

**Consultation Paper on
the Implementation of Carrier Licence
under Telecommunications Ordinance
as Amended by
Telecommunication (Amendment) