

Services-Based Operator (SBO) Licence

Statement of the Telecommunications Authority

6 January 2006

Introduction

Following the issue of the statement of the Telecommunications Authority (TA) entitled “Regulation of Internet Protocol (IP) Telephony” on 20 June 2005 (**VoIP Statement**), the TA issued the consultation paper entitled “Consultation Paper on the Creation of a New Licence for Services-Based Operators for the Provision of IP Telephony Services” on 22 August 2005 (**SBO Licence Consultation**). In the SBO Licence Consultation, the TA proposed to create a Services-Based Operator (**SBO**) Licence to regulate the provision of IP telephony services and invited interested parties to comment on his proposal.

2. The consultation period lasted until 17 October 2005. The TA has received a total of 15 submissions:

- AT&T Global Network Services Hong Kong Ltd. and AT&T Corp. (AT&T)
- Yahoo! Holdings (Hong Kong) Ltd. (Yahoo)
- Hong Kong Police (Police)
- Zone Ltd. (Zone)
- New World Telecommunications Ltd. (NWT)
- Wharf T&T Ltd. (WT&T)
- CM Tel (HK) Ltd. (CM Tel)
- SUNDAY o/b Mandarin Communications Ltd. (SUNDAY)
- China Resources Peoples Telephone Company Ltd. (Peoples)
- Pacific Internet (Hong Kong) Ltd. (Pacific Internet)
- PCCW-HKT Telephone Ltd. (PCCW-HKTC)
- SmarTone Mobile Communications Ltd. (SmarTone)
- Hong Kong Broadband Network Ltd. (HKBN)
- Hong Kong CSL Ltd. (CSL)
- Hutchison Global Communications Ltd. (HGC)

The full submissions can be downloaded from OFTA's website at www.ofta.gov.hk.

3. Having considered the submissions received, the TA has come to a decision on the SBO Licence. The TA's comments on the submissions and his views on the SBO Licence are set out in this statement. The SBO Licence to be issued by the TA under section 7(5) of the Telecommunications Ordinance (**Ordinance**), the direction to be issued under Special Condition 17 of the SBO Licence (**Direction**), and the validity period together with the fee structure of the SBO Licence determined by the TA under section 7(6) of the Ordinance are attached in Annexes 1, 2 and 3 respectively.

Scope of Services

Removal of the restriction on communications "between fixed points"

4. In the SBO Licence Consultation, the TA proposed the scope of permitted services of the SBO Licence to be

"... all internal and external telecommunications services, other than telecommunications services the subject of [a number of licences issued under the Ordinance specified in the Scope of the Service]."

HGC submits that this is different from the scope of services of the current fixed telecommunications network service (FTNS) or fixed carrier (FC) licence which covers "all internal and external telecommunications services *between fixed points* capable of being provided utilizing the Network, other than telecommunications services the subject of [a number of licences issued under the Ordinance specified in the Scope of the Service]". HGC considers that the removal of the reference to "between fixed points" in the proposed SBO Licence prior to the review of the fixed-mobile convergence would give the SBO licensees an unfair advantage over the FTNS/FC licensees.

5. The TA would like to make it clear that he does not intend, at this stage, to allow the SBO licensees to provide local voice telephony services to customers of mobile services. In addition to setting out the scope of the services that an SBO licensee may provide, paragraph 1 of Schedule 1 of the

SBO Licence also sets out the services that an SBO licensee may not provide. These include services that are the subject of the mobile carrier licences, the public radiocommunications services (**PRS**) licences and the public non-exclusive telecommunications service (**PNETS**) licences for mobile virtual network operators (**MVNO**) services. Accordingly, in removing the reference to “between fixed points”, the TA has not extended the scope of services under the SBO Licence beyond that permissible under the FTNS/FC licences. The omission of reference to “fixed points” in Schedule 1 is intended to bring the SBO Licence in line with the upcoming developments in fixed-mobile convergence. Under the Scope of the Service in Schedule 1, the SBO licensees are permitted to provide international value-added network services and external telecommunications services accessible to customers of mobile networks. The FTNS/FC licensees are also authorised under their licences to provide such services accessible over the mobile networks. The TA agrees that the accessibility of local voice telephony services provided by SBO licensees to mobile customers should be considered as part of the fixed-mobile convergence issues. To all intents and purposes, he expects that the IP-based local voice telephony services provided by SBO licensees will not, at this stage, be an economically viable and commercially feasible solution to mobile customers because of the data transmission charges involved. Therefore he inserts initially a restriction in the Scope of the Service (see Clause 4) on the provision of local voice telephony services to mobile customers. If, in the future, it is considered that the scope of the SBO Licence should be extended such that local voice telephony services offered by SBO licensees are accessible to customers of mobile services, the licence has to be amended to remove this restriction.

Inclusion of Internet Access Services etc.

6. HKBN submits that the preliminary aim of the SBO Licence Consultation is to regulate the provision of telephony services through the IP platforms by SBO licensees and doubts whether it would be too broad to allow SBO licensees to provide other telecommunications services such as Internet access services, international value-added network services (**IVANS**) and external telecommunications services (**ETS**). HGC submits that external traffic can be disguised as local traffic by using the telephone numbers of Class 1 or Class 2 services overseas. To avoid confusion, it takes the view that SBO licensees should not be licensed to provide ETS and IVANS until the conclusion of the LAC review and the clarification of the “disguised” traffic issue.

7. PCCW-HKTC also submits that the lack of clarity surrounding the use of Class 1 and Class 2 numbers for “internal” telecommunications services will encourage SBO licensees to disguise predominately “external” telecommunications services as “nomadic” Class 1 or Class 2 service in order to evade local access charge (LAC), international call forwarding service (ICFS) charge and other interconnection charges. PCCW-HKTC suggests that the scope of services of the SBO Licence should exclude ETS, and if ETS is allowed, Class 1 and Class 2 numbers cannot be used in predominantly “external” services, including without limitation, calling card account services, ICFS, or pseudo CLI for aggregating traffic from overseas.

8. The TA takes the view that the aim of the SBO Licence Consultation is to create a licensing regime whereby services-based operators, who are already permitted to provide IVANS and ETS¹, may also provide local voice telephony services, through the IP platform or otherwise. As such, the scope of the SBO Licence should not be narrowly restricted to permitting the provision of local voice telephony services only. The TA sees no reason why IVANS and ETS should not be permitted under the SBO Licence, in much the same way as the FTNS/FC licensees are also permitted under their licences to provide IVANS and ETS.

9. While the TA will permit the use of Hong Kong telephone numbers for phones that are connected to the Internet outside Hong Kong, he will not tolerate the bypass of the LAC and USC regimes through making use of Hong Kong telephone numbers intended for end-users as the service access number for public telecommunications services delivering outgoing calls from subscribers of the Hong Kong public switched telephone network (PSTN) to places outside Hong Kong, or receiving incoming calls from a place outside Hong Kong to local PSTN numbers. An SBO licensee providing ETS under the SBO Licence is required to comply with the numbering plan for telecommunications services in Hong Kong and any regulatory guide or code of practice in relation to calling line identification (CLI) and other CLI related services, and to use codes or numbers with the appropriate prefixes as the access numbers for delivering outgoing calls and CLIs for receiving incoming calls.

¹ By obtaining a PNETS Licence.

Local Access Charge

10. As regards the concern over external traffic “disguised” as internal traffic, the TA notes that one of the characteristics of the IP telephony services is that the telephone number is not necessarily assigned to a fixed location but may permit the use of the service in a nomadic way, i.e. at any location as long as a broadband connection to the Internet is available. Given such a special feature of IP telephony services, prohibiting users from using Hong Kong numbers at places outside Hong Kong would restrict the users from benefiting from the full capabilities of the new technology, and would not be practicable and enforceable. A local telephone number can be taken as an “address” on a local network and it represents a “network terminating point” at a local place. In the situation where the phone assigned with this local telephone number is used in a place outside Hong Kong, it is just that this local network terminating point is linked to the phone in a place outside Hong Kong through the Internet, which is quite similar to the “external extension” arrangement for a “direct exchange line”. Following this, a more realistic and practical approach that would not restrict users’ benefits is to classify communications between phones using Hong Kong telephone numbers as local calls, even though it may be possible that one or both parties to a telephone call is/are physically located outside Hong Kong.

11. In considering whether external traffic carried over IP networks should be captured for LAC payment, the TA expressed his initial view in the VoIP Statement that the proposal of checking the IP addresses of the IP telephony traffic to establish whether the traffic was external might not be a practicable and cost-effective solution (paragraph 51 of the VoIP Statement). In any case, the telephone numbers concerned are numbers for the end-users not providing a public telecommunications service. These numbers should be distinguished from numbers used as access to public telecommunications services and other types of services, such as calling card account services and ICFS. In the VoIP Statement, the TA also indicated there that he would “[welcome] any further view on this when conducting an overall review of the existing LAC charging regime and methodology in future”. The TA will include this issue in the review of the LAC charging regime and methodology that he may initiate in the future.

Universal Service Contribution (USC)

12. The issues of whether the universal service obligation (USO) and the USC sharing mechanism should be overhauled because of the development of the VoIP services, the practical difficulties of metering the volume of external traffic for USC purposes and the basis for sharing the USC were one of the subject matters considered in the VoIP consultation exercise. As stated in the VoIP Statement, it remains the TA's intention to initiate a review on USO/USC regime in 2006.

Interconnection Charging Arrangements

13. SmarTone requests the TA to clarify the interconnection charging arrangement for the delivery of local telecommunications traffic to and from SBO licensees, in particular, the interconnection charging arrangement between the mobile and hosting fixed network operators for a call made by a mobile user and terminated at a customer of the SBO licensee.

14. Peoples considers that the interconnection principle defined in the TA Statement entitled "Interconnection and Related Competition Issues Statement No. 7 (Second Revision) – Carrier-to-Carrier Charging Principles" issued on 18 March 2002 (TA Statement No. 7) should not be applicable to IP telephony services.

