

**Modification of Interconnection and Related Competition Issues  
Statement No. 7 (Second Revision)  
“Carrier-to-Carrier Charging Principles” (for Fixed Carrier  
Interconnections)**

**Statement of the Telecommunications Authority**

**3 April 2009**

**INTRODUCTION**

On 16 January 2009, the Office of the Telecommunications Authority (“OFTA”) issued a consultation paper entitled “Modification of Interconnection and Related Competition Issues Statement No. 7 (Second Revision) “Carrier-to-Carrier Charging Principles” (for Fixed Carrier Interconnections)” (the “consultation paper”)<sup>1</sup>. The consultation paper aims at seeking the views of the industry on the proposed modifications to the “Interconnection and Related Competition Issues Statement No. 7 (Second Revision) – ‘Carrier-to-Carrier Charging Principles’” dated 18 March 2002 (“Statement No. 7 (Second Revision)”) as a consequence of the changes in the regulatory regime that have taken place since March 2002, including in particular the impending withdrawal of the existing regulatory guidance on fixed-mobile interconnection charge (“FMIC”) as set out in the Statement entitled “Deregulation for Fixed-Mobile Convergence” on 27 April 2007 (“FMC Statement”)<sup>2</sup>.

2. In response to the consultation paper, submissions were made by the following parties (listed in alphabetical order):

- (1) China Mobile Hong Kong Company Limited (“China Mobile”)
- (2) CSL Limited (“CSL”)
- (3) Hong Kong Broadband Network Limited (“HKBN”)
- (4) Hutchison Telephone Company Limited (“Hutchison”)
- (5) New World Telecommunications Limited (“NWT”)
- (6) PCCW Limited (“PCCW”)

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<sup>1</sup> <http://www.ofta.gov.hk/en/report-paper-guide/paper/consultation/20090116.pdf>

<sup>2</sup> <http://www.ofta.gov.hk/en/tas/others/ta20070427.pdf>

- (7) SmarTone Communications Limited and SmarTone Mobile Communications Limited (collectively referred to “SmarTone”<sup>3</sup>)
- (8) Wharf T&T Limited (“WT&T”).

3. All of the submissions have been published on the website of OFTA<sup>4</sup>. This Statement sets out the conclusions of the Telecommunications Authority (“TA”) after consideration of the views and comments expressed by the respondents.

## **MODIFICATIONS DUE TO DE-REGULATION OF FMIC**

4. In the FMC Statement, the TA decided to deregulate the existing FMIC arrangement by withdrawing the regulatory guidance in favour of Mobile Party’s Network Pay (“MPNP”) subject to a two-year transition period ending on 27 April 2009. After the transition period, there will be no pre-set regulatory guidance for the interconnection charging arrangements between fixed and mobile carriers and they will have to determine their respective interconnection charges by commercial negotiations. The FMC Statement has set out in detail the considerations and reasons of the TA in reaching such a decision. Since the issuance of the FMC Statement, the TA has reiterated on numerous occasions that there has been and would be no change to the decision to withdraw the regulatory guidance. Nonetheless, some respondents still queried whether the withdrawal should proceed as planned.

### **The Withdrawal of FMIC Guidance**

#### *Views and Comments of Respondents*

5. Given that the negotiations between fixed and mobile carriers on the new FMIC arrangement are still on-going, some fixed carriers were worried about the potential hazard which the withdrawal of regulatory guidance may bring. In particular, PCCW considered the planned withdrawal would be destructive and damaging to the commercial negotiations underway. HKBN warned that “catastrophe” would result and WT&T raised concern that there might be a real threat of traffic disruption, thus threatening Hong Kong’s

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<sup>3</sup> The views expressed in the submissions by SmarTone Communications Limited and SmarTone Mobile Communications Limited are literally the same and will be treated as a single submission.

<sup>4</sup> <http://www.ofta.gov.hk/en/report-paper-guide/paper/consultation/20090302/table.html>.

position as a telecommunications hub in the region. PCCW and NWT suggested that the guidance should only be withdrawn after commercial agreements between fixed and mobile carriers were settled. PCCW and WT&T suggested that the TA should extend the two-year transition period so that carriers could have more time for commercial negotiation. WT&T and HKBN considered that it would not be the appropriate time to update Statement No. 7 (Second Revision).

