

ACCESS TO AND CO-LOCATION AT CABLE LANDING STATIONS

Statement of the Telecommunications Authority, Hong Kong

Statement No. 2 on Issues Connected with the Implementation of Competition in External Facilities Market

19 September 2000

Introduction

Competition has commenced in the operation of external telecommunications facilities from 1 January 2000. A number of submarine cables have been planned for landing or termination in Hong Kong. The submarine cables landed in Hong Kong will terminate at cable landing stations constructed and operated by the Fixed Telecommunications Network Services (FTNS) licensees which perform the role of a “landing party”. The Telecommunications Authority (TA) envisages that access to these cable landing stations by other licensees which own capacity in the cables will be necessary for these licensees to use the capacity they own for the operation of external facilities. In some cases, sharing of the cable landing stations for “co-location” of the equipment of these licensees may be necessary. The operators of the landing stations may also provide backhaul facilities to the licensees seeking access.

2. With a view to facilitating commercial agreements on access and co-location, the TA issues this Statement which outlines the principles that he would apply if the matter was brought to him for determination under the relevant licence conditions and provisions of the Telecommunications Ordinance (Ordinance). One of the relevant conditions is General Condition (GC) 31 concerning sharing of facilities. (This is now also covered by section 36AA of the Ordinance.) Under this condition, the TA may direct that certain facilities be shared, on terms and conditions which may be determined by the TA, after the TA has reasonably formed the opinion that it is in the public interest for the facilities to be shared. Other relevant provisions and licence conditions are section 36A of the Ordinance and GC 13 of the FTNS licence on interconnection.

3. Before forming views on various issues, the TA has initiated a consultation process to solicit comments on the subject from interested parties. In 1999, the TA consulted four wireline FTNS licensees on the issues regarding access to and co-location at cable landing stations. The four licensees were Cable & Wireless HKT International Limited (CWHKTI)¹, Hutchison Global

¹ As of the date of publication of this Statement, this is still the official name of the company. This name of the operator will be used throughout this Statement.

Crossing Limited (HGC) (then known as Hutchison Communications Limited), New T&T Hong Kong Limited (New T&T) and New World Telephone Limited (NWT). In view of the entry of new FTNS licensees to the market, the TA issued a consultation paper (Consultation Paper) on 8 May 2000 seeking further views from the industry on the issues. In response to the Consultation Paper, the TA received eight submissions. Respondents included CWHKTI, Concert, CTI International Limited (CTI), Global Crossing Limited / Asia Global Crossing Hong Kong Limited (GCL), HGC, New T&T, NWT and SmarTone Mobile Communications Limited (SmarTone). A summary of comments from the respondents is given in Annex.

4. In the paragraphs below, the TA discusses the views in submissions which are significantly different from the preliminary views of the TA given in the Consultation Paper and draws conclusions on the issues.

General Considerations

5. CWHKTI disagrees that the principles discussed in the Consultation Paper should only apply to its cable landing stations, claiming that this is unjustified and discriminatory. It sees no reason for different considerations to be taken into account in deciding on the applicability of the principles to the cable landing stations of the other FTNS licensees. CTI assumes the principles apply also to other external FTNS licensees in access to and co-location at cable landing stations of CWHKTI and other external FTNS licensees.

6. In the Consultation Paper, the TA stated that the principles apply only to CWHKTI because CWHKTI is the dominant operator of external facilities and the sites for the landing stations were granted to the company based on the consideration that the company was the exclusive licensee in the operation of external facilities. In the cases of cable landing stations of the other FTNS licensees, the applicability of these principles would be considered by the TA on a case-by-case basis having regard to the factors listed in GC 31 of the FTNS licence related to public interest. This General Condition is now also covered by section 36AA of the Ordinance.

7. Having considered the comments in the submissions, the TA agrees that it is not necessary to differentiate between operators in the application of the principles established in this consultation exercise. It is necessary for other operators to have access to, and co-locate at, the cable landing stations operated by CWHKTI because without such access and co-location, it would not be possible for the other operators to use the capacity they own on the submarine cables for the operation of external facilities. Such considerations, which are relevant in the application of GC 31 and section 36AA of the Ordinance, are applicable to CWHKTI as well as to the cable landing stations operated by other FTNS licensees. The factor that the land for the cable

landing stations of CWHKTI was granted to the company based on the consideration that the company was, at the time of the grant, the exclusive licensee for external facilities would be relevant in the determination of the level of rental or access fees only. Thus the TA considers that the principles set out in this Statement should apply to all FTNS licensees.

8. CWHKTI expresses that the original designs of its cable stations were based on its own needs at the time. Thus it should not be surprising that there is now insufficient space within the stations to accommodate the requirements of the other operators.

9. The TA considers that whether there is availability of space in CWHKTI's cable landing station for co-location by other operators should be considered by the TA on a case-by-case basis if the matter is brought to him for determination. The TA would take into account various factors including size of equipment, justifications for using space in the cable stations for purposes other than housing the equipment, long and short term expansion plans, etc.