15. PCCW-HKTC suggests that the hosting FTNS/FC operator should on behalf of the SBO licensee settle the interconnection payment in respect of the traffic of Class 1 and Class 2 services provided by the SBO licensee. This may, however, require amendments to the existing interconnection agreements between FTNS/FC licensees. As for the interconnection charge for Class 2 services, PCCW-HKTC considers that a Class 2 service, whether offered by an SBO licensee or an FTNS licensee, is a value-added service (VAS) and should be subject to the current VAS charging scheme. PCCW-HKTC further submits that given the SBO licensees are not facilities-based operators, both their Class 1 and Class 2 services should be subject to originating or terminating access charges (as appropriate) in order to compensate the underlying network operators for the use of their facilities.

16. According to the VoIP Statement, an SBO licensee offering Class 1 and Class 2 services for access to the conventional PSTN should seek a hosting connection to the network of at least one FTNS/FC licensee. This FTNS/FC licensee will then be responsible for the routing of the traffic of Class 1 and Class 2 services hosted to and from networks of other FTNS/FC and mobile licensees. Moreover, it is expected that the hosting FTNS/FC licensee will be responsible for handling all the interconnection charges, LAC and USC due to the IP telephony traffic of its client (the SBO licensee) in accordance with the existing charging principles for interconnection. Paragraph 50 of the VoIP Statement stipulates explicitly that if a customer of IP telephony services makes or receives a local telephone call through the circuit-switched hosting network, the hosting FTNS/FC licensee will pay, or receive, a termination charge, as the case may be, in accordance with the existing charging arrangements, as if the local call were made or received by other customers directly connected to the hosting network. Therefore, for calls of the customers of an SBO licensee delivered via the hosting network to or from other fixed networks, the existing fixed-to-fixed carrier charging principles shall apply. Similarly, for calls delivered to or from mobile networks, the existing fixed-to-mobile carrier charging principles shall apply.

17. The rationale behind this charging arrangement is that a Class 1 or Class 2 service subscriber is no different from a basic telephone service subscriber, in terms of traffic volume, flow or direction and the subscriber is an end-user not providing a public telecommunications service. The situation is therefore different from that of the access lines for a public value added telecommunications service where traffic aggregation for access to a value added or premium service other than the conventional telephony service may be involved and the traffic flow is generally in one direction only. The costs incurred by a carrier in delivering a voice call originating from (or terminating at) a customer of Class 1 or Class 2 service of an SBO licensee via the SBO licensee's hosting network should be no different from the costs incurred in delivering a voice call (which is of the same nature) originating from (or terminating at) a customer belonging to a carrier network. Given that the traffic is of the same nature, there is no logical reason to apply a different charging principle on the basis that the call is originated from or terminated at a customer of a non-carrier. Under the interconnect arrangement outlined in the VoIP Statement, calls made by or to a customer of an SBO licensee to or from the customer of a PSTN network have to be transmitted through a hosting

FTNS/FC network. Accordingly, such calls should therefore be treated as the calls of the hosting network and be charged on the basis of carrier-to-carrier principle. The TA is of view that the interconnection charging arrangement as depicted in paragraph 50 of the VoIP Statement should apply.

Licence Conditions

Numbering Plan (SC2)

18. In paragraph 36 of the VoIP Statement, the TA stated that he would allow Class 2 services to use 8-digit numbers for conventional telephone services pending further consultation with the Telecommunications Numbering Advisory Committee (NAC)² and the decision on the exact numbering approach to be adopted for Class 2 services.

19. Operators take the opportunity of commenting on the draft SBO Licence to address the numbering issue for Class 2 services. HGC considers that declaration by licensees cannot be solely relied on for classification of Class 1 or Class 2 services and suggests that only 10-digits numbers should be used for Class 2 services. HKBN also suggests that the TA may consider adopting 10-digit numbers for Class 2 services.

20. Pacific Internet strongly recommends that an 8-digit number should be used. Otherwise, Class 2 services will be marginalised. CSL has a concern on the considerable cost burden to the industry should 10-digit numbers be used.

21. The matter was deliberated at the 56th and the 57th meetings of the NAC and additional views of members of the NAC were obtained subsequently. Up to now, only one network operator confirmed in writing that its network/system could generally and readily support the 10-digit Class 2 numbers. On the contrary, a number of fixed and mobile network operators advised that they would have problems with 10-digit subscriber numbers - for example, a few indicated that their value added services (e.g. caller number

² The NAC is an advisory committee to OFTA advising on (1) the development, implementation and administration of Hong Kong's telecommunications numbering plan and issues related to it; and (2) the allocation of numbers in a fair and equitable manner to telecommunications operators and users in Hong Kong. The NAC is chaired by OFTA with members from the industry, the Consumer Council and consumer user group. The terms of reference, membership, agenda, meeting minutes and papers issued

display (CND) services) might be affected. In order to support 10-digit subscriber numbers, they advised that their networks/systems needed to be enhanced/modified. While a few of them have provided the estimated lead time of 4 to 12 months for the necessary enhancements/modifications, the others are non-committal or they have not provided OFTA with the estimated timeline. A few network operators proposed a compromised arrangement that they would send 8-digit caller number information and the affected customers who could not receive full 10-digit numbers would have to “rebuild” the caller number by some other means proposed by these operators. The TA considers that the uncertainty over the timeline for network/system enhancements/modifications and the proposed alternative arrangement for CND customers are unacceptable as (a) potential service providers need certainty for business planning and service introduction and (b) the proposed arrangement might cause confusion to end users and affect the business of those service providers who rely on accurate caller line identification (CLI) information for their proper provisioning of service.

22. While many network operators indicated their preference of employing 10-digit numbers for IP telephony service from the very beginning, potential service providers have proposed assignment of 8-digit numbers. They consider that 10-digit numbers might make them more difficult in successfully launching the new IP telephony service. In fact, telephone numbers with the same digit-length as that of conventional telephone service are assigned for IP telephony services in a number of developed economies including the U.K., U.S. and Singapore.

23. After carefully considering the views submitted by the network operators, members of NAC and other interested parties responding to the SBO Licence Consultation, the TA decides that 8-digit numbers should be allocated for both Class 1 and Class 2 services. For Class 1 service, numbers for conventional fixed services (e.g. prefix “3” numbers) are to be allocated. For Class 2 service, 8-digit numbers with prefix “57” and “58” are to be deployed. This means a total of 2 million numbers will be set aside for Class 2 service. With the assignment of prefix “57” and “58” for Class 2 service, and the requirement that all Class 2 services should be declared (see SC 15.2), operators and consumers will be able to differentiate between Class 1 and Class 2 services without difficulty. Therefore the TA does not agree that 8-digit numbers would

by the NAC are available from OFTA’s website.

cause confusion and therefore Class 2 service should deploy 10-digit subscriber numbers rather than 8-digit numbers from the outset for distinction purposes.

24. There is concern that if it is permissible for phones allocated with Hong Kong telephone numbers to be used outside Hong Kong, this might drain the numbering resources quickly and shorten the lifetime of the 8-digit numbering plan. Whilst the TA notes that preventing users from using Hong Kong telephone numbers at places outside Hong Kong would be impracticable due to the nomadic nature of IP telephony services, the TA has to make it clear that the Hong Kong telephone numbers are allocated to the licensed operators in Hong Kong for assignment to their customers to represent local “addresses” or “network terminating points” for communications mainly over the local networks. Thus, the numbers should not be “sold” or passed to overseas operators to enable the overseas operators to assign the numbers to their own customers. The code of practice relating to the use of numbers and codes in the numbering plan of Hong Kong issued under section 32(F) of the Ordinance will be amended to incorporate this restriction accordingly. The TA expects that the local operators allocated with the Hong Kong telephone numbers should maintain a direct supplier-customer relationship with the end-users assigned with the Hong Kong telephone numbers, or be involved in operating or maintaining the Class 1 or Class 2 services enjoyed by the end-users assigned with the Hong Kong telephone numbers.

25. Moreover, the TA considers that concerns relating to the drain of numbering resources and shortening of the lifetime of the 8-digit numbering plan could be addressed by having a better control mechanism for allocating telephone numbers. In the NAC Paper 3/2005 tabled at the 57th NAC meeting, the TA proposed that number blocks of 10,000³ would be adopted for number allocation for IP telephony services. In addition, the TA is of the view that the licence fee mechanism of the SBO licence, which imposes an annual fee in direct proportion to the quantity of the telephone numbers allocated to SBO licensees, will provide the necessary incentive for the licensees to make efficient use of the scarce numbering resources. In addition, the TA will monitor closely the market situation regarding the consumption of local telephone numbers and take appropriate measures, say, by switching to 10-digit numbers for Class 2 services in a timely manner so that the lifetime of the current 8-digit numbering plan will not be adversely affected. The preliminary thinking is

³ Instead of following the current practice of 100,000 for allocation of numbers to network operators.

that by the time the 8-digit numbers with prefix “57” and “58” are about to be exhausted, subject to the readiness of all carriers to route 10-digit numbers, the TA will then consider allocating 10-digit numbers with the prefix “59”.

26. At the 57th NAC meeting, there were discussions about whether or not a grandfathering arrangement could be made available to those customers already assigned with an 8-digit number for Class 2 service such that they could retain the 8-digit numbers when it was considered necessary that 10-digit numbers with prefix 59 should be allocated to the Class 2 service. There were divided views among members. Members were of the view that the matter might be left open and to be decided closer to the time when the 10-digit numbering arrangement was to be put in place. The TA agrees to such a pragmatic approach.

Tariffs (SC4)

27. HGC, HKBN, NWT and PCCW-HKT submit that they are required to publish the tariffs in the Gazette and send a copy of the tariffs to the TA before the service is introduced under the licence condition of their FTNS/FC licences. They consider that, given that the scope of services of the SBO Licence and FTNS/FC licence is the same, the omission of this licence condition in the SBO Licence is unfairly discriminatory against FTNS/FC licensee.

28. Currently, the requirement of publication of tariffs in the Gazette is only present in facilities-based FTNS/FC licence, but not in the services-based PNETS licence. The TA considers it not appropriate to impose this licence condition on the SBO Licence. It is also relevant to point out that the need to revisit the licensing requirements for the carriers to publish their tariffs has not escaped the attention of the TA. He has proposed to adopt a more flexible approach for such a requirement in the FMC Consultation⁴.

International Call Forwarding Service Charge (SC7)

29. SmarTone and SUNDAY enquire whether SBO licensees, when

⁴ See paragraphs 49 and 50 of the Consultation Paper on Revision of Regulatory Regimes for Fixed-Mobile Convergence (FMC Consultation) issued on 21 September 2005. The TA proposes to introduce to the Unified Carrier Licence a new special condition on tariff publication requirements, which enables the TA to direct that any one of the publication requirements set out in the condition is not applicable to the licensee.

providing international call forwarding services (ICFS), shall pay interconnection charges as determined by the TA. The TA would like to clarify that ICFS is a type of ETS and ICFS charge is a type of interconnection charge payable for ETS. It follows that the obligation set out in SC 7.1 of the SBO Licence to pay interconnection charge for ETS types of services includes payment of ICFS charge where the SBO licensee provides ICFS. For the avoidance of doubt, the following minor amendments (the text in bold) are made to SC 7:

Amended SC 7.1

*For the delivery of outgoing and incoming external telecommunications traffic between the facilities and the users of the service in Hong Kong, the licensee shall pay such interconnection charges, **including, without limitation, and** local access charges, **and access charge or origination charge for interconnection necessary for the provision of international call forwarding service** as may be determined by the Authority from time to time under section 36A of the Ordinance...*

Amended SC 7.2

*The licensee shall comply with any code of practice concerning technical configuration and operation of the service that may be issued by the Authority from time to time after consultation with the licensees ... for the purpose of implementing the terms under the determination referred to in Special Condition 7.1 for interconnection charges ~~and~~, local access charges **and access charge or origination charge for interconnection necessary for the provision of international call forwarding service**, and the prevention of non-compliance with the determination.*

Provision of Information to Customers (SC 9)

30. PCCW-HKTC considers that the proposed licence condition is not effective and suggests that SBO licensee should be required to lodge a bond or guarantee with OFTA to ensure a refund of any charges if the licensee absconds.

31. CSL has doubts as to why the TA considers imposing the proposed licence condition to SBO licensee, for the TA has not finalised the consultation

on the regulation of resale of telecommunications services on a prepaid basis.

32. The TA considers that the proposed licence condition is meant to enable customers of SBO licensees to obtain more information at the time the services are provided so that they are able to identify the services providers and make informed purchasing decisions. The requirement that SBO licensees should lodge a performance bond or bank guarantee with OFTA does not serve this purpose. In any case, PCCW-HKTC seems to have mistaken that performance bond and bank guarantee, by their nature, would function as a “compensation fund” for claims by consumers who suffer loss if the services providers have absconded⁵.

33. As regards CSL’s comments, the TA would like to explain that his proposal on the commencement of section 8(1)(aa) and the licensing regime that follows the commencement is still under review. However, he considers that the licence condition concerning the provision of customer information, which was proposed both for the consultation on the regulation of resale of prepaid telecommunications services, and for the SBO Licence, is desirable for the protection of consumer interest. The fact that the consultation on the commencement of section 8(1)(aa) is yet to be concluded should not affect the introduction of this licence condition to the SBO Licence. Nonetheless, upon further analysis, the TA considers that the same requirements on provision of information should not only apply to prepaid services, but should also apply to postpaid services provided under the SBO Licence. The reason is that a similar protection should equally be offered to postpaid customers to ensure that the customers know the identity of the service providers and obtain some basic information relating to service provision before making the purchasing decisions. In the light of this, SC 9.1 is amended (the text in bold) as follows:

Amended SC 9.1

Without prejudice to the other terms and conditions of this licence, ~~where the licensee receives prepayment for the telecommunications services offered to customers,~~ the licensee shall provide or make available the following information to the customers when ~~such the~~

⁵ Where a performance bond or bank guarantee requirement is imposed on a telecommunications licensee, the purpose is generally to ensure that the licensee will fulfil certain obligations or observe certain requirements to which the performance bond or bank guarantee is related. If the licensee fails to fulfil the obligations or observe the requirements, the performance bond or bank guarantee will be forfeited by the TA with the bonded sum paid to the Government.

services are offered:

- (a) Name of the licensee;
- (b) Licence number of the licensee under this licence;
- (c) Customer service hotline number(s);
- (d) Where applicable, the access code(s) or number(s) (including any access password) used for obtaining ~~prepaid telecommunications~~ **the services**;
- (e) Instructions on how to access the ~~prepaid telecommunications~~ services;
- (f) ~~The tariffs~~ **under which the prepaid telecommunications services are offered; and**
- (g) ~~The duration Expiry date~~ **or validity period of the prepaid telecommunications services offered.; and**
- ~~(h) Expiry date or validity period of the prepaid telecommunications services after replenishment of the prepayment.~~

With the removal of the reference to prepayment in the amended SC9.1, the original SC9.2 which defines prepayment is not necessary and is deleted.

Compliance with Codes of Practice (SC13)

34. PCCW-HKTC considers that this licence condition requiring an SBO licensee to comply with codes of practice in relation to customer protection is unnecessary. For protection of consumer interest, the TA may rely on section 7M of the Ordinance to prevent operators from engaging in misleading or deceptive conduct. PCCW-HKTC considers that it may be unlawful and ultra vires for the TA to try and impose a gloss on what the Ordinance already provides and, therefore, any obligation may be considered by the courts to be unlawfully expanding the bounds of the Ordinance.

35. The TA does not agree that the proposed licence condition expands the TA's power beyond the Ordinance and 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 special conditions, consistent with the Ordinance and not inconsistent with the prescribed general conditions. The proposed SC13 provides that the TA may

issue code of practice 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 general conditions. Notwithstanding the reserve power under the proposed SC13, 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 codes of practice shall continue to be voluntary. The TA will only exercise the reserve power and issue mandatory codes of practice 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 codes of practice. When issuing such codes of practice, care will also be taken to ensure that the codes of practice will cover matters concerning the telecommunications services, instead of issues unrelated to telecommunications or otherwise unspecified. As such, the TA maintains his views that SC13 should be retained.

Applicability of Certain Special Conditions for Class 1 and Class 2 Services (SCs14 and 15)

36. In addition to SCs 14 to 21, which only apply to Class 1 and/or Class 2 services, SBO licensees providing Class 1 or Class 2 services are also required to comply with all GCs and SCs 1 to 13. For the avoidance of doubt, the following minor amendments (the text in bold) are made to SCs14.1 and 15.1.

Amended SC 14.1

*Where the licensee provides a “Class 1 service” defined in Special Condition 14.2, Special Conditions 16 to 21 shall apply **in addition to all General Conditions and Special Conditions 1 to 13.***

Amended SC 15.1

*Where the licensee provides a “Class 2 service” defined in Special Condition 15.2, Special Conditions 16 to 19 shall apply **in addition to all General Conditions and Special Conditions 1 to 13.***

37. In the SBO Licence Consultation, the TA proposed that SBO licensees providing Class 1 or Class 2 services are required to comply with licence conditions relating to interconnection, number portability, emergency call

service, backup power supply and directory services. Invariably, these licensing requirements are imposed for services whereby Hong Kong telephone numbers are assigned to the end-users, and where the services enable the end-user customers to make calls to, and receive calls from, customers of local PSTN. Indeed, in case where a service-specific or non-Hong Kong number is used by a local end-user, there is no point to require the supplier of the service to support the portability of such a number.

38. The TA considers that only voice telephony services which are very close to the conventional telephone service should be subject to requirements such as number portability, emergency call services and backup power supply etc. Real time voice services such as “instant messaging” which do not require assignment of Hong Kong numbers are generally viewed by the public and consumers as a new form of voice communications and are very different from the conventional voice telephony services to which they are accustomed. Such services have never been subject to regulations or licensing requirements similar to those for the conventional telephone service. In the circumstances, the regulatory requirements set out in SCs 16 – 21 should only apply to services that (a) use Hong Kong telephone numbers and (b) can make and receive calls to and from phones using Hong Kong telephone numbers. The definitions for “Class 1 service” and “Class 2 service” given in SCs 14 and 15 are respectively amended to make this clear (the text in bold):

Amended SC14.2

For the purpose of this licence, “Class 1 service” means an internal telecommunications service

- (a) for carrying real-time voice communications which may **be integrated with other types of communications;***
- (b) **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;***
- (c) **to which customers are assigned with numbers from the numbering plan of Hong Kong; and***

- (d) which is not a “Class 2 service” as defined in Special Conditions 15.2. ~~not declared by the licensee (and where appropriate its agents, contractors and resellers) 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).~~*

Amended SC15.2

For the purpose of this licence, “Class 2 service” means an internal telecommunications service

- (a) for carrying real-time voice communications which may be integrated with other types of communications;*
- (b) 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;*
- (c) to which customers are assigned with numbers from the numbering plan of Hong Kong; and*
- (d) in the provision of which –*
- (i) ~~declared by~~ the licensee (and where appropriate its agents, contractors and resellers) in all promoting, marketing or advertising materials concerning such service; **declares the 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*
 - (ii) the licensee, in lieu of (i), complies with such conditions as may be specified by the Authority in a direction that may be issued by the Authority.*

39. The TA would like to explain further on the background for the newly introduced SC15.2(d)(ii). Before issuing the SBO Licence Consultation, the TA issued a circular letter on 7 July 2005 to local FTNS/FC licensees to solicit

their views on the amendment of the FTNS/FC licence for the operation of Class 2 service. The circular letter was published on OFTA's website. The TA's responses to the comments received from the local FTNS/FC licensees by way of circular letter are published today on OFTA's website. For clarity and alignment with the amendments of the FTNS/FC licence in respect of the definition of Class 2 service, SC15.2(d)(ii) of the SBO Licence is added. The newly added SC15.2(d)(ii) provides flexibility to the classification of Class 2 service in the event where the TA considers other conditions in lieu of SC15.2(d)(i) are suitable for the classification.

40. For the avoidance of doubt, SBO licensees offering local voice telephony services which do not fall within the definitions of Class 1 or Class 2 services in the amended SC14.2 and 15.2 are not required to comply with SCs 14 – 21. However, the services will still fall within the Scope of the Service provided in Schedule 1 of the SBO Licence. All GCs and SCs 1 – 13 of the SBO Licence will be applicable to these services.

Number Portability (SC17) and Direction under SC17

41. CSL enquires whether a Class 1 service subscriber can port out its number to an operator offering Class 2 service. If yes, this would cause potential confusion to the market about the type of service associated with the particular telephone number.