6. In contrast with the fixed carriers, mobile carriers including China Mobile, CSL, SmarTone and Hutchison supported the withdrawal of the existing guidance in favour of MPNP as planned on 27 April 2009 with the proposed modifications of Statement No. 7 (Second Revision) implemented. China Mobile considered that the proposed modifications should not be treated as an avenue to re-open any review on the concluded principles. It explicitly requested no extension of the transition period. SmarTone reiterated its position that the company had been supportive to the immediate removal of the FMIC arrangement. SmarTone viewed that there should be no dispute concerning the proposed modifications, which only reflected the TA's decision made in the FMC Statement. Hutchison supported the proposed modifications, thus giving a clear signal to the industry that the TA would implement the requisite changes with effect upon the expiry of the transition period. While agreeing with the proposed modifications, CSL emphasized that absence of commercial agreement was not evidence of market failure and it also strongly disputed any alleged risk to any-to-any ("A2A") connectivity even if interconnection agreements had not been finalised between fixed and mobile operators by the end of the transition period.

#### TA's Considerations

7. In the FMC Statement, the decision of withdrawing the existing regulatory guidance for FMIC in favour of MPNP with the setting of a two-year transition period was arrived at after a thorough review and public consultation exercise involving all stakeholders. There has been no change of circumstance that justifies a review of that decision. The proposed modifications in the consultation paper are basically consequential to the removal of the regulatory guidance in favour of MPNP. The consultation was not about the withdrawal of the MPNP guidance or the associated transition period, which had already been decided in April 2007.

8. During the two-year transition period set by the TA, he observes that there have been intensive and genuine commercial negotiations on-going for the new FMIC arrangement among the fixed and mobile operators, in particular after the first quarter of 2008. The TA is also aware that some major fixed and mobile operators have been able to reach some form of agreement or understanding as to the post-transition FMIC arrangement. He does not see any reason why such negotiations between other fixed and mobile operators cannot continue after the transition period. The TA expects that the industry will keep up with this momentum and continue to negotiate in the run up to and after the transition period. The TA firmly believes that the market should be able to settle the arrangement for FMIC if all concerned operators, having due regard to their licence obligations, conduct their commercial negotiations in good faith. After the transition period, if commercial agreement has not yet been reached, parties should keep record of the concerned traffic while continuing to engage in negotiation. After having reached a commercial agreement they may then settle the interconnection charges retrospectively in accordance with the agreed settlement scheme. If parties have engaged in genuine commercial negotiation for some time but still fail to reach a commercial agreement, the concerned party or parties may request for a determination of the terms and conditions for interconnection by the TA under section 36A of the Telecommunications Ordinance (the “Ordinance”). Such terms and conditions can be retrospectively applied.

9. Nevertheless, the carriers should not expect the TA would intervene prematurely. In considering whether to accept a determination request or not, the TA will have to take into account factors pursuant to section 36A(10) of the Ordinance.

10. Some fixed carriers raised the concern about risk of disconnection between networks if the regulatory guidance is withdrawn before the operators reach agreement. The TA would like to assure the industry that if such a threat does appear to loom large ahead, he will not hesitate to use his statutory power to ensure that any-to-any (“A2A”) connectivity will be maintained. To safeguard the public interest, the TA’s intervention will be carried out proportionately, promptly and effectively.

### TA's Conclusion

**11. The TA re-affirms that, in accordance with the FMC Statement, the regulatory guidance on FMIC arrangement in favour of MPNP will be withdrawn as planned on 27 April 2009. Corresponding modifications to Statement No. 7 (Second Revision) will take effect on the same date.**

### **International Call Forwarding Service (“ICFS”)**

12. Fixed carriers responding to the consultation paper pointed out that along with the removal of the regulatory guidance for FMIC, the TA should also review the existing access and origination charges for interconnection of ICFS, which are associated with FMIC and which remain regulated by way of the relevant statements<sup>5</sup> and determination<sup>6</sup>.

13. The TA is aware that since the determination of the ICFS interconnection charge in November 2003, there have been substantial changes in the regulatory framework and the market environment, including the impending de-regulation of the arrangement for FMIC which has been included as a component of the ICFS interconnection charge due to the MPNP guidance in force when the determination was made. With the impending withdrawal of the MPNP guidance, the TA agrees that there is a need to review the existing arrangement for ICFS interconnection charge with a view to providing a practical approach to cope with those changes in a prudent manner. To this end, the TA has issued on 19 March 2009 a consultation paper entitled “Variation of the Determination of the Terms and Conditions of Interconnection for International Call Forwarding Services” to invite views and comments on his proposal of varying the arrangement for ICFS interconnection charge (“ICFS consultation”). To align with the deregulation of FMIC and without prejudice to the commercial negotiations and the ICFS consultation, the TA intends that the implementation of the proposed change to ICFS interconnection charge should take effect on 27 April 2009. This should address the concern raised by the industry on this subject.