Use of Access / Co-location Facilities for the Routing of Traffic over Capacity Not Owned by the Licensee

10. The access and co-location facilities supplied by the operator of a cable landing station may be used to handle traffic over capacity not owned by the licensees supplied with the facilities. In the Consultation Paper, the TA has identified that there are two cases to consider:

- Case 1: routing of traffic terminated in, or originated from, Hong Kong; and
- Case 2: routing of traffic which is in transit through Hong Kong.

11. CWHKTI opines that the Infeasible Right of Use (IRU) owners who are not FTNS licensees should not be permitted to obtain an ownership interest, whether by resale or sub-lease from an FTNS licensee, in the co-location space and facilities or interconnection services provided by CWHKTI to that FTNS licensee.

12. CWHKTI further argues that granting such ownership interest would allow the IRU owners to become external facilities service providers by default and is contrary to Government's policy objectives to encourage investment in additional external cable capacity and to enhance the range and diversity of Hong Kong's physical telecommunications links to the rest of the world. New T&T shares the same view.

13. The TA disagrees with these views. The position of the TA with regard to the use of capacity under IRU for submarine cables landing in Hong

Kong has been set out in Statement No. 1 in this series issued on 8 May 2000 and it is not necessary to repeat it in this Statement other than to reiterate the position that where the owner of the IRU enters into a contract with an FTNS licensee to terminate the cable capacity in Hong Kong, the FTNS licensee itself would be treated as operating external circuits through the cable capacity. It does not give rise to the question of “sub-leasing” or granting “ownership interest” of co-location facilities to non-licensee to establish and maintain a means of telecommunications in Hong Kong. What in effect will take place is that the FTNS licensee is simply using the co-location facilities to carry on activities permitted under its external FTNS licence.

14. In the same Statement of 8 May 2000, the TA has given his view that allowing third parties to terminate their capacity on the equipment of other licensed external facilities operators is in line with the Government policy announced on 5 May 1999 to progressively liberalise our external facilities market.

15. Thus the agreement for access to and co-location at cable landing stations should not restrict the use of the co-location facilities for the handling of traffic to and from the capacity of the non-licensee IRU owners who have entered into a contract with the FTNS licensee provided with the co-location facilities by the operator of the cable landing station.

16. Furthermore, as the use of the access/co-location facilities for the termination of capacity owned by other FTNS licensees or non-FTNS licensees would not result in any increase in the cost to the operator of the cable landing station supplying the facilities, the TA is of the view that the charges payable for the facilities should not be affected by whether the facilities have been used for the termination of capacity owned by other FTNS licensees or non-FTNS licensees.

Co-location within the Main Equipment Room

17. One issue in the Consultation Paper is whether the FTNS licensee seeking co-location should be allowed to share the main equipment rooms in the cable landing stations if space exists for such sharing.

18. CWHKTI maintains that more stringent security is required for co-location in the context of cable landing stations than in the context of Type II interconnection at local exchanges, as in the former case CWHKTI has obligations to cable consortium members and IRU owners to operate, maintain and safeguard the security of the systems.

19. As the TA pointed out in the Consultation Paper, in the arrangement for co-location for Type II interconnection, it has been accepted by the FTNS licensees that the equipment of one FTNS licensee may be co-located within

the same equipment room with the equipment of the FTNS licensee supplying the co-location space without causing any insurmountable security problems. The TA considers that the same arrangement may be extended to the co-location of equipment in cable landing stations. The TA does not see any security problems which could not be resolved in the same manner as for Type II interconnection.

20. In the Consultation Paper, the TA has stated that he is not convinced that security requirement for cable landing stations is any more stringent than that for local telephone exchanges. The TA considers that security is also extremely important in local telephone exchanges to safeguard the integrity of local telephone services in such a densely populated city like Hong Kong. There has been no complaint that the co-location arrangements in local telephone exchanges have compromised the security and integrity of the local telephone services.

21. The TA maintains his view that the equipment of one FTNS licensee may be co-located within the same equipment room in the cable landing station with the equipment of the FTNS licensee supplying the co-location space, unless any practical difficulty in any particular landing station or other justifiable objective grounds exist.

Grooming Service Charge and the Right to Perform Grooming

22. As part of the access arrangement, the operator of the cable landing station may provide a “grooming service” to the licensees seeking access. The purpose of the “grooming service” is to break down higher capacity outputs from the submarine cable termination into the lower capacity channels for connection to the backhaul facilities of the licensees seeking access.

23. CWHKTI maintains that grooming should be provided by the landing party of the cable system as there is significant risk of disruption to the transmission of service if the new FTNS licensees are permitted to handle the systems. It argues that grooming is not a separate service where CWHKTI can be said to be dominant or have additional licence obligations. It is the relevant Construction and Maintenance Agreement and the FTNS licensees' relationship with the cable consortia which determine whether or not grooming will be provided by CWHKTI.

24. CWHKTI further claims that grooming is not an interconnection service. It is an operational procedure necessitated by the fact that the new FTNS licensees are investing in less than STM-1 level of capacity. Hence the provision of grooming is a commercial matter for negotiation between the parties concerned.