42. PCCW-HKTC submits that as there is so far no requirement to use different number or number ranges for Class 1 and Class 2 services, there is a risk that the restrictions on number porting imposed on Class 2 services may be circumvented. This would also lead to an undesirable situation as it would inevitably cause great confusion to customers (and operators alike) given that the number will not indicate whether it is for Class 1 or Class 2 service or whether number porting will apply.

43. As regards the number porting requirements, the TA reiterates that where the SBO licensees provide a Class 1 service, they have no obligation to port out the numbers used for providing Class 1 service to other operators for providing a Class 2 service. Where the SBO licensees provide a Class 2 service, they have no obligation to port out the numbers used for providing Class 2 service to other operators providing a Class 1 or Class 2 service. This

is reflected in the Direction to be issued under SC17, which waives the number porting requirements for Class 2 services under all circumstances and Class 1 services under two circumstances, namely porting numbers used for Class 1 service to Class 2 service, and accepting porting of numbers used for Class 2 service.

44. It is the responsibility of the SBO licensee to inform the consumers whether the service is a Class 1 or Class 2 service before providing the service to them. Where a Class 2 service is provided, the SBO licensees are also required to declare in all promoting, marketing or advertising materials such service as a Class 2 service. Moreover, given that paragraph 23 of this Statement has already specified that Class 2 service providers will have to deploy a dedicated numbering range i.e. 8-digit numbers with prefix “57” and “58”, any concern that that the end customers will be confused should be a non-issue.

45. For clarity and alignment with the amendments of the FTNS/FC licence as mentioned in paragraph 39 in respect of the licence condition on number portability, SC17.1 of the SBO Licence is amended (the text in bold) as follows:

Amended 17.1

*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 2.1 and assigned to any customer of an internal fixed telecommunications service provided by any services-based operator licensee for carrying real-time voice communications (which may be integrated with other types of communications) which is interconnected with systems and services under fixed telecommunications network services licences or fixed carrier licences, or any customer of any fixed carrier licensee or fixed telecommunications network services licensee, 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 an internal fixed telecommunications service provided by any other services-based operator licensee for carrying real-time voice communications (which may be integrated with other types of communications) which is interconnected with systems and services***

under fixed telecommunications network services licences or fixed carrier licences, or a customer of fixed carrier licensee or fixed telecommunications network services licensee, as the case may be.

Paragraph 1(a) of the Direction to be issued under SC 17 is also amended accordingly.

46. The original SC17.2 requires SBO licensees to facilitate portability of numbers of customers of mobile network operators licensed under the public radiocommunications service licence or mobile carrier licence. In addition to customers of mobile network operators, the SBO licensees are required to facilitate portability of numbers of customers of MVNO licensed under the PNETS licence. This is already reflected in the draft Direction to be issued under SC 17. For the avoidance of doubt, SC17.2 is slightly amended (the text in bold) as follows:

Amended 17.2

*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 2.1** and assigned to any customer of any public radiocommunications services licensed under the public radiocommunications service licence or mobile carrier licence **or mobile virtual network operators services licensed under public non-exclusive telecommunications service licences granted under the Ordinance** 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 public radiocommunications services **or mobile virtual network operators services.***

Emergency Call Service (SC 18)

47. For public safety requirement, the Police consider that Class 1 and Class 2 services operators are required to provide free of charge to the Police and Fire Services Department the relevant location information of customers calling the emergency service. The TA agrees to the Police's view that, for public safety reason, SBO licensee should have a social obligation to provide such location information of customer free of charge to the relevant emergency agencies. As such, SC 18.2 is slightly amended (the text in bold) as follows:

Amended SC 18.2

*Where the licensee provides a public emergency call service pursuant to Special Condition 18.1 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 18.1**, the relevant information relating to the location of a customer calling the emergency service described in Special Condition 18.1...*

48. The Police also suggest some implementation details as to how and when the location information of customer is to be provided. The TA considers that as technology and market evolve, the mechanism of how the information is to be provided may have to be updated from time to time. It is therefore appropriate to impose a general obligation on licensees to provide location information of customers. The implementation details should be best dealt with under separate discussions with the relevant parties.

Backup Power Supply (SC19)

49. Other than lifeline users, PCCW-HKTC considers that SBO licensees should be barred from selling services without power backup to households with senior citizens as well because they face similar risk when making telephone calls during power outages. However, it takes the view that the restriction should not be imposed as a licence condition. Instead, the “Code of Practice for the Provision of Backup Power Supply to Network Equipment of FTNS” (Code of Practice on Backup Power Supply) issued by the TA on 26 September 2003 should be amended.

50. CSL in principle supports the requirement of backup power supply being part of the licence condition of the SBO Licence, but considers that this condition would impose a requirement that is not necessarily available to consumers of a standard telephone services. For example, some cordless and handheld PSTN handsets do not operate during power failure. In circumstances like this, it is up to the consumer to ensure that they have a phone service available in the event of a power failure. CSL further submits that

OFTA needs to develop guidelines of how customers should confirm that they do not require the services for lifeline purposes given that operators cannot know how a customer will be using their services on a day-to-day basis.

51. On balancing the interests of consumers' concern over the lack of power supply for IP telephony services and operators' obligation to provide backup power supply, the TA affirms his position that SBO licensees providing Class 1 or Class 2 services must not sell the service to "lifeline" users unless they provide backup power supply to the customer premises equipment and network equipment as stipulated in SC19. The requirement should be imposed as a licence condition as the TA considers that this is a basic obligation that the licensees must observe. 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 backup power supply under SC19, such that service continuity will be maintained during power outage. The TA also concurs with CSL's view that where a telephone user chooses to use a cordless phone which does not operate in the event of a power failure, it is up to the user concerned to ensure that he has a phone service available under such circumstances.

52. Regarding the implementation details as to how backup power should be supplied, the TA has issued a consultation paper on 31 October 2005 proposing to revise the Code of Practice for Backup Power Supply in the light of the policy announcement in the VoIP Statement. The proposal covers the requirement to provide backup power supply for both "lifeline" and "non-lifeline" services as stated in the VoIP Statement. The consultation ended on 28 November 2005 and the TA expects to update the Code of Practice in due course. For the avoidance of doubt, the TA considers it appropriate to add a new SC19.1 requiring the SBO licensee to conform to any guideline or code of practice for backup power supply.

53. The TA concurs with CSL that SBO licensees offering Class 1 or Class 2 services may have practical difficulty in knowing whether their customers will use their services for lifeline purposes on an ongoing basis. To comply with the licence condition, all SBO licensees offering Class 1 or Class 2 services

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 backup power supply is available as stipulated in SC19 before providing the services to or signing service agreements with the consumers. Amendments are made to SC 19 to state clearly this obligation. The TA will also make this clear in the licensing guidelines for the application of the SBO Licence and in consumer education materials that he is going to publish. To avoid any potential disputes with the customers after services are subscribed to, the 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 backup power supply 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 code of practice. The amended SC 19 in full (amended text in bold) is set out as follows:

Amended SC 19

19.1 The licensee shall conform to any guideline or code of practice issued by the Authority in respect of the provision of backup power supply to the service.

~~19.1~~ ***19.2 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.***

19.3 Where no backup power supply is available in such manner as described in Special Condition 19.2, the licensee is deemed to have complied with Special Condition 19.2 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.**

~~19.3~~ **19.4** *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.*

Directory Information and Directory Information Service (SC20)

54. CM Tel and PCCW-HKTC consider that the requirement of printed directory is costly, obsolete and unfriendly to the environment. At present, customers have other better choices of obtaining directory service via phone or online enquiry services.

55. As for telephonic directory services, PCCW-HKTC considers that, under a multi-operator environment, the mandatory provision of a free telephonic directory services by FTNS/FC licensees is obsolete and should be changed.

56. The obligation of providing printed directory and telephonic directory service exists in the current FTNS/FC licence. To ensure a level playing field for the provision of Class 1 services, the same licence condition should also be imposed on SBO licensees offering Class 1 services. As regards the requirements of providing printed directory and telephonic directory services to customers, the issues are currently the subject of the FMC Consultation⁶. Pending any change made to the obligations on the FTNS/FC licensees, the TA will impose the same condition on the SBO licensees.

⁶ See paragraphs 41 to 45 of the Consultation Paper on Revision of Regulatory Regimes for Fixed-Mobile Convergence (FMC Consultation) issued on 21 September 2005.

Other Licence Conditions

57. Some respondents submit that the licence conditions in relation to “obligation to keep records of network information” and “obligation to maintain third party liability insurance” currently imposed on FTNS/FC licence should be equally extended to the SBO licensees.

58. The TA considers that there is a major difference between the nature of operation by the SBO licensees and that by the FTNS/FC licensees, who are carriers licensed to establish or maintain telecommunications networks crossing public streets or unleased Government lands for the provision of public telecommunications services. Given the lack of right of the SBO licensees to establish and maintain network facilities, it is not appropriate to introduce these licence conditions, which are basically network-related, to the SBO Licence.

59. As for the obligation relating to “accounting practices”, which is present in the FTNS/FC licences but not in the SBO Licence, the TA considers that the requirement should not be imposed on services-based operators due to the relatively smaller scale of operation.

Period of Validity

60. In the SBO Consultation, the TA proposed that the SBO Licence shall be valid for one year, and may be renewed for a period of one year at a time subject to the discretion of the TA. HKBN and Peoples support the TA’s proposal, whilst Yahoo suggests that the initial and renewal term of the SBO Licence should be at least two years since an SBO licensee may invest substantial initial capital and resources for providing the services. The TA would like to point out that since there is no requirement on the level of investment of a licensee under the SBO Licence, the investment of an SBO licensee may not necessarily be substantial which depends, to a large extent, on the mode of operation and business model. The same holds true for other services-based PNETS licensees, whose licences are also renewable on an annual basis. The TA considers that imposing a one year licence validity period is more flexible and appropriate for services-based operations.

Licence Fee

61. In the SBO Licence Consultation, the TA proposed that the SBO licensee is required to pay an annual fixed component fee of \$90,000 if Class 1 services are provided, or \$25,000 if Class 1 services are not provided in the service portfolio. The SBO licensee shall also pay an annual fee of \$7 for each subscriber number allocated by the TA to the licensee.

