requested the OFTA to clarify the procedures for granting section 14(1) rights.

38. HGC and PCCW-HKTC commented that the granting of section 14(1) rights should be conditional. HGC submitted that new entrants not planning significant infrastructure development that will benefit a good portion of the public should not be given any road opening or building access rights at all. PCCW-HKTC also requested that road opening rights should be granted only to those carrier licensees who have made firm commitments to build network infrastructure on a scale comparable to the existing FTNS operators. PCCW-HKTC acknowledged that there are buildings that lack sufficient space to accommodate all operators’ telecommunications systems. However, in PCCW-HKTC’s view, new entrants should not be encouraged by the TA to compete on a service basis and the TA should urge all operators to build their own in-building facilities, particularly in new buildings.

39. On the contrary, CLPT objected to the proposal and considered that new entrants should not be awarded “second class licences” without the same rights for access to buildings and road opening as HGC, HKCTV, NWT, PCCW-HKTC and WNT&T. In its view, genuine infrastructure competition could not emerge with such an arrangement. HKBN also objected to the proposal, and had concern that case-by-case authorization for in-building access and road opening by the TA would impose unnecessary uncertainty and confusion on new entrants.

40. SmarTone and SUNDAY requested that mobile network operators should be granted same section 14(1) rights as fixed network operators.

41. The TA disagrees that case-by-case authorization would impose uncertainty on new entrants' operation and would adversely affect genuine infrastructure competition. As pointed out in earlier paragraphs, the TA promotes facilities competition and he will exercise his power to facilitate the operators' infrastructure roll-out.

42. At the early stage of market liberalization with a limited number of licences, the Government needed to speed up the pace of infrastructure roll-out to facilitate the earliest possible competition in the FTNS market. Therefore in consideration of the substantial scale of network roll-out and performance commitments, the granting of general section 14(1) rights was necessary. Upon full liberalization of the local FTNS market with no pre-set limit of number of licences to operate local wireline-based fixed networks and with no performance commitments under the licences, general authorization for these licensees would not be reasonable. It is therefore essential for the regulator to manage the public resources in an orderly manner and to ensure the public can ultimately benefit from the utilization of those resources.

43. Given the diversified situations of space availability and utilization within buildings and underneath public streets or unleased Government land in Hong Kong, the TA considers that it would be essential to grant the access authorization on a case-by-case basis in order to achieve the objectives of efficient resource utilization. The case-by-case authorization intends to screen out those infrastructure roll-outs that cause inefficient resources and infrastructure utilization and do not aim to provide genuine fixed telecommunications service to the public. Such mechanism will therefore not affect genuine infrastructure competition.

44. In respect of the comments that only those new entrants committed to building out significant scale of network infrastructure should be granted the section 14(1) rights, the TA considers that it is an artificial barrier to entry which would impede the competition, and is not necessary under the full liberalization.

45. The case-by-case authorization for access to building has been put in place since the issuing of licences for operation of local wireless FTNS in 2000. The access of these FTNS operators to common parts in buildings for the roll-out of their infrastructure is currently subjected to the coordination mechanism facilitated by the OFTA. In the TA's view, the mechanism has in general been operating satisfactorily and the TA is stepping up effort to ensure smooth operation and educate the building owners and management on the benefits and obligations of building access.

46. The TA maintains that section 14(1) rights for access to buildings and road opening should be granted to newly licensed local wireline-based fixed network operators on a case-by-case basis. The authorized operators will be further subjected to any guidelines, regulations and coordination mechanisms imposed by the TA, and any other regulatory requirement under other authorities.

47. In addition the TA finds it essential to impose conditions to any section 14(1) rights to ensure the infrastructure will be rolled out as submitted in the applications and fixed telecommunications services over the infrastructure will be made available to the public. With such, the TA will grant section 14(1) rights to fixed carriers seeking the access rights for the provision of services to the public and on the condition that the installation work relating to the access will be completed on or before specified dates. If the work is not completed before the specified dates, the authorization may be extended at the discretion the TA based on the merits of the request for extension. For the avoidance of doubt, offering services only to affiliated companies or entities does not qualify as offering services to the public. Licence conditions would prevent attempts to avoid or by-pass such requirements, e.g. offering services to the public with prohibitively high prices, or discriminatory pricing schemes between affiliated companies/entities and non-affiliated parties.

48. Whilst the TA promotes facilities competition, the environmental factor may limit the development of in-building infrastructure using the prevailing means and methods of laying telecommunications cables and installation of equipment. Over duplication of infrastructure would also lead to inefficient usage and wastage of valuable space within buildings.

49. To this end, the TA does encourage innovative means that can overcome any space problems for development of in-building infrastructure or wireless means for end customer access. The TA has decided and announced in his Statement of 18 May 2001 to allow local FTNS operators to apply for authorizations to use the band of 5,850 – 5,950 MHz (which is allocated to Fixed Satellite Service) on a shared and uncoordinated basis for fixed wireless access use. The TA will continue to identify and allocate suitable radio spectrum to facilitate fixed wireless access to users in buildings. The TA would also consider granting section 14(1) right for access to buildings for in-building infrastructure roll-out that deploys innovative technology without putting more strain on the limited resources available.