25. HGC is of the opinion that only the landing party and the FTNS

licensees providing backhaul services should have the right to perform grooming services. Charges should be determined by commercial negotiation. There is no reason for the application of the carrier-to-carrier cost-based interconnection principles, as no party is mandated to provide such services.

26. The TA does not see any new arguments from CWHKTI on this issue and would like to reiterate his views that he stated in the Consultation Paper. The TA considers that if any restriction on the performance of the grooming function actually exists in the agreement between the IRU purchasers and the cable consortium, it is for the new FTNS licensees who purchase the IRU to meet their contractual obligations under the agreement with the cable consortium. If the agreement between the new FTNS licensee and the cable consortium does not preclude the new FTNS licensee as the IRU purchaser to have direct access to the consortium's equipment for grooming, CWHKTI should not obstruct this from happening.

27. If grooming service is not included in the cost of acquisition of an IRU – and this is a matter for the operator acquiring capacity to find out from the cable owners – but is left to be agreed on an individual basis between each operator acquiring the IRU and the landing party of the cable, then this is an interconnection service (referred to in section 36A of the Telecommunications Ordinance) between the system of the landing party providing the grooming service and the systems of the other licensees seeking access and co-location at the landing station. The grooming service should be charged on the same basis as any other interconnection service between licensed carriers². This means that the price for the grooming service must be based on reasonable relevant costs, including the cost of capital. In addition, since CWHKTI is for the time being the dominant operator for the provisions of such service, it has additional responsibilities arising from its licence, including in particular the responsibility not to abuse its position in providing the service.

Minimum Commitment Period of the Co-location Service

28. CWHKTI reiterates its view that arrangements for access and co-location are commercial matters for negotiation between the parties. In any case, it is too simplistic for the TA to take the view that contracts for period in excess of 3 - 5 years need to be justified, as the access and co-location are for the specific purpose of having connections to cable systems which typically have life spans of 20 - 25 years.

29. As stated in the Consultation Paper, the TA does not consider it appropriate to make a ruling in the Statement on the minimum commitment

² HGC is of the opinion that only the landing party and the FTNS licensees providing backhaul services should have the right to perform grooming services. The TA does not see any reason for imposing such restriction as opined by HGC. Any external cable-based FTNS licensees should have the right to perform grooming services if not restricted under the agreement with the cable consortium.

period for co-location space. However, if he is called upon to determine the issue formally, he would take into account all relevant factors including the impact of the length of the minimum commitment period on competition in that market, the economic characteristics of the service contracted for and the availability and terms and conditions of shorter term contracts for the same service.

30. Where the product or service is standard and requires little dedicated resources, fairly short contracts would be expected and their absence or excessive cost over long term contracts is likely to raise significant concerns. The TA expects that some co-location services would fall within this category. In this circumstance, the contracts for these co-location services for periods in excess of 3 - 5 years need to be objectively justified by the party seeking to impose such terms. Where significant sunk or dedicated costs are involved or where the price differential between long and short-term contracts reflects real cost difference, less concern will arise.

31. CWHKTI warns that if FTNS licensees are not willing to commit to longer than 3 – 5 years, CWHKTI should not be precluded from offering the space to new facilities based carriers once the commitment period is over.

32. The TA is of the view that an existing lessee of co-location space should be given reasonable time and opportunity to negotiate the renewal of the contract, if the lessee wishes to extend it, even though the initial contract is for a period less than 3 – 5 years. On the other hand, the lessee should give the cable station operator reasonable notice whether it intends to extend the contract or not so that the cable station operator can either find another lessee for the co-location space or re-deploy the resources for its own use. This is in line with normal commercial practice.

Obligation for the Cable Landing Station Operator to Lease the Backhaul for the Interim Period

33. CWHKTI and HGC share the view that the leasing of backhaul is a matter for negotiation between the parties.

34. It is also TA's view that the terms and conditions for leasing the backhaul should be agreed between the parties on a commercial basis. It is only when the operators fail to reach agreement after negotiation for a reasonable period of time that the TA would consider making a determination if the matter was brought to his attention. The issue of determining the terms and conditions for interconnection to backhaul facilities will be covered in a separate consultation exercise on “Broadband Interconnection” currently in progress (Consultation Paper issued on 14 June 2000 entitled “Broadband Interconnection - Analysis of Comments Received, Preliminary Conclusions and Further Industry Consultation”). As regards the minimum commitment

period for leasing the backhaul facilities, the TA considers that if he is called upon to determine the issue, he would take into account all relevant factors as enunciated in paragraphs 29-30 and on a case-by-case basis.

Co-location Site Access Lead-time

35. CWHKTI disagrees with the TA's approach in assuming that GC 15 of the FTNS licence may be contravened in this matter.

36. The TA does not make any assumptions. The TA only considers that the access lead-time should not be discriminatory and should generally reflect the lead time taken by the staff of the operator of the cable landing station to attend to its own equipment or cable faults at the station.