Fixed Component Fee

62. In terms of the fixed component fees of \$90,000 and \$25,000, CM Tel, HGC, HKBN, PCCW-HKTC and WT&T consider that the fees are excessively low when compared with the annual licence fee of \$1,000,000 payable by FTNS/FC licensee. Their major arguments are summarised as follows:

- The scope of services of the FTNS/FC licence and the SBO Licence is the same, and the only difference is in the facilities rights. The extent of OFTA's involvement in administering the "facilities rights" of FTNS/FC licensees cannot justify the significant difference in costs or licence fees. They consider that the TA should explain the efforts or resources that he has to spend in administering the "facilities" rights, and justify the basis of the huge disparity of licence fees between the FTNS/FC licence and the SBO Licence.
- There are many regulatory areas that are common between the FTNS/FC and SBO licensees that require considerable efforts by OFTA, for example, numbering plan administration, common technical standards for customer equipment, competition related matters, consumer protection and customer complaints issue. The administrative burden to OFTA for the SBO Licence is broadly similar to that for the FTNS/FC licence.
- The excessively low licence fee provides an unfair cross-subsidisation to the SBO licensees by the FTNS/FC licensees and the level playing field between the SBO and FTNS/FC licensees cannot be maintained.

- The introduction of an extremely low licence fee for the SBO Licence could result in attracting new entrants that may not possess acceptable credit-worthiness and financial strength to provide quality voice services which are similar to the conventional telephony services.

63. PCCW-HKTC submits that OFTA's current role of monitoring FTNS/FC licensees' compliance with the road-opening guidelines is minimal given that most of the necessary work is carried out by the FTNS/FC operators (and other public utilities) and the Lands Department. It also submits that although the rules and guidelines for in building access have evolved over time, the regulatory framework has basically remained unchanged. Since the announcement of the withdrawal of Type II interconnection in mid-2004, there have been no new requests for co-location in PCCW-HKTC's exchanges. WT&T takes the view that as the Government has adopted a light-handed regulatory approach since the liberalisation of the local fixed-line telecommunications industry in 1995, the administration of FTNS/FC licences should be straightforward and simple and should not be costly.

64. Before responding to the arguments raised by the operators in detail, the TA would like to reiterate that the licence fee for the proposed SBO Licence is based on the cost-recovery principle aiming at recovering the costs of OFTA in administering the licence. As the SBO Licence is a new licence yet to be introduced, the costs are calculated based on projection by reference to and comparison with the resources incurred in administering the FTNS/FC licences. For the reasons given in the following paragraphs, the TA considers that he has made an estimation that is as accurate as possible with the information available to him. When the SBO licensing regime is put in place, the TA will conduct periodical reviews examining the actual costs incurred and the number of licences issued to make sure that the cost-recovery principle is adhered to as far as practicable.

65. We have also reviewed the licensing and licence fee arrangement for carriers and non-carriers in other overseas administrations. The Singaporean example is of particular relevance to us. In Singapore, iDA, the telecommunications regulator, adopts a two-pronged licensing approach that differentiates between facilities-based and services-based type of operations i.e., facilities-based operator (FBO) licence and services-based operator (SBO)

licence, with significant disparity in the licence fee arrangement. The annual licence fee for SBO licence for IP telephony services in Singapore is S\$5,000 whilst that for FBO licence is 1% of the licensee's annual gross turnover, subject to a minimum of S\$100,000 or S\$250,000 depending on the type of operations. The Singaporean example indicates that in terms of the differential licensing fee structures for facilities-based and services-based operators, the cost efficiency that OFTA has achieved are consistent and on par with the international practice and benchmark.

66. Turning to the specific points raised by the operators, the TA considers that PCCW-HKTC has narrowly construed OFTA's role in respect of road opening to monitoring licensees' compliance with the road-opening guidelines. On a macro level, OFTA's staff members are heavily involved in the work of infrastructure coordination, including the monitoring and coordination of road opening, cross-border telecommunications facilities development (e.g. Shenzhen Western Corridor) etc. As for road opening, OFTA plays a major role in coordinating road opening requested by the concerned operators and enforcing the guidelines for road opening for telecommunications operators. OFTA is also involved in mediating and resolving technical or commercial disputes arising from road opening when the concerned parties has failed to reach agreements or consensus. Moreover, OFTA needs to process applications and grant right for access to road opening on a case-by-case basis to those local wireline-based FTNS/FC operators who have been permitted to operate local wireline-based FTNS with effect from 1 January 2003.

67. WT&T and PCCW-HKTC have also oversimplified the role and involvement of and under-estimated the resources devoted by OFTA to deal with issues relating to in-building access and sharing of facilities by FTNS/FC licensees. Facilitation of the rollout of self-built customer access networks by FTNS/FC licensees remains the primary work of OFTA. Operators sometimes encounter difficulties in seeking access to buildings. OFTA has all along been undertaking a proactive role to facilitate FTNS/FC operators' access to buildings. Briefings have been organised for the owners' corporations, property management companies, and District Board members to explain the benefits of access by, and the right of access of, fixed network operators to the buildings.

68. Another area which consumes OFTA's resources is handling issues of interconnection of the networks of the FTNS/FC licensees, including both Type

I and Type II interconnections. With multiple local FTNS/FC licensees in the market, OFTA has been engaged in offering regulatory and technical advice in facilitating interconnections between various networks. Taking Type II interconnection as an example, after the implementation of the new Type II interconnection policy, the TA has revised the Industry Code of Practice for the Interconnection of Broadband and Narrowband Local Access Links providing new procedures for withdrawal / reduction of co-location sites, the possible request of commissioning test reports for broadband LAL etc. The TA will continue to convene the LAL Forum with a view to discussing and resolving any issues that may arise with Type II interconnections, which will continue to be subject to the withdrawal policy.

69. On the other hand, SBO licensees are only required to make interconnection with the FTNS/FC licensees to enable its customers to make and receive calls to and from all other users assigned with numbers from the numbering plan of Hong Kong. The terms and conditions of the interconnection agreements will be subject to their commercial negotiations. As there are multiple local fixed networks in the market, market forces should ensure that the SBO licensees have fair access to the networks and it is rather unlikely for the TA to make intervention or determination on any interconnection charge. Hence, OFTA's resources devoted to setting up costing and charging principles, clearing up technical and practical issues, determination and mediation, if any, should be minimal. Similarly, SBO licensees, depending on whether Class 1 or Class 2 services are provided, are required to enter into commercial agreements with the hosting FTNS/FC operators to fulfil the obligations of facilitating number portability and providing printed directory and the telephonic directory services. Whilst the SBO licensees will be imposed with licence conditions relating to interconnection, number portability, directory services, the extent to which OFTA will devote resources for the SBO Licence is unlikely to be as great as those devoted for FTNS/FC licence.

70. WT&T submits that section 36A(6) of the Ordinance allows the TA to recover the costs and expenses in determination proceedings. It is therefore not justified for OFTA to impose excessive licence fees. Although the TA can recover the costs and expenses in a determination made under section 36A of the Ordinance, there are many interconnection dispute cases where the TA takes part heavily in the mediation process either before or after requests for determination are submitted. In fact, OFTA has been engaged in the mediation of a number

of cases raised by WT&T itself. As costs of determination are recoverable in accordance with section 36A of the Ordinance, there will be no cost recovery under the Ordinance if OFTA gets involved in mediation and the dispute is resolved before proceeding to the stage of determination, or the requesting party withdraws the application for determination any time before the case is concluded by a determination issued by the TA under section 36A. In the circumstances, the cost incurred will have to be recovered from the licence fees paid by the operators.

Variable Component Fee

71. Some respondents to the SBO Licence Consultation consider that the proposed variable component fee of \$7 per number for the SBO Licence is not consistent with the FMC Consultation where the variable component fee for the unified carrier licence is based on \$8 per customer connection and \$3 per number, and the TA has failed to justify the difference. PCCW-HKTC submits that under the proposed unified carrier licence, the per “subscriber” licence fee for a fixed carrier operator would effectively be increased from the present \$7 to \$14 (i.e., \$8 per connection + \$3 per number allocated but not yet assigned + \$3 per number assigned) on the assumption that a utilisation rate of 50% of an operator’s allocated numbers being already assigned to its customers, and is much higher than the proposed licence fee of the SBO Licence which is only \$7 per number. The TA considers that the comparison made by PCCW-HKTC is misleading because the comparison was made without taking into consideration of the number utilisation rate adopted for the SBO Licence. If, adopting PCCW-HKTC’s approach, the same number utilisation rate of 50% is applied to the SBO Licence, the per “subscriber” licence fee will also be \$14 (i.e., \$7 per number allocated but not yet assigned + \$7 per number assigned).

72. The TA has taken different approaches in designing the variable component of the unified carrier licence fee and the SBO Licence fee because of the characteristics inherent in these two licences. The SBO licensee, unlike the carrier licensee, is not granted facilities-based right and is not allowed to establish or maintain any means of telecommunications which cross public streets and unleased Government lands. In particular, as mentioned in paragraph 21 of the VoIP Statement, there are three modes of provision of IP telephony services accessed over broadband connections. In each mode, a broadband connection is a prerequisite for a customer to access to IP telephony

services. In the circumstances, the IP telephony service provider does not establish or maintain any physical connection to its customers. Based on the above considerations, there is no “customer connection” that can form a component of licence fee for the SBO Licence, as the “connection” charge is paid by the FTNS/FC licensees establishing the physical link. On the other hand, whether the “connection fee” component should be imposed on the fixed network operators or whether the magnitude is at the appropriate level, these should be the subjects of discussion in the FMC Consultation and should accordingly be dealt with in that exercise.

73. NWT considers it is fairer that the variable licence fee component of the SBO Licence should be payable in relation to numbers that have been assigned by the licensees to end customers. This would mean that the licence fee is payable for active numbers. The TA however considers that the variable licence fee component should be based on each subscriber number allocated⁷ by the TA to the SBO licensee instead of each subscriber number assigned by the licensee to the end customers. This proposal serves the purpose of encouraging the SBO licensee to make more efficient use of the scarce numbering resources allocated by the TA to the licensee. Furthermore, taking into consideration the number portability requirement for Class 1 service providers, the TA will slightly modify the variable licence fee component of the SBO Licence to the effect that it is based on each subscriber number in the Numbering Plan of Hong Kong within the numbering blocks allocated by the TA to the SBO licensee (net of those numbers subsequently ported out from the SBO licensee’s system) and for each number in the Numbering Plan of Hong Kong ported in to the SBO licensee’s system.