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<sup>5</sup> See the TA Statements entitled “Charging Arrangements for International Call Forwarding Services” and “Implementation Issues on the Charging Arrangements of International Call Forwarding Services” issued on 11 June 2002 and 25 January 2003 respectively.

<sup>6</sup> See the “Determination under Section 36A of the Telecommunications Ordinance of the Terms and Conditions of Interconnection for International Call Forwarding Services” dated 3 November 2003.

## **Role of the TA in the New FMIC Arrangement**

14. In the FMC Statement, the TA indicated that he would not issue replacement regulatory guidance upon the withdrawal of the MPNP guidance. Although the TA preferred the new FMIC arrangement to be settled by commercial negotiations, he also made clear that he would continue to monitor market developments and would re-consider the need for regulatory guidance should market conditions change and/or indications of likely market failure emerge. A number of respondents commented on the role of the TA in shaping the new FMIC arrangement and the appropriateness and form of intervention, such as facilitation of negotiation and issuance of replacement guidance.

### *Views and Comments of Respondents*

15. Though none of the respondents objected in principle to resolving the new FMIC arrangement by way of commercial negotiations, some cast doubt on the prospect of successful negotiations that would result in commercial agreements if these were left entirely to the market. HKBN opined that the TA's intervention would be essential for fruitful results on these commercial negotiations. WT&T was of the view that the insistence of the TA in not issuing replacement guidance had aggravated regulatory uncertainty after de-regulation of the FMIC arrangement. NWT opined that the TA should provide "guiding principles" governing the criteria for determination for FMIC if the de-regulation should go ahead. PCCW considered that if the existing FMIC guidance was removed and while negotiations had not been concluded, the TA should set an interim rate to allow the fixed line operators to recover their relevant reasonable costs of interconnection.

16. On the other hand, none of the mobile carriers supported any form of regulatory intervention by the TA in the setting of the new FMIC arrangement by the market. CSL even viewed that the prospect of regulatory intervention or threat of re-regulation and setting up a new FMIC regime could be counter-productive to commercial negotiations and open up risks of regulatory gaming. The company suggested that the TA should make use of the other more appropriate powers available to him to deal with any market failure in resolving fixed-mobile interconnection arrangements, such as the competition provisions under the Ordinance to deal with anti-competitive behaviours, the

use of his power under section 36A for making an interconnection determination upon request by an operator and the power to enforce A2A connectivity. Hutchison considered that the only appropriate form of intervention, where necessary, is to strictly enforce A2A connectivity obligation.

### TA's Considerations

17. In the FMC Statement, the TA expressed the view that it was neither necessary nor appropriate to issue replacement guidance upon the withdrawal of the existing MPNP guidance, given that the market was likely to settle the new FMIC arrangement by itself and there was no compelling evidence to indicate that replacement guidance would promote commercial agreements. This market driven approach towards future FMIC arrangement as stated in the FMC Statement should continue to be firmly upheld. Given that commercial negotiations have been on-going and some carriers have already been able to reach some form of understanding or agreement, there is no overwhelming case for intervention. If the TA is to decide otherwise, it may give the wrong signal to the industry that he has changed course and that the market driven policy as espoused in the FMC Statement has been given up. Having said that, there must be no doubt that the TA will continue to maintain vigilance to ensure a competitive and efficient telecommunications market and he would exercise his powers wherever appropriate if there is a need to safeguard public interest.

18. As regards PCCW's comments that the absence of commercial agreements or an interim rate set by the TA would result in under-contribution to interconnection costs by the mobile carriers, the FMC Statement has already pointed out that the existing markets of fixed and mobile services are very different from the early 1980's, when the asymmetric MPNP guidance was introduced (see paragraphs 48 to 54 of the FMC Statement) and therefore maintenance of asymmetric treatment between fixed and mobile carriers today in respect of the share of interconnection costs would be out of place. Consistent with the market driven policy behind the withdrawal of the MPNP guidance, both fixed and mobile carriers should engage in genuine commercial discussion to resolve how interconnection costs should be shared among themselves.