37. If an FTNS licensee intends to offer terms and conditions which has the effect that the response time would be longer than that which it offers to itself or its associate or affiliates, due consideration should be given to the implication under GC 15 of the FTNS licence.

38. The imposition of such a term or condition may contravene GC 15 because the competitors of the licensee could not have access to their facilities with the same speed as the licensee in question and that would put them in a disadvantageous position as they would not be able to at least match the quality of service of the licensee providing the access. It also appears to the TA that subject to the issue of costs, better response times should be available for those licensees that are willing to pay an increased cost for a better service. The service that the licensee currently provides to itself should be the benchmark for the minimum standard of service unless again the parties agree to longer response times but reflecting this in the relevant charges.

39. The TA also considers that the operator of cable landing stations should exercise reasonable flexibility in working out practical working arrangements with the operator seeking access and co-location. For example, where security arrangement would not be compromised, e.g. the co-location being in a separate room, consideration might be given to issuing a separate set of keys to the co-locating operator to obviate the need and the associated lead time for the operator of the cable landing station to despatch its staff to the site upon request by the co-locating operator.

Legal Status and Enforcement

40. In the 1999 consultation (referred to in paragraph 3), some parties expressed the doubt of the effectiveness of a TA Statement in the enforcement of the principles set out in the consultation. The purpose of this Statement is to give guidance to assist the FTNS licensees to gain an understanding of how the TA intends to administer the relevant licence conditions and provisions of

the Ordinance, and in respect of any of the guidelines enunciated to govern the types of interconnection referred to in section 36A(1) and sharing of facilities referred to in section 36AA(1) of the Ordinance, this Statement is issued under section 6D(1) and the TA has regard to these guidelines in making any determination under sections 36A, 36AA or other forms of intervention in exercise of his powers under the Ordinance. Nevertheless, the TA cannot legally fetter his discretion in advance and the guidelines enunciated herein therefore will not affect a person's right of objection or making representation pursuant to the rules of natural justice or other statutory safeguards when the matter is brought before the TA for determination on its merits on a case by case basis.

Office of the Telecommunications Authority
19 September 2000

**Summary of Comments Submitted in Response to
the Consultation Paper Issued on 8 May 2000 on
Access to and Co-location at Cable Landing Stations**

1. Cable & Wireless HKT International Limited
2. Concert
3. CTI International Limited
4. Global Crossing Limited / Asia Global Crossing Hong Kong Limited
5. Hutchison Global Crossing Limited
6. New T & T Hong Kong Limited
7. New World Telephone Limited
8. SmarTone Mobile Communications Limited

1. Cable & Wireless HKT International Limited (CWHKTI)

General Considerations

CWHKTI disagrees that the principles discussed in the paper should only apply to its cable landing stations, claiming that this is unjustified and discriminatory. It sees no reason for different considerations to be taken into account in deciding on the applicability of the principles to the cable landing stations of the other FTNS licensees.

2. CWHKTI explains that the original designs of its cable stations were based on its own needs at the time. Thus it should not be surprising that there is now insufficient space within the stations to accommodate the requirements of the other operators. It further suggests that the cable landing stations of the other FTNS licensees should be designed and planned on the basis that they would have to accommodate other FTNS licensees requirements and be so dimensioned.

Use of Access/Co-location Facilities for the Routing of Traffic over Capacity Not Owned by the Licensee

3. The IRU owners who are not FTNS licensees should not be permitted to obtain an ownership interest, whether by resale or sub-lease from an FTNS licensee, in the co-location space and facilities or interconnection services provided by CWHKTI to that FTNS licensee. Obtaining such ownership interest would allow the IRU owners to become external facilities service providers by default and is contrary to Government's policy objectives to encourage investment in additional external cable capacity and to enhance the range and diversity of Hong Kong's physical telecommunications links to the rest of the world.

4. Given TA's views that FTNS licensees should deal with the IRU owners on a commercial basis, CWHKTI considers that the arrangements for the use of co-location facilities of CWHKTI by the FTNS licensees to carry or terminate capacity owned by non-FTNS licensees should also be dealt with on a commercial basis between CWHKTI and the FTNS licensees.

Co-location within the Main Equipment Room

5. CWHKTI maintains that more stringent security is required for co-location in the context of cable landing stations than in the context of Type II interconnection at local exchanges, as in the former case, CWHKTI has obligations to cable consortium members and owners of IRUs to maintain and safeguard the security of the systems. It reiterates that co-location within the

main equipment rooms of the cable station is not necessary and not a prerequisite to FTNS licensees gaining access to the cable system and offering external facilities services. Alternative options include leasing backhaul facilities, co-locating at local exchanges and in-span interconnection.

Grooming

6. CWHKTI maintains that grooming should be provided by the landing party of the cable system as there are significant risks of disruption to the transmission of service if the new FTNS licensees are permitted to handle the systems. It further claims that grooming is not an interconnection service. It is an operational procedure necessitated by the fact that the new FTNS licensees are investing in less than STM-1 level of capacity. Hence the provision of grooming is a commercial matter for negotiation between the parties concerned. Grooming is also not a separate service where CWHKTI can be said to be dominant or have additional licence obligations. It is the relevant Construction and Maintenance Agreement (C&MA) governing the FTNS licensees' relationship with the cable consortia which determines whether or not grooming will be provided by CWHKTI.