50. For the conventional in-building access networks occupying the usual common parts in buildings, the TA will consider whether there is adequate space in the buildings to accommodate the additional facilities, and the feasibility to interconnect to existing systems. In this regard the TA encourages joint projects for building access to minimize inconvenience caused to residents and for the efficient use of valuable space.

EXTERNAL AND LOCAL WIRELESS FTNS OPERATORS TO OPERATE LOCAL WIRELINE-BASED FIXED NETWORKS

51. The TA sees general support from the submissions to allow existing FTNS operators to apply for the extension of their scope of services to operate local wireline-based fixed networks and other forms of FTNS. However, PCCW-HKTC and HGC objected to the proposal to allow external facilities operator to operate local

wireline-based fixed networks for their own backhaul usage, and AGC objected to the extension of scope of services if no substantial commitment on investment is provided.

52. Mobile operators (HKCSL, Hutchison, Peoples, SmarTone and SUNDAY) submitted that mobile carriers should be given the same statutory right as fixed carriers and be allowed to self-build their own circuits between base stations and mobile switching centres. They also considered that the TA's views in the Consultation Paper that mobile carriers self-building wireline networks would cause environmental concern were contradictory to his views put forward in the same paper that roll-out of additional wireline networks would not cause much environmental problem.

53. The TA has addressed the matter of requirements for performance commitments and minimum scale of network roll-out in earlier paragraphs. The TA maintains that local wireless FTNS and external FTNS operators may apply to extend their scope of services to operate local wireline-based fixed networks and other forms of FTNS. These applications will be subjected to the same licensing criteria set out for the new fixed carrier licence applications.

54. Backhauls of external FTNS operators are the circuits linking the cable landing points or satellite earth stations to the external gateways or Points of Presence ("PoP") normally in the urban areas. At present, external FTNS operators licensed during the Moratorium period are not allowed by licence conditions to construct and operate their own backhauls. They are therefore required to obtain backhauls from licensed local wireline-based fixed network operators. Operation of backhauls is by nature self-provisioning and does not satisfy the criteria of offering the service to the public. Therefore an application to operate backhauls only would not satisfy the licensing criteria for a licence to operate local wireline-based fixed networks. The TA considers that the backhauls may be treated as a continuation of the external circuits which terminate at the external gateways or PoP. Therefore, the TA considers that external FTNS operators may apply to have their external FTNS or fixed carrier licences modified, with effect from 1 January 2003, to include the right of operating backhauls without applying for a full-scale local fixed network licence. If the external FTNS or fixed carrier licensees are granted with such right, they may participate in the activities (a) to (e) listed in paragraph 17 for the purpose of installing and operating the backhauls from 1 January 2003. They may also apply for authorization for road opening under section 14, but such an application, as for other applications, would be considered on its own individual merits, for example, whether the road opening may be avoided by sharing existing ducts along the route concerned. If the external FTNS or fixed carrier licensees wish to apply for the licence for local fixed wireline networks, they have to meet the licensing criteria as for other applicants, including offering local fixed service to the public.

55. In respect of a mobile carrier's need for wireline networks for connection between mobile switching centres and base stations, the TA considers that given the large number of base stations for public mobile services, such use will lead to large-scale requirements for point-to-point wireline installation. This will cause more

uneconomical consumption of public resources, in respect of space underneath public streets or unleased Government land, and more road opening disturbances, than a wireline network for offering fixed telecommunications services to the public. When the local FTNS market is fully liberalized, mobile operators can benefit also from the intensified competition. As pointed out in earlier paragraphs, the TA has to ensure the public can benefit from the further competition while the amount of road opening should be minimised. Therefore, the TA decides that only FTNS and fixed carrier licensees should be allowed to operate wireline-based fixed networks.

56. A mobile network operator may also apply for a licence to operate local wireline-based fixed networks provided that the application meets the licensing criteria as for other applications. In other words, the application must not be primarily for self-provision of the circuits for the operation of the mobile services. To satisfy the licensing criteria, the applicant must be prepared to offer fixed services to the public.

INVITATION FOR PROPOSALS

57. Following the implementation details described above, the TA will invite proposals for applying for fixed carrier licences for the operation of FTNS, including the local wireline-based fixed networks from 1 January 2003. The TA has separately issued today a set of guidelines entitled “Guidelines for the Submission of Proposals Applying for Fixed Carrier Licences for the Operation of Fixed Telecommunications Network Services from 1 January 2003 in the Hong Kong Special Administrative Region” (the “Guidelines”) to invite interested parties to submit proposals applying for fixed carrier licences or extension of scopes of services of existing FTNS or fixed carrier licences for the operation of local wireline-based fixed networks and/or other forms of FTNS from 1 January 2003.

Office of the Telecommunications Authority
11 January 2002