### TA's Conclusion

19. Consistent with the conclusion in the FMC Statement, the TA will adhere to a market driven approach regarding the new FMIC arrangement after the end of the transition period. **The TA does not find a need to issue replacement guidance at this stage and he will not intervene lightly in the on-going commercial negotiations, which may continue beyond 27 April 2009.** He will continue to encourage and facilitate such negotiations in a neutral and unbiased manner. **He will however reserve his right to use his regulatory powers as a last resort when public interest requires him to do so.** As mentioned in paragraph 7 of the consultation paper, in case the TA considers there is a genuine need to issue fresh guidance for FMIC in future, he will further consult the industry.

### **OTHER MODIFICATIONS TO STATEMENT NO. 7**

#### **Need and Scope of Statement No. 7**

20. After modification of Statement No. 7 (Second Revision) to remove the regulatory guidance on FMIC, the modified Statement will then be solely concerned with the charging principles for interconnection between fixed carriers.

21. PCCW questioned whether or not Statement No. 7 is still needed in today's environment. It suggested that Statement No. 7 can be withdrawn altogether once FMIC negotiations have been settled. The company considered maintaining Statement No. 7 will mean that only fixed-to-fixed interconnection is regulated while leaving fixed-to-mobile and mobile-to-mobile interconnections unregulated, and this would create an uneven playing field between fixed and mobile operators. It opined that continuing to impose heavy-handed regulation on fixed-to-fixed interconnection is against the Government's market driven policy. It also suggested that if the TA still considers it necessary to impose interconnection charging principles, Statement No. 7 should be amended to cover all types of interconnection between and amongst fixed and mobile operators, not just fixed operators. HKBN also submitted that Statement No. 7 should be extended to cover non-voice traffic.

22. Statement No. 7 was first issued in June 1995 in respect of the introduction of competition in the local fixed telecommunications service market to provide guidance on carrier-to-carrier charging principles for interconnection between fixed telecommunications network services (“FTNS”) operators that the TA might rely on in making a determination under section 36A of the Ordinance. It has been continually updated to reflect the developing competitive environment in Hong Kong and to address the latest interconnection issues that have arisen since the introduction of competition in the local FTNS market in 1995. The TA is of the view that the charging principles laid down in Statement No. 7 have served to facilitate the interconnection between fixed carriers in an effective manner and promote / maintain a competitive market for local fixed services. There has been so far no request from the fixed carriers, other than PCCW in its submission to this consultation, to withdraw regulatory guidance for fixed-fixed interconnection charge (“FFIC”). On the other hand, the TA has never regulated mobile-mobile interconnection charge (“MMIC”) because the market has been able to resolve interconnection issues without regulatory intervention by the TA.

23. Whether the TA should consider regulation, maintenance of regulation or de-regulation would depend on the merits of the individual cases, in particular whether there is evidence of sufficient competition in the market such that a market driven solution would be better off than a regulated outcome. **Given that the withdrawal of regulatory guidance for fixed-to-fixed interconnection has not been a subject of serious debate by the industry, the TA would like to understand the views of other fixed operators before deciding whether a review on this subject would be warranted.** The review will need to take into account the long term development of interconnection between fixed networks, including both voice and non-voice services and the impact of the migration from the legacy network to next-generation network (“NGN”). If necessary, the TA will carry out a separate consultation in the future. For the time being, the existing charging principles contained in Statement No. 7 will continue to be applicable as guidance for the TA to determine FFIC until they are reviewed and revised by the TA.

## **Specific Amendments to Statement No. 7**

24. Mobile carriers responding to the consultation paper in general agreed to the amendments to Statement No. 7 (Second Revision) proposed in the consultation paper. PCCW raised a number of specific comments on the proposed amendments. The specific comments of the respondents on the draft Statement No. 7 (Third Revision) given in Annex 1 of the consultation paper and the TA's considerations are summarised below. Unless otherwise specified, the paragraph numbering refers to those used in Annex 1 of the consultation paper.