Minimum Commitment Period

7. CWHKTI reiterates its view that arrangements for access and co-location are commercial matters for negotiation between the parties. In any case, it is too simplistic for the TA to take the view that contracts for period in excess of 3 – 5 years need to be justified, as the access and co-location are for the specific purpose of having connections to cable systems which typically have life spans of 20 – 25 years. If FTNS licensees are not willing to commit to longer than 3 – 5 years then CWHKTI should not be precluded from offering the space to new facilities based carriers once the commitment period is over.

Backhaul for Interim Period

8. CWHKTI claims that the leasing of backhaul is a matter for negotiation between the parties. It disagrees with the views of NWT in relation to the ease of redeployment of International Interconnection Gateway (IICG) facilities. All infrastructure facilities are designed for dedicated usage by the requesting operator for a specific telecommunications purpose and are not easily deployable for other purposes once installed.

Co-location Site Access Lead Time

9. CWHKTI agrees that the access lead time should not be discriminatory. However, it disagrees with the TA's approach in assuming that GC15 may be contravened.

Other matters – TA Statement No 1 issued on 8 May 2000

10. CWHKTI claims that to allow IRU owners which are unlicensed in Hong Kong to land capacity in their cables in Hong Kong is contrary to the Government policy, announced on 5 May 1999, of encouraging investment in additional external cable capacity. CWHKTI's position is that IRU owners who are not holders of international facilities licences in Hong Kong should not be permitted to convert their capacity to land in Hong Kong, thereby qualifying as facilities-based carriers by default.

2. Concert

General

Concert welcomes the pro-competitive approach taken by the TA in the Consultation Paper.

General Considerations

2. Concert proposes that the TA should encourage all submarine cable station operators to provide access and co-location to other owners in the submarine cables landing at their stations on terms similar to those set forth in the Consultation Paper wherever this is technically feasible, and to encourage all consortium arrangements and capacity purchase arrangements with non-consortium cables to routinely provide such access. However, unless there is a threshold showing dominance by the station operator, access and co-location arrangements should be treated as a contractual rather than a regulatory matter.

Co-location and Access Requirements

3. Concerts supports TA's proposal that CWHKTI should be required to provide co-location access and co-location to other licensed international operators in Hong Kong owning capacity in the cables landing at these stations, and that there should be no restrictions on the ability of the co-locating operators to provide backhaul services both to themselves and to other entities owning capacity on the relevant cables.

4. Further, Concert believes that there should be no restriction on operators' use of their own personnel for the operation and maintenance of their co-location equipment and backhaul facilities. This can be achieved by separating each operator's co-location equipment and facilities in different buildings or separate, clearly delineated areas of a single building, with restrictions on unauthorised access to other operators' equipment and facilities.

Grooming Services

5. Concert agrees to the stance taken by the TA and the reasons set forth in support of the stance.

Minimum Commitment Period of the Co-location Service / Leasing the Backhaul

6. To prevent long minimum commitment period which may arise where significant sunk or dedicated costs are involved, Concert believes that to require CWHKTI to provide co-location at cost would be an effective method.

This would include the costs of any separate building or separate area of a single building that may be required to allow each operator's personnel to have access to its co-location equipment.

Co-location Site Access Lead Time

7. Concert takes the view that the TA is properly concerned that operators using the station should receive the same standard of service. Concert also notes that any improved services provided at an increased cost should be available to all operators using the station.

Other matters

8. Concert is of the opinion that to require international carriers to invest in submarine cable facilities as a specific condition of their international facilities-based licences is an unnecessary restriction on new competitors and the restriction should be removed to encourage wider new entry to the international facilities-based market in Hong Kong.

3. CTI International Limited (CTI)

CTI's response to the Consultation Paper contains two points. First, it assumes that the principles in the paper apply also to an external FTNS (EFTNS) operator's access to and co-location at the cable landing stations of CWHKTI and other FTNS operators. Second, it suggests that CWHKTI should allocate evenly the co-location facilities not only to the existing FTNS operators but also to the future EFTNS operators, and to allow equal right of access to the future EFTNS operators.

4. Global Crossing Ltd / Asia Global Crossing Hong Kong Limited (Global Crossing)

General

Global Crossing generally supports the approach proposed by the TA in the Consultation Paper.

General Considerations

2. Global Crossing takes the view that where the cable station is non-dominant, it should not be required to provide access or co-location except on negotiated terms. As CWHKTI is the dominant provider of external facilities in Hong Kong, Global Crossing agrees with TA that it should be obligated to provide access and co-location upon request to all cable-based FTNS licensees on non-discriminatory terms and conditions and at cost-based rates.