74. As for the licence fee of \$7 for each subscriber number, it is developed based on the cost-recovery approach. The TA confirms that it should be \$7 per subscriber number *allocated* by the TA to the SBO licensee with the slight modification as mentioned in the preceding paragraph. The TA would again like to point out that given the SBO Licence is a new licence which is yet to be issued, the relevant cost is not calculated based on actual empirical data but is developed based on an estimation of OFTA’s resources required to administer the SBO Licence. Nevertheless, the TA will keep track of the costs of

⁷ For the sake of clarity, the terminology “allocation” is used for numbers or codes on a block-by-block basis distributed by the TA to the relevant operators and “assignment” is used for the actual designation of individual numbers and codes by the relevant operators to end customers as set out in the Code of Practice Relating to the Use of Numbers and Codes in Hong Kong Numbering Plan issued by the TA.

administering the SBO Licence in the coming years after it is issued. After gaining the necessary operational experience, the TA will have a better understanding of the OFTA resources required and will adjust the licence fee where necessary.

Commencement of the SBO Licence

75. The SBO Licence and the Direction to be issued under Special Condition 17 of the SBO Licence annexed to this Statement are the finalised version incorporating the changes mentioned above and other minor textual revisions. The form of the SBO Licence together with the general conditions to be imposed under the SBO Licence is published in the Gazette, and the SBO Licence comes into effect today. The guidelines for the application for SBO Licence and application form are published on OFTA's website simultaneously for interested parties to submit their application for the SBO Licence.

Office of the Telecommunications Authority
6 January 2006

**TELECOMMUNICATIONS ORDINANCE
(Chapter 106)**

SERVICES-BASED OPERATOR LICENCE

DATE OF ISSUE: [Date]

[Name of Licensee]

.....

of [Address]

.....

(the “licensee”) is licensed, subject to the following conditions set out in this licence-

- (a) to provide a public telecommunications service (the “service”), the scope of which is described in Schedule 1; and
- (b) to establish and maintain a telecommunications system (the “system”) described in Schedule 2 to provide the service.

GENERAL CONDITIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this licence, except as hereinafter provided or unless the context otherwise requires, words or expressions shall have the meanings assigned to them in the Telecommunications Ordinance (Cap. 106) (the “Ordinance”) and, as the case may be, the Interpretation and General Clauses Ordinance (Cap. 1). For the purposes of interpreting this licence, headings and titles shall be disregarded.
- 1.2 This licence shall not be construed as granting an exclusive right to the licensee to provide the service.
- 1.3 This licence replaces any licence or any exemption from licensing, however described, which the Authority may have granted to the licensee for providing the service.
- 1.4 The grant of this licence does not authorize the licensee to do anything which infringes any exclusive licence granted under the Ordinance or any exclusive right to operate and provide telecommunications networks, systems, installations or services granted under any other Ordinance.

2. TRANSFER

- 2.1 The licensee may, only with the prior written consent of the Authority and subject to such reasonable conditions as the Authority thinks fit, transfer this licence or any permission, right or benefit under this licence. In giving his consent the Authority will have regard to such matters as he thinks fit including but not limited to the effect which the transfer will have on market structure and the financial and technical competence and viability of the transferee.

3. INTERNATIONAL CONVENTIONS

- 3.1 The licensee shall at all times perform and observe the requirements of the Constitution and Convention of the International Telecommunication Union and the regulations and recommendations annexed to it, as are stated to be applicable to Hong Kong, and any other international convention, agreement, protocol, understanding or the like to the extent that the instruments described in this General Condition 3.1 impose obligations on Hong Kong of which the Authority gives notice to the licensee, except to the extent that the Authority may in writing exempt the licensee from such compliance.
- 3.2 Where the Government has been consulted about or is involved in the preparation or negotiation of an international convention, agreement, protocol or understanding or the like or amendments thereto which are on the subject-matter of telecommunications or which relate to another subject-matter but which the Government anticipates could have a material impact on the provision of the service under this licence, the Government will, where practicable, provide the licensee with a reasonable opportunity to make a submission stating its views on the matter.

4. COMPLIANCE GENERALLY

- 4.1 The licensee shall comply with the Ordinance, regulations made under the Ordinance, licence conditions or any other instruments which may be issued by the Authority under the Ordinance and such guidelines or Codes of Practices which may be issued by the Authority as in his opinion are suitable for the purpose of providing practical guidance on any particular aspect of any conditions of this licence.

5. PROVISION OF SERVICE

- 5.1 The licensee shall, subject to Schedule 1 to this licence and any special conditions of this licence relating to the provision of the service, at all times during the validity period of this licence operate, maintain and

provide a good, efficient and continuous service in a manner satisfactory to the Authority. The Authority may, on application in writing by the licensee, exempt a part or parts of the service from the requirement of continuous provision.

6. CONFIDENTIALITY OF CUSTOMER INFORMATION

6.1 The licensee shall not disclose information of a customer except with the consent of the customer, which form of consent shall be approved by the Authority, except for the prevention or detection of crime or the apprehension or prosecution of offenders or except as may be authorized by or under any law.

6.2 The licensee shall not use information provided by its customers or obtained in the course of provision of service to its customers other than for and in relation to the provision by the licensee of the service.

7. CONTROL OF INTERFERENCE AND OBSTRUCTION

7.1 The licensee shall take reasonable measures to install, maintain and operate the service and the system in such a manner as not to cause any harmful interference or physical obstruction to any lawful telecommunications service, or cause any physical obstruction to the installation, maintenance, operation, adjustment, repair, alteration, removal or replacement of the facilities of any lawful telecommunications or utility service provider.

7.2 The licensee shall take reasonable measures to ensure that the customers of the service do not cause harmful interference to lawful telecommunications services or utility services through use of the service.

7.3 The Authority may give such reasonable directions as he thinks fit to avoid harmful interference or physical obstruction referred to in General Condition 7.1. The licensee shall comply with the directions.

8. COMPLIANCE

- 8.1 If the licensee employs any person under contract for the purpose of the service, or for the installation, maintenance or operation of the system (a “contractor”), the licensee shall continue to be responsible for compliance with the conditions of this licence, and the performance thereof, by any contractor.

9. SAFETY

- 9.1 The licensee shall take proper and adequate safety measures for the safeguarding of life and property in connection with all installations, equipment and apparatus operated or used, including safeguarding against exposure to any electrical or radiation hazard emanating from the installations, equipment or apparatus operated or used under this licence.
- 9.2 The licensee shall comply with the safety standards and specifications as may from time to time be prescribed by the Authority and any directions of the Authority in relation to any safety matter.

10. PROHIBITION OF CLAIMS AGAINST GOVERNMENT

- 10.1 The licensee shall have no claim against the Government in tort or in contract in respect of any disturbance or interruption to any part of the system due to works carried out by or on behalf of the Government which result in disturbance to the system.

11. INDEMNITY

- 11.1 The licensee shall indemnify the Government against any losses, claims, charges, expenses, actions, damages or demands which the Government incurs or which may be made against the Government as a result of or in relation to the activities of the licensee or any employee, agent or

contractor of the licensee in relation to the provision of the service or the installation, maintenance and operation of the system.

12. CONTRAVENTION BEYOND LICENSEE'S CONTROL

- 12.1 The licensee shall not be liable for any breach of this licence where it is able to demonstrate, to the reasonable satisfaction of the Authority, that the breach was caused by circumstances beyond its control and that it has taken all reasonable steps open to it to rectify that breach.
- 12.2 Where the circumstances referred to in General Condition 12.1 are such that there is an outage or interruption in the service affecting a significant number of the licensee's customers for a period of more than 7 days, the licensee shall provide the Authority with a full report in writing detailing the reasons for the breach and indicating when, or if, it will be able to continue to provide the service.
- 12.3 If the Authority is, after considering a report provided under General Condition 12.2, of the reasonable belief that the licensee would be able to provide the service within a reasonable period of time despite the circumstances outlined in that report, the Authority may direct that the licensee recommence the service within such reasonable period as the Authority may in writing direct. The licensee shall comply with such direction.
- 12.4 For the avoidance of doubt, General Condition 12.1 shall apply to any of the licence conditions and the Authority may at his discretion, and on such conditions as he thinks fit, extend any time period within which the obligations of the licensee under any of the licence conditions may be met.
- 12.5 In exercising his discretion under General Condition 12.4 with respect to any of the licence conditions, the Authority shall take into account including, without limitation, whether circumstances are such that it would be unreasonable to require compliance by the licensee with the relevant licence condition.

13. PERIOD OF VALIDITY

- 13.1 This licence shall be valid for such period as determined and published by the Authority to be applicable to services-based operator licence at the time of the issue of this licence.

14. LICENCE FEES

- 14.1 The licensee shall pay the fees applicable to services-based operator licence as may from time to time be determined and published by the Authority.

15. PUBLICATION OF LICENCE

- 15.1 The licensee, or the Authority, may at their discretion make the terms and conditions of this licence, including any specific conditions, publicly available in any manner they think fit.

SPECIAL CONDITIONS

1. PROVISION OF SERVICE

- 1.1 The licensee shall, subject to Schedule 1 and any special conditions of this licence relating to the provision of the service, provide the service on its published terms and conditions and at the tariff published in accordance with Special Condition 4 (as applicable) on request of a customer whether or not the customer intends the service to be available for its own use or intends to utilize the service to provide a lawful telecommunications service to third parties.
- 1.2 Subject to Schedule 1 and any special conditions relating to the provision of the service, the licensee shall comply with a customer request for the service as tariffed by the licensee in accordance with Special Condition 4 where the service reasonably could be provided by the licensee to the customer.

2. NUMBERING PLAN

- 2.1 The licensee shall conform to a numbering plan made or approved by the Authority and any directions given by the Authority in respect of the numbering plan.
- 2.2 The licensee shall at the request of the Authority or otherwise consult the Authority about the arrangements for the allocation and reallocation of numbers and codes within the numbering plan.
- 2.3 Where requested by the Authority, the licensee shall prepare and furnish to the Authority proposals for developing, adding to or replacing the numbering plan relating to the service.