### ***(a) Responsibility to share interconnection costs (3rd point of Paragraph 7)***

25. In Statement No. 7 (Second Revision), a general charging principle has been stated that “*where interconnecting carriers receive benefits from interconnection arrangements, the interconnecting carriers should bear a proportionate share of the responsibility for interconnection costs from such arrangements.*” The proposed modification in the draft Statement No. 7 (Third Revision) narrows down the scope to include only *fixed* carriers as the modified Statement will cover only fixed-to-fixed interconnection.

26. PCCW requested the TA to make the above charging principle as a principle also for fixed-mobile interconnection, where the TA is required to make a concerned determination. The company considered that mobile operators charging their customers for costs of interconnection have responsibility to compensate the fixed operators for the costs they incur.

27. The TA has reconfirmed in paragraph 19 of this Statement that he does not see any need to prescribe any regulatory guidance for fixed-mobile interconnection at this stage. The comments of PCCW would be dealt with in future if the TA conceives a need of issuing such guidance or receives a request for determination involving fixed-mobile interconnection.

### ***(b) Allowing mark-up for the recovery of indirect fixed costs of fixed carriers (7th point of Paragraph 7)***

28. In Statement No. 7 (Second Revision), a general charging principle has been stated that “*At the current stage of development of the market, no*

*mark-up would be applied to the LRAIC for the recovery of any of the shared costs common to all services. As the market becomes more developed and mature, it would be justified to allow the LRAIC to include a mark-up for the recovery of the incumbent's indirect fixed costs.*” The proposed modification in the draft Statement No. 7 (Third Revision) aims to recognize the maturity of the local fixed telecommunications market and thus the inclusion of a mark-up in the long run average incremental costs (“LRAIC”) for the recovery of indirect fixed costs of a fixed carrier in providing interconnection services.

29. While PCCW welcomed the proposed modification, it suggested allowing fixed carriers to use “overall average overhead recovery percentage” as mark-up since the interconnection service provided by a fixed carrier can be treated just like any other product or service provided by the fixed carrier.

30. The “overall average overhead recovery percentage” is seen from a company’s perspective and it is generally different from that of individual services. For the purpose of determining the relevant costs of interconnection, the TA considers that only the indirect fixed costs attributable to interconnection services should be used as the mark-up. The detailed costing methodology including the adjustment to the LRAIC to account for the relevant mark-up will be decided by the TA on a case by case basis in future if he has to make an interconnection determination.

***(c) Historical cost cap (8th point of Paragraph 7)***

31. In Statement No. 7 (Second Revision), a general charging principle given by the TA is that the relevant costs should be determined with reference to the current cost measurement of assets. Notwithstanding the use of the current cost standard to reflect the most economical replacement cost of the remaining service potential of the existing assets, the TA will consider applying a cap based on the historical cost standard on all or part of the cost components in the LRAIC, particularly those cost components related to land and buildings. This is to balance considerations from different angles - economic efficiency and fair compensation when determining the interconnection charges. The concerned charging principle remains the same in the draft Statement No. 7 (Third Revision).

32. PCCW objected to the application of a historical cost cap on the cost components in the LRAIC and considered that interconnection charges should purely be based on current costs regardless of the type of asset in question.

33. The justifications for use of a cap on historical cost on certain costs were explained in detail in the TA Statement on “Review of the Telecommunications Authority’s Statements No. 4, 5, 6, 7 (Revised) and 8 on Interconnection and Related Competition Issues” issued on 18 March 2002<sup>7</sup> (see paragraphs 17 to 26 of that Statement). Due to historical reasons, a substantial portion of the existing network built by the incumbent fixed carrier (i.e. PCCW), in particular the telephone exchanges, had been built on the land granted by the Government on concession terms many years ago. If the current market value of these exchanges were used to calculate the interconnection charge, this would result in “windfall” gain to the incumbent. In addition, new entrants would be expected to optimise their network configuration and so require smaller and fewer exchange buildings when constructing their own networks. If the network configuration of the incumbent is taken as a reference in calculating the interconnection charge, the generally higher current land and building costs would result in an interconnection charge which does not represent the current or replacement cost of an operator using the most efficient technology and network configuration. The use of historical cost for land and buildings deployed by the incumbent would be a closer approximation of the current or replacement cost for land and buildings used for the network of an efficient operator, as well as representing fair compensation to the incumbent operator. The considerations set out in the TA Statement of 18 March 2002 for applying a historical cost cap for the incumbent fixed carrier are still valid today. Therefore, the TA will continue to apply a cap based on the historical cost standard on all or part of the cost components (particularly those cost components related to land and buildings) in the LRAIC model, which is based on the current or replacement cost standard.