Use of the Access / Co-location Facilities for the Routing of Traffic over Capacity not Owned by the Licensee

3. Global Crossing agrees with the TA's conclusion that the access and co-location facilities can be used to transport traffic over capacity not owned by the co-locating licensees. Global Crossing also agrees with the TA that CWHKTI should not be permitted to impose differential charges for the FTNS licensee's own traffic and traffic over capacity sold on an IRU basis.

Co-location of the Cable Stations

4. Global Crossing suggests that CWHKTI should be required to allow competing FTNS licensees to physically co-locate at the cable stations and to use their own multiplexing equipment on reasonable and non-discriminatory terms and conditions. If the competing licensees must use equipment owned by CWHKTI, access to such equipment should be granted on reasonable and non-discriminatory basis. To ensure that competing operators are treated equally, provisioning timeframes should be established and CWHKTI should be required to provide periodic reports demonstrating its compliance with those timeframes.

5. The TA should also ensure that the access and co-location services are provided at cost-based rates. CWHKTI should be required to provide transparent cost models that clearly show the basis for its access and co-location charges. The TA should subject CWHKTI's cost models to rigorous scrutiny, and ensure that CWHKTI charges only for the direct costs resulting from that operator, and not the historic costs to construct and install the cable

station, landing equipment and associated terrestrial transmission facilities.

6. FTNS licensees seeking co-location should be permitted to share the main equipment room if space exists. The TA is urged to require CWHKTI to maintain an updated inventory of where and how much space is available. CWHKTI should be obligated to remove its own outdated equipment to maximise the space available for competing operators. Further, competing operators that are denied co-location on claims of unavailability should be permitted to examine the premises in which co-location was denied.

7. Global Crossing is of the view that CWHKTI's security concerns are overstated. The TA should ensure that CWHKTI does not use improper and unduly burdensome security measures as a means to thwart effective co-location by competing operators. CWHKTI should be prohibited from imposing stricter security measures on competing operators than on itself, and must be required to provide 24 hours per day/7 days per week access so that faults can be identified and remedied in a timely manner. Representatives of competitors should not be required to have a security escort to access their equipment.

Grooming Service

8. Global Crossing takes the view that CWHKTI should be required to provide grooming services at cost-based prices. On the other hand, competing operators should be permitted, but not required, to provide grooming services at the cable station.

Minimum Commitment Period for Co-location Services / Lease of Backhaul

9. Global Crossing agrees that the minimum length of a co-location agreement normally should be left to commercial negotiation, but it urges the TA to ensure that CWHKTI does not impose excessively long and anti-competitive terms, as such terms will inhibit the competing operators' ability to seek more economical co-location options or to construct their own cable stations. Global Crossing also dismisses as not appropriate CWHKTI's argument that the term of the co-location contracts should be 20 years to match the standard IRU term. It agrees with the TA that a co-location term longer than three years has to be justified. The same position is adopted in respect of the provision of backhaul capacity.

Co-location Site Access Lead-time

10. Global Crossing opines that CWHKTI should be required to provide the same treatment to competing operators as it provides to itself and its affiliates, and to commence negotiations and provision of these services on a

timely and reasonable basis.

5. Hutchison Global Crossing Ltd (HGC)

General Considerations

HGC points out that the application of the principles to CWHKTI is in the context of its historical dominance. If any of the principles are to be applied to the other FTNS operators, a separate consultation should be done before any statements or policies are made.

Use of Access / Co-location Facilities for the Routing of Traffic over Capacity Not Owned by the Licensee

2. HGC supports the removal of any restriction on the use of the access / co-location facilities by FTNS licensees based on whether the capacity landed is owned by the FTNS licensees. It also agrees with the TA's reasoning that charges payable for the access / co-location facilities should not be affected by whether the facilities have been used in relation to capacity owned by an FTNS licensee or non-FTNS licensee.

Co-location within the Main Equipment Rooms of the Cable Stations

3. HGC supports the position that the three new FTNS licensees should be able to share the main equipment rooms. It however strongly objects to extending such sharing arrangement to the other external facilities-based FTNS licensees who do not have backhaul facilities, as co-location facilities in the main equipment rooms are a part of the facilities for providing backhaul service. To allow external facilities-based FTNS licensees who do not have backhaul facilities to co-locate is an unnecessary waste of resources. It would also lead to unnecessary complications in the co-ordination for sharing of space and facilities.

Grooming Service Charge and the Right to Perform Grooming

4. HGC agrees with the TA that practical difficulties would arise if any telecommunication operator who owns capacity on the submarine cable can set up their own grooming equipment. It opines that only the landing party and the FTNS licensees providing backhaul services should have the right to perform grooming services. Charges by the cable landing party and the providers of backhaul services should be determined by commercial negotiation as part of the packaged services for cable landing and backhaul respectively. There is no reason for the application of the 'carrier-to-carrier' cost-based interconnection principles, as no party is mandated to provide such services.

Minimum Commitment Period of the Co-location Service

5. HGC supports contract periods between 3 to 5 years. This should allow both parties to review the contract terms in the then prevailing circumstances.