3. REQUIREMENT TO FURNISH INFORMATION TO THE AUTHORITY

- 3.1 The licensee shall furnish to the Authority, in such manner and at such times as the Authority may request in writing, such information related to the business run by the licensee under this licence, including financial, technical and statistical information, accounts and other records, as the Authority may reasonably require in order to perform his functions under the Ordinance and this licence.
- 3.2 Subject to Special Condition 3.3, the Authority may use and disclose information to such person as the Authority thinks fit.
- 3.3 Where the Authority proposes to disclose information obtained and the Authority considers that the disclosure would result in the release of information concerning the business or commercial or financial affairs of a licensee which disclosure would or could reasonably be expected to adversely affect the licensee's lawful business or commercial or financial affairs, the Authority will give the licensee a reasonable opportunity to make representations on the proposed disclosure before the Authority makes a final decision whether to disclose the information.

4. TARIFFS

- 4.1 The licensee shall publish and charge no more than the tariffs for the service operated under this licence. The tariffs shall include the relevant terms and conditions for the provision of the service.
- 4.2 Publication shall be effected by –
- (a) placing a copy in a publicly accessible part of the principal business place and other business premises of the licensee as advised by the Authority; and
 - (b) sending a copy to any person who may request it. The licensee shall not levy a charge greater than that is necessary to cover reasonable costs involved.

5. METERING ACCURACY

- 5.1 The licensee shall take all reasonable steps to ensure that any metering equipment used in connection with the service is accurate and reliable.
- 5.2 Upon the written request of the Authority, the licensee shall conduct tests on metering equipment to assess its accuracy, reliability and conformity to the technical standards, if any, specified by the Authority. The licensee shall submit the test result to the Authority within 14 days after the date of the test or such other longer period as the Authority may determine.
- 5.3 The licensee shall keep such records of any metering equipment in such form as may be specified by the Authority and shall supply such records to the Authority on the written request of the Authority.

6. UNIVERSAL SERVICE CONTRIBUTION

- 6.1 Where directed by the Authority, the licensee shall pay to PCCW-HKT Telephone Limited, or other licensees, as the case may be, its relevant share of the universal service contribution to assist PCCW-HKT Telephone Limited, or those licensees, to meet their universal service obligations, if any.
- 6.2 Any universal service contribution shall be subject to annual review by the Authority as to description and quantum and the licensee shall pay its relevant share of such universal service contribution as the Authority may direct following a review. On the completion of an annual review, the Authority will supply the licensee such information as the Authority is reasonably able to supply, and subject to any duty of confidentiality, as to the basis on which the universal service contribution is calculated.
- 6.3 For the purpose of this Special Condition 6, the following definitions shall apply:
 - (a) Basic Service means, subject to the Ordinance, the provision of

- (i) a public switched telephone service including the service connection, continued provision of connectivity, provision of a dedicated telephone number, an appropriate directory listing (except where the customer otherwise directs), a standard telephone handset without switching capacity (except where the customer elects to provide the handset), standard billing and collection services and relevant ancillary services and facilities necessarily utilized by the licensee;
- (ii) a reasonable number of public payphones including payphones located within publicly or privately owned facilities to which the public have access, whether on a 24 hours basis or restricted to certain hours or days of the week;
- (iii) a reasonable number of public payphones, designed for ease of effective use by the hearing impaired;
- (iv) a reasonable number of public payphones, designed for access by the physically disabled, including but not limited to those persons using wheelchairs;
- (v) operator provided directory enquiries, fault reporting, service difficulty and connection services;
- (vi) a tropical cyclone warning service;
- (vii) a thunderstorm and heavy rain warning service;
- (viii) a flood warning service;
- (ix) access to a number or numbers for emergency services; and
- (x) such other services, subject to the Ordinance, as the Authority may include.

- (b) Universal service contribution is that sum calculated in accordance with a formula adopted annually by the Authority, to ensure that PCCW-HKT Telephone Limited, where it has a universal service obligation, and any other licensee with such an obligation, as the case may be, receives a fair contribution from other licensees towards the costs, net of attributable revenue, of serving customers with Basic Service whom would otherwise not be served because it is not economically viable to do so but who are required to be served under the universal service obligation.
- (c) Universal service obligation is the obligation to provide, maintain and operate the relevant network in such manner as to ensure that a good, efficient and continuous Basic Service is reasonably available, subject to the Ordinance, to all persons in Hong Kong and to provide that Basic Service in such manner.

7. INTERCONNECTION CHARGES, INCLUDING WITHOUT LIMITATION, LOCAL ACCESS CHARGE AND INTERNATIONAL CALL FORWARDING SERVICE CHARGE

- 7.1 For the delivery of outgoing and incoming external telecommunications traffic between the facilities of the licensee and the users of the service in Hong Kong, the licensee shall pay such interconnection charges, including, without limitation, local access charges, and access charge or origination charge for interconnection necessary for the provision of international call forwarding service as may be determined by the Authority from time to time under section 36A of the Ordinance and the level and to the fixed carriers, fixed telecommunications network services licensees, mobile carriers or public radiocommunications service licensee specified by the Authority in the determination.
- 7.2 The licensee shall comply with any code of practice concerning technical configuration and operation of the service that may be issued by the Authority from time to time after consultation with the licensees for external telecommunications services, fixed carriers, fixed telecommunications network services licensees, mobile carriers, public

radiocommunications service licensees, or services-based operator licensees for the purpose of implementing the terms under the determination referred to in Special Condition 7.1 for interconnection charges, local access charges and access charge or origination charge for interconnection necessary for the provision of international call forwarding service, and the prevention of non-compliance with the determination.

8. CALLING LINE IDENTIFICATION AND RELATED SERVICES

8.1 The licensee shall conform to any regulatory guide, code of practice or direction issued by the Authority in respect of calling line identification and other calling line identification related services.

8.2 Without limiting the generality of Special Condition 8.1, the regulatory guide, code of practice or direction issued under that Special Condition may require the licensee to validate the calling line identification against the authenticated customer in order to prevent fraud and spam.

9. PROVISION OF INFORMATION TO CUSTOMERS

9.1 Without prejudice to the other terms and conditions of this licence, the licensee shall provide or make available the following information to the customers when the services are offered:

- (a) Name of the licensee;
- (b) Licence number of the licensee under this licence;
- (c) Customer service hotline number(s);
- (d) Where applicable, the access code(s) or number(s) (including any access password) used for obtaining the services;
- (e) Instructions on how to access the services;

- (f) The tariffs under which the services are offered; and
- (g) The duration or validity period of the services offered.

10. INSPECTION

- 10.1 On receiving reasonable prior written notice from the Authority, the licensee shall allow the Authority and any person authorized in writing by him for the Authority's own purposes to enter and inspect the offices, places and premises in Hong Kong where the licensee has installed telecommunications equipment, or used for the provision of the service and if required to make copies of records, documents and accounts relating to the licensee's business for the purpose of enabling the Authority to perform his functions under the Ordinance and ensure the licensee's compliance with the general conditions and special conditions of this licence and the Ordinance.
- 10.2 The licensee shall provide and maintain, at no less than the reasonable technical standards set by the Authority, facilities to enable the Authority to inspect, test, read or measure, as the case may be, any telecommunications installations, equipment (including, but not limited to testing instruments) or premises used or to be used for the provision of the service, and may at its option, and shall on the written request of the Authority, and subject to the provision by the Authority of reasonable prior written notice, provide a representative to be present at any such inspection, testing, reading or measurement.
- 10.3 On giving reasonable prior written notice, the Authority may direct the licensee to demonstrate that the service complies with the technical requirements imposed by the Ordinance and Regulations or any other instruments which may be issued by the Authority under the Ordinance and the licensee shall comply with such directions.
- 10.4 For the purpose of Special Conditions 10.2 and 10.3, the licensee shall provide adequate testing instruments and operating staff.

11. TELECOMMUNICATIONS NUMBER TRANSLATION DEVICE

- 11.1 The licensee shall comply with any directions given in writing by the Authority in relation to the use of a telecommunications number translation device for access to the service.
- 11.2 The licensee shall bear all the costs and financial losses incurred due to full compliance with the directions mentioned in Special Condition 11.1.
- 11.3 In this condition, “telecommunications number translation device” shall mean a device which translates a number input via the normal dialling pad into another number for access to specified destinations or services, but does not include a device which generates such a number upon input through a special function key or a combination of special function keys and the normal dialling pad. The “normal dialling pad” means the dialling pad comprising the buttons for digits 0 to 9, and for “*” and “#”.

12. UNSOLICITED ADVERTISING

- 12.1 The licensee shall not use the service, and shall endeavour to prevent the service from being used by any user, for the transmission of messages or communications comprised in any unsolicited advertising or unsolicited promotional information and comply with all codes of practice which may be issued by the Authority from time to time concerning unsolicited advertising or unsolicited promotional information.

13. COMPLIANCE WITH CODES OF PRACTICE

- 13.1 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

13.2 Before issuing any code of practice or guideline referred to in Special Condition 13.1, the Authority shall carry out such consultation as is reasonable in all the circumstances of the case.

SPECIAL CONDITIONS FOR CLASS 1 AND CLASS 2 SERVICES

14. APPLICABILITY OF CERTAIN SPECIAL CONDITIONS FOR CLASS 1 SERVICE

14.1 Where the licensee provides a “Class 1 service” defined in Special Condition 14.2, Special Conditions 16 to 21 shall apply in addition to all General Conditions and Special Conditions 1 to 13.

14.2 For the purpose of this licence, “Class 1 service” means an internal telecommunications service

(a) for carrying real-time voice communications which may be integrated with other types of communications;

(b) 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;

(c) to which customers are assigned with numbers from the numbering plan of Hong Kong; and

(d) which is not a “Class 2 service” as defined in Special Condition 15.2.

15. APPLICABILITY OF CERTAIN SPECIAL CONDITIONS FOR CLASS 2 SERVICE

15.1 Where the licensee provides a “Class 2 service” defined in Special Condition 15.2, Special Conditions 16 to 19 shall apply in addition to all General Conditions and Special Conditions 1 to 13.

15.2 For the purpose of this licence, “Class 2 service” means an internal telecommunications service

(a) for carrying real-time voice communications which may be

integrated with other types of communications;

- (b) 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;
- (c) to which customers are assigned with numbers from the numbering plan of Hong Kong; and
- (d) in the provision of which –
 - (i) the licensee (and where appropriate its agents, contractors and resellers) in all promoting, marketing or advertising materials concerning such service declares the 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
 - (ii) the licensee, in lieu of (i), complies with such conditions as may be specified by the Authority in a direction that may be issued by the Authority.