***(d) Reference to the “the most efficient fixed carrier” (8th and 12th point of Paragraph 7)***

34. In Statement No. 7 (Second Revision), two general charging principles given in paragraph 7 stated that the TA will make reference to the network

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<sup>7</sup> [http://www.ofta.gov.hk/en/tas/interconnect/table\\_0318/ta20020318\\_review.pdf](http://www.ofta.gov.hk/en/tas/interconnect/table_0318/ta20020318_review.pdf)

configuration and the cost of incumbent fixed carrier when determining the concerned charges. The proposed modifications in the draft Statement No. 7 (Third Revision) change the basis of reference from the incumbent fixed carrier to the “most efficient fixed carrier” to recognise the fact that it is no longer appropriate to accept automatically the incumbent fixed carrier as the most efficient carrier in calculating costs and charges.

35. While PCCW agreed that reference to the “most efficient fixed carrier” may be taken as a general rule, it advised the TA to consider interconnection determination on a case-by-case basis and take into account the service level of the “most efficient operator” and other factors before deciding whether or not all the appropriate costs have been reflected in the interconnection charge to be determined. On the other hand, SmarTone supported using the cost of the most efficient fixed carrier as benchmark in determining interconnection charge.

36. The TA welcomes the support by the respondents to the general rule of making reference to the “most efficient fixed carrier”. **In response to the comments received, the TA will add the following point in paragraph 7 of Statement No. 7 (Third Revision) in respect of the “most efficient fixed carrier”:**

*“In making reference to the most efficient fixed carrier, the TA may do all things that are necessary in order to eliminate any network inefficiency and he may take into account all relevant factors in providing the interconnection service when deciding the reasonable relevant costs of interconnection.”*

**(e) Network conditioning costs (Paragraph 15)**

37. In the existing Statement No. 7 (Second Revision), it was stated as a principle that a fixed carrier will be required to bear the relevant network conditioning costs to prepare and maintain its own network for interconnection. On the other hand, those costs of network conditioning (if identifiable, causally related and attributable to the provision of the interconnection service) may be regarded as part of the incremental costs for the provision of the interconnection service and recovered through the usage charge of interconnection. The principle of network conditioning is applied to both

public switched telephone network (“PSTN”) and integrated services digital network (“ISDN”).

38. PCCW commented that the above principle should be applicable not only to PSTN and ISDN but be extended to “other alternative substituting networks or technologies”. The TA notes that HKBN has also suggested expanding Statement No. 7 to cover non-voice traffic.

39. While the TA considers that the existing principles stated in Statement No. 7 are largely technology neutral, they have been developed in the context of circuit switched PSTN and ISDN. Although the TA sees a need to review the application of the existing charging principles to cater for new technologies, including NGN (see paragraph 23), this should be done after a more thorough review and consultation with the industry. In the meantime, the TA will not decide on the matter but he may consider applying the principle of network conditioning to interconnections involving other alternative substituting networks or technologies, if he finds it necessary to deal with in the relevant proceeding, such as a section 36A determination.

*(f) Local Access Charge (Paragraphs 20 – 28)*

40. A number of interconnection scenarios for fixed networks are illustrated by diagrams in Statement No. 7 (Second Revision). These diagrams are updated in the draft Statement No. 7 (Third Revision) mainly to reflect the withdrawal of the MPNP guidance.

41. PCCW pointed out that in the interconnection scenarios described in Statement No. 7, interconnection charges for calls delivered between a fixed line customer in Hong Kong and an overseas customer using a Hong Kong telephone number via Internet are not explained. PCCW considered that such inbound and outbound calls using Voice over Internet Protocol (“VoIP”) technology should be subject to local access charge (“LAC”) applicable for external calls instead of local termination charge applicable for local calls between fixed networks, and this charging arrangement should be made clear in Statement No. 7 to avoid any misunderstanding.