Obligation for the Cable Landing Station Operator to Lease the Backhaul for the Interim Period

6. HGC believes that the issue of the minimum commitment period for backhaul facilities should be a matter of commercial negotiation between the parties.

Co-location Site Access Lead-time

7. HGC agrees with the TA's view.

Other Matters – TA Statement No 1 issued on 8 May 2000

8. HGC welcomes clarification in the statement that (a) CWHKTI cannot restrict HGC's ability to terminate cable capacity for IRU owners at its facilities co-located with CWHKTI's cable landing stations; and (b) it is the commercial decision of FTNS licensees and a matter of commercial negotiation whether to supply landing service to IRU capacity owners.

6. New T&T Hong Kong Limited (New T&T)

General Considerations

NT&T agrees that the principles in the Consultation Paper should only apply to the cable landing stations operated by CWHKTI, and that the applicability of the principles to the other FTNS licensees will be considered on a case by case basis. As regards the charges imposed by CWHKTI, consideration should be given that the sites were granted to CWHKTI on the basis that it was the exclusive licensee in the operation of external facilities.

Use of the Access / Co-location Facilities for the Routing of Traffic over Capacity Not Owned by the Licensee

2. New T&T agrees with the TA that there should be no restriction on the use of the access / co-location facilities for the termination of capacity owned by non-FTNS licensees, and that the charges payable for the facilities should not be affected whether the facilities have been used for the termination of capacity owned by other FTNS licensees or non-FTNS licensees. It further submits that the provision of access or co-location facilities is analogous to Type II Interconnection, thus the relevant charging principles, namely carrier-to-carrier charging principles should apply.

3. New T&T submits that the TA should take positive action to ensure that any arrangements entered into for the provisions of access and co-location facilities do not have the effect or purpose of substantially lessening competition. One of the actions that the TA should take is to call for a copy of the relevant agreement to assess its effect on the competition. This is particularly the case where the parties enter into the agreement on unequal bargaining position.

Co-location within the Main Equipment Rooms of Cable Stations

4. New T&T agrees that co-location should be within the same equipment room unless there exists practical difficulty, and that co-location within cable station is no different from co-location for Type II Interconnection in terms of security issues.

5. New T&T is concerned that CWHKTI can potentially and conveniently reserve any vacant space inside the main buildings such that no space could be made available to the other operators. The TA is requested to establish objective rules in determining space availability, and in the justification for reserving space with evidence of financial commitment and commercial agreement. Further, it believes that the Code of Practice

developed for Type II Interconnection could be applied to cable station co-location.

Grooming Service Charge and the Right to Perform Grooming

6. New T&T agrees with the TA that the grooming service provided by the landing party to co-locating operators should be regarded as carrier-to-carrier interconnection and therefore cost-based. Further, NT&T believes that it is technically feasible and practical for the co-locating operator to have direct connection to the equipment of the cable consortium, if so permitted. An appropriate demarcation point can be established by the landing party to fulfil its duty and responsibilities to the cable consortium. The TA should have the power and responsibility to make determination on the charges for such services upon request.

Minimum Commitment Period of the Co-location Service

7. New T&T agrees with the TA that contracts for periods in excess of 3 – 5 years need to be objectively justified. NT&T does not agree with CWHKTI that the minimum commitment period of 20 years is reasonable because it is a normal international practice for IRUs to be acquired for the life of the cable system. NT&T does not dispute that there exists such a practice but this is a separate issue from the commitment period on the co-location of the cable landing.

Obligation for the Cable Landing Station Operator to Lease the Backhaul for the Interim Period

8. On the issue of the minimum commitment period, New T&T adopts the same position as above in respect of co-location service.

Co-location Site Access Lead-time

9. New T&T agrees with the TA that the access lead-time should not be discriminatory. Problems however lie in the difficulty in proving discrimination, as other operators do not know CWHKTI's internal standard and requirements on its own staff to determine whether there is discrimination. New T&T proposes that the TA should direct CWHKTI to publish its internal standards and requirements on access to cable stations including access in emergency situations to OFTA and other operators.

10. New T&T further states that it is not necessary for the requesting operator to be escorted by CWHKTI, nor for CWHKTI staff to be present to open the door for the requesting operator to go to inspect the equipment of the requesting operator. Their presence only adds to the cost and time of access by the requesting operator, and affects the requesting operator's ability to offer

better service level commitments to its retail customers. This in turn will result in the other carriers' inability to compete on equal footing and may amount to a breach of GC15 and 16 of the FTNS licence.

11. New T&T requests the TA to consider the following ways to improve on the fault response time which have all been rejected by CWHKTI: provision of key to the main gate of the cable stations, separate access with fenced out co-location area, and specified time to answer door when CWHKTI staff are present.

Legal Status and Enforcement

12. New T&T believes that the TA should expressly state in the impending TA statement that the parties should negotiate for appropriate amendments to the commercial agreement so as to ensure that the terms and conditions are consistent with the principles established by the TA. If the agreement could not be reached within a reasonable period, either party may request the TA to make a determination pursuant to s 36A.