16. REQUIREMENTS FOR INTERCONNECTION

- 16.1 Where the customers to the service are assigned with numbers from the numbering plan of Hong Kong as stipulated in Special Condition 2.1, the licensee shall interconnect the service and the system with other networks and services licensed under the Ordinance in such a manner that enables the customers to the service to make and receive calls to and from all other users assigned with numbers from the said numbering plan.

17. NUMBER PORTABILITY

- 17.1 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 2.1 and assigned to any customer of an internal fixed telecommunications service provided by any services-based operator licensee for carrying real-time voice communications (which may be integrated with other types of communications) which is interconnected with systems and services under fixed telecommunications network services licences or fixed carrier licences, or any customer of any fixed carrier licensee or fixed telecommunications network services licensee, 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 an internal fixed telecommunications service provided by any other services-based operator licensee for carrying real-time voice communications (which may be integrated with other types of communications) which is interconnected with systems and services under fixed telecommunications network services licences or fixed carrier licences, or a customer of fixed carrier licensee or fixed telecommunications network services licensee, as the case may be.

- 17.2 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 2.1 and assigned to any customer of any public radiocommunications services licensed under the public radiocommunications service licence or mobile carrier licence or mobile virtual network operators services licensed under public non-exclusive telecommunications service licences granted under the Ordinance 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 public radiocommunications services or mobile virtual network operators services.
- 17.3 The licensee shall make commercial arrangements with one or more fixed carrier or fixed telecommunications network services licensees to fulfil the obligations of facilitating the portability of numbers under Special Conditions 17.1 and 17.2 and conform to any code of practice issued by the Authority in respect of procedures for handling number portability.

18. EMERGENCY CALL SERVICE

- 18.1 Where the customers to the service are assigned with numbers from the numbering plan of Hong Kong as stipulated in Special Condition 2.1, 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 system, communicate as quickly as practicable with the Hong Kong Police Emergency Centre or other entity as directed by the Authority to report an emergency.
- 18.2 Where the licensee provides a public emergency call service pursuant to Special Condition 18.1 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 18.1, the relevant information relating to the location of a customer calling the emergency service described in Special Condition 18.1 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.

19. BACKUP POWER SUPPLY

- 19.1 The licensee shall conform to any guideline or code of practice issued by the Authority in respect of the provision of backup power supply to the service.
- 19.2 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.

19.3 Where no backup power supply is available in such manner as described in Special Condition 19.2, the licensee is deemed to have complied with Special Condition 19.2 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.

19.4 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.

20. DIRECTORY INFORMATION AND DIRECTORY INFORMATION SERVICE

20.1 For the purposes of this Special Condition –

- (a) “directory information” means information obtained by the licensee in the course of the provision of Class 1 service under this licence concerning or relating to the name, address, business and telephone numbers of each of its customers;
- (b) “raw directory information” means the licensee’s directory information held in a basic format relating to all of its customers of Class 1 service other than its customers who request that directory information about them not be disclosed.

- 20.2 This Special Condition applies only in respect of standard printed directories and other directory databases and services which include all of the names of a licensee's customers listed in alphabetical order and does not apply to classified directories where customers are listed by business or trade category or to other business or specialised directories.
- 20.3 Subject to compliance with the Personal Data (Privacy) Ordinance (Cap. 486), General Condition 6 and any applicable law, the licensee shall
- (a) unless otherwise agreed by the Authority, publish or arrange at least biennially for the publication of directory information in a printed or other form approved by the Authority, relating to all its customers of Class 1 service, other than its customers who request not to be included in a directory to be published ("the printed directory"); and
 - (b) establish, maintain and operate, or arrange for the establishment, maintenance or operation of a telecommunications service whereby customers of Class 1 service may, upon request, be provided with directory information other than that of its customers of Class 1 service who request the information not to be disclosed ("the telephonic directory service").
- 20.4 The printed directory and the telephonic directory service provided under Special Condition 20.3 shall be made available free of charge to all of the licensee's customers of Class 1 service and shall be provided in a manner satisfactory to the Authority.
- 20.5 The licensee shall make commercial arrangements with one or more fixed carrier or fixed telecommunications network services licensees to fulfil the obligations of providing the printed directory and the telephonic directory service under this Special Condition.
- 20.6 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 Class 1 service

provided by services-based operator licensees, and directory information on all customers required to be included into a unified printed directory and provided with a unified telephonic directory service by fixed carrier or fixed telecommunications network services licensees pursuant to their relevant licence conditions, 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 of Class 1 service to the fixed carrier or fixed telecommunications network services licensees with whom the licensee shall make commercial arrangements pursuant to Special Condition 20.5.

21. CUSTOMER CHARTER

- 21.1 Unless a waiver in writing is granted by the Authority, the licensee shall prepare a customer charter which sets out the minimum standards of service to the licensee's customers and gives guidance to the employees of the licensee in their relations and dealings with customers.

SCHEDULE 1

SCOPE OF THE SERVICE

1. Subject to General Condition 3, Clause 3 and Clause 4 of this Schedule 1, all internal and external telecommunication services, other than telecommunication services the subject of an exclusive licence issued under the Ordinance, a Mobile Carrier Licence, a Mobile Carrier (Restricted) Licence, a Public Radiocommunications Service Licence, a Radio Paging System Licence, a Public Radiocommunications Service Licence (For Services Other Than Land Mobile Services), a Public Non-Exclusive Telecommunications Service Licence for the provision of Mobile Virtual Network Operators Services, a Public Non-Exclusive Telecommunications Service Licence for the provision of Public Radio Communications Relay Service, a service subject to licensing under any other Ordinance, or a satellite broadcasting service under a Satellite Television Uplink and Downlink Licence.

2. For the purpose of this licence,
 - an “internal” telecommunication service means a service for communications between points within the Hong Kong Special Administrative Region; and

 - an “external” telecommunication service means a service for communications
 - (a) between one or more points in the Hong Kong Special Administrative Region and one or more points outside the Hong Kong Special Administrative Region; and
 - (b) between two or more points outside the Hong Kong Special Administrative Region but routed in transit via the Hong Kong Special Administrative Region.

3. Nothing in this licence authorises the licensee to establish or maintain any means of telecommunications, including but not limited to physical facilities or telecommunications installations, which cross public streets or

unleased Government lands.

4. The scope of service specified in Clause 1 of this Schedule 1 does not include internal voice telephony services provided to mobile customers.

SCHEDULE 2

DESCRIPTION OF THE SYSTEM

All such telecommunications installations established, maintained, possessed or used whether owned by the licensee, leased, or otherwise acquired by the licensee for the purpose of providing the public telecommunications services specified in Schedule 1.

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for Telecommunications Authority

Date: [Date]

TELECOMMUNICATIONS ORDINANCE
(Chapter 106)

SERVICES-BASED OPERATOR LICENCE

DIRECTION
(Special Condition 17)

To : [] (the “Licensee”)
Date : []

1. Pursuant to Special Condition 17 of the Services-Based Operator Licence granted to [] on [], the Telecommunications Authority hereby directs the Licensee, until further notice is given in writing,

- (a) to facilitate the portability of numbers from the numbering plan of Hong Kong as stipulated in Special Condition 2.1 for customers of 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 and licensed under services-based operator licences, or for customers of fixed telecommunications network services licensed under the fixed telecommunications network services licences or fixed carrier licences in Hong Kong (“Operator Number Portability”) so that HKTA 2102 entitled “Procedures for Handling Number Porting by Database Solution” issued by the Telecommunications Authority and as revised from time to time by the Telecommunications Authority can be fully complied with on and after the launch of the service;

(b) to facilitate the portability of numbers from the numbering plan of Hong Kong as stipulated in Special Condition 2.1 for customers of mobile carrier licences, public mobile radiotelephone services and personal communications services licensed under public radiocommunications service licences or mobile virtual network operators services licensed under public non-exclusive telecommunications service licences in Hong Kong (“Mobile Number Portability”) so that the Code of Practice entitled “Code of Practice related to the Implementation of Mobile Number Portability” issued by the Telecommunications Authority and as revised from time to time by the Telecommunications Authority can be fully complied with on and after the launch of the service.

2. Notwithstanding paragraph 1(a), where the Licensee provides a “Class 1 service”, nothing in this Direction requires the Licensee:

- (a) to enable the number assigned by the Licensee to the customer, to be used by that customer for a “Class 2 service” provided by any other “Class 2 service” provider should that customer cease to be a customer of the Licensee; or
- (b) to enable the number assigned to a customer of any other “Class 2 service” provider, to be used by that customer for the service provided by the Licensee.

3. Notwithstanding paragraph 1(a), where the Licensee provides a “Class 2 service”, nothing in this Direction requires the Licensee:

- (a) to enable the number assigned by the Licensee to the customer for such service, to be used by that customer for a service provided by any other fixed carrier or fixed telecommunications network services licensee, or services-based operator licensee should that customer cease to be a customer of such service; or

- (b) to enable the number assigned to a customer of any other fixed carrier or fixed telecommunications networks service licensee, or services-based operator licensee, to be used by that customer for such service.

(M. H. AU)
Telecommunications Authority

SBO LICENCE VALIDITY PERIOD

1. The SBO Licence shall be valid for one year and shall expire on the first day of the month next following the month in which it was issued and in the year next following the year in which it was issued. Subject to the discretion of the Authority, the SBO Licence may be renewed for a period of one year at a time.

SBO LICENCE FEE

1. A fee of
 - (a) \$90,000 where Class 1 services⁸ are provided by the licensee during the validity period of the SBO Licence; or
 - (b) \$25,000 where Class 1 services are not provided by the licensee during the validity period of the SBO Licenceshall be payable on the issue or renewal of the SBO Licence.
2. A fee of \$7 for each subscriber number in the Numbering Plan of Hong Kong within the numbering blocks allocated by the Authority to the SBO licensee (net of those numbers subsequently ported out from the SBO licensee's system) and for each number in the Numbering Plan of Hong Kong ported in to the SBO licensee's system) shall be payable on the issue or renewal of the SBO Licence.

⁸ Class 1 services have the meanings prescribed in Special Condition 14 of the SBO Licence.