42. Statement No. 7 is primarily concerned with the charging principles for interconnection of local fixed telecommunications service. The industry

should refer to other relevant Statements issued by the TA concerning the interconnection charges for external telecommunications services (“ETS”). In particular, the TA set out a regulatory framework and a determination on the LAC applicable for ETS traffic in the Statement of 30 December 1998 on “Implementation of Local Access Charge and Modified Delivery Fee Arrangements”. Reference to this TA Statement regarding the LAC regime has been made in paragraph 42 of the draft Statement No. 7 (Third Revision). On the other hand, the interconnection regime for VoIP calls, including the application of LAC to VoIP calls, was set out with details in the Statements on “Services-Based Operator (“SBO”) Licence” dated 6 January 2006 and “Regulation of Internet Protocol (“IP”) Telephony” dated 20 June 2005. **To address the concern of PCCW, the TA will add the following paragraph in the modified Statement No. 7:**

*“Internet Protocol (IP) Telephony Calls*

*48. Where one fixed carrier hosting a service-based operator providing IP telephony services delivers calls originating from or terminating to IP telephony customers via a PSTN gateway to or from another fixed carrier, the hosting fixed carrier will be responsible for handling all the interconnection arrangements of the concerned IP telephony traffic in accordance with the existing charging principles for interconnection. Reference should be made to the relevant TA Statements including the Statements on “Services-Based Operator (“SBO”) Licence” dated 6 January 2006 and “Regulation of Internet Protocol (“IP”) Telephony” dated 20 June 2005”.*

**(g) *Interconnection charge for ICFS (Paragraph 38)***

43. In the draft Statement No. 7 (Third Revision), the charging arrangement related to the use of personal numbers for international call forwarding service (“ICFS”) has been updated in paragraph 38. The TA has made it clear that he will consider a review of ICFS interconnection charge in accordance with the established procedures if the industry submits a request to do so. Fixed carriers responding to the consultation paper including PCCW, Wharf T&T, NWT and HKBN have all suggested OFTA to review the interconnection charges for ICFS along with the withdrawal of the FMIC guidance.

44. As mentioned in paragraph 13 of this Statement, the TA has issued a consultation paper on 19 March 2009 setting out his proposal for ICFS interconnection charge when the FMIC arrangement is de-regulated. The concerned development will be updated in a footnote under paragraph 38.

***(h) Charging principles for non-interconnection matters (Paragraphs 47 to 51)***

45. In the Statement No. 7 (Second Revision), the TA has briefly mentioned how he would deal with charges for other facilities (e.g. ducts, risers, space in equipment room) and services (e.g. directory assistance, fault reporting, customer inquiries, network maintenance, inter-carrier billing and operator services) which are supplementary to interconnection. In paragraph 47, reference has been made to other relevant Statements and determinations made by the TA. The broad approach and principles that will be followed by the TA for dealing with these non-interconnection facilities and services are stated in paragraphs 48 to 51 which have been carried forward from the existing Statement No. 7 (Second Revision). PCCW considered that there was no need for the TA to provide guidance on charging principles relating to non-interconnection matters and it suggested deleting the concerned paragraphs.

46. The TA has maintained in the draft Statement No. 7 (Third Revision) that he does not wish to set rigid principles for determining charges for non-interconnection services (see paragraph 50). Nevertheless, if the TA is required to set the appropriate charging principles and the actual charges, the TA is minded to ensure that the charges determined under such principles are “*economically efficient*” (see paragraph 49) and the TA will abide by the principles of “*cost-based charging and cost causality*” (see paragraph 51). The TA considers that the broad approach and principles so described in the concerned paragraphs of the draft Statement No. 7 (Third Revision) are in line with the provision under section 36A of the Ordinance and they should provide sufficient flexibility and predictability on how the TA will handle such matter. Therefore, the TA considers that it is appropriate to retain the concerned paragraphs as a minimum guidance to the industry.

## **SUMMARY**

47. Based on the considerations and conclusions in the preceding paragraphs, the TA has modified the Statement No. 7 (Second Revision). The Statement No. 7 (Third Revision) will take effect on 27 April 2009.

48. For avoidance of doubt, with the withdrawal of the existing regulatory guidance on FMIC on 27 April 2009, there will be no *per se* obligation to pay interconnection charges for interconnection between fixed and mobile networks and those charges, if they should be paid by any party, should be subject to commercial negotiation and agreement, failing which a determination may be made by the TA.

49. The TA encourages those fixed and mobile carriers which have yet to reach a commercial agreement to continue negotiations in good faith on the new fixed-mobile interconnection arrangement with a view to reaching agreements as soon as possible. The TA will continue to monitor the progress of negotiation and, depending on the circumstances, offer the necessary assistance and facilitation.

**Office of the Telecommunications Authority**  
**3 April 2009**