13. New T&T further submits that the TA should consider making a determination on the terms and conditions for use of co-location facilities at CWHKTI's cable landing station in the absence of the parties involved and despite the conclusion of the commercial agreement based on public policy ground.

Other Matters: TA Statement No 1 issued on 8 May 2000

14. New T&T has concerns with the clarification provided by the TA on the rights of owners in the capacity in the IRU who are not FTNS licensees. The classification appears to contradict Government policy as laid down in the ITBB May 1999 Legco Brief that in order to encourage the construction of new submarine and overland cables between Hong Kong and other places, up to 31 December 2002, external facilities licences shall only be issued to those companies which will bring new cables to land in Hong Kong and not to those who merely purchase IRUs of existing cables. New T&T reserves its right to separately raise its concerns on this issue at a separate forum.

15. Irrespective of what the owners of the capacity in the IRU can or cannot do, New T&T maintains that it does not give CWHKTI the right to impose restriction on the other operators with regard to the use of its access / co-location facilities.

7. New World Telephone (NWT)

Use of the Access / Co-location Facilities for the Routing of Traffic over Capacity Not Owned by the Licensee

NWT supports the TA's view that the charges payable to CWHKTI by FTNS licensees for the access / co-location facilities should not be affected by whether the facilities have been used for the termination of capacity owned by other FTNS or non-FTNS licensees.

Co-location within the Main Equipment Rooms of the Cable Landing Stations

2. NWT supports the TA's view that security consideration should not be an excuse for preventing co-location within the main equipment room. The analogy with the co-location arrangement in local telephone exchanges is drawn. To safeguard the proper and fair interconnection arrangement at the cable landing stations, CWHKTI should be mandated to submit its existing and future plans of the use of its cable landing stations to OFTA for scrutiny.

Grooming Service Charge and the Right to Perform Grooming

3. NWT fully supports that the grooming service provided by the landing party should be charged on cost-based basis. As there are practical difficulties for the co-locating operators to set up their own grooming equipment, resource of the shared grooming equipment provided by the landing party should be made transparent to all users and provisioning of the grooming capacity should not be unreasonably limited or delayed.

Minimum Commitment Period of the Co-location Service

4. NWT persists that the shorter period of a contract of 3 years or for the unexpired term of the life of the submarine cable is appropriate for the co-location service.

Co-location Site Access Lead-time

5. NWT agrees that the site access lead-time should not be discriminatory. The standard lead-time for the cable landing station operator should be reviewed by the TA and published for public reference in order to avoid any discriminatory practice. For cable landing station which is manned on a 24-hour basis by the cable landing station operator, the access lead-time required for the co-locating operators should be minimised to allow simple administration only, which should be less than half an hour.

6. If a co-location site is located in a separate room, the co-locating operator should be allowed to attend to its own equipment or cable faults without the involvement of the cable landing station operator by the arrangement of an individual access path to its own equipment. This would eliminate the arbitrary overhead on access lead-time imposed by the cable landing station operator.

8. SmarTone Mobile Telecommunications Limited (SmarTone)

General Considerations

As an external FTNS, SmarTone considers it necessary for cable landing stations and the associated facilities to be shared by all FTNS, external FTNS and IRU owners to ensure a level playing field for all. Further, the principles derived from this consultation process should be applied to all other FTNS licensees as long as there is bottleneck in the facilities.

Use of Access / Co-location Facilities for the Routing of Traffic over Capacity Not Owned by the Licensee

2. SmarTone supports the TA's view that there should not be any restriction on the use of the access / co-location facilities for the two identified cases. The charges for facilities should be the same.

Co-location within the Main Equipment Rooms of the Cable Stations

3. SmarTone does not consider there would be any security issue in the co-location, the arrangement of which should be similar to that of Type II interconnection, in that the co-location space is a well confined area and staff from other co-locating operators are only allowed access to the confined area under supervision of the cable station operator.

Grooming Service Charge and Right to Perform Grooming

4. SmarTone agrees that access to facilities in cable stations to be charged at costs on a carrier-to-carrier basis, and that the grooming can be done by the new FTNS operators on their own unless the consortium disallows direct interconnection to the consortium's equipment.

5. SmarTone considers that it is appropriate for the requesting FTNS operators to have their own commercial arrangement governing the share use of their own grooming equipment. It is not necessary for each of the FTNS operator to acquire grooming service from the cable station operator or to maintain their own grooming equipment. However, if grooming cannot be done by the requesting FTNS operators, the grooming function becomes a bottleneck and such service should be provided by the cable station operator at cost on a carrier to carrier basis.

Minimum Commitment Period of Co-location Service

6. SmarTone takes the view that any form of minimum commitment is

itself a barrier to entry and is not in line with the TA's objective to promote competition.

Obligation for the Cable Landing Station Operator to Lease the Backhaul for the Interim Period

7. SmarTone suggests a shorter commitment period as the backhaul service can be reused either by the cable station operator for its retail business or by other new requesting operators.

Co-location Site Access Lead Time

8. SmarTone agrees that there should not be any discriminatory treatment in the access lead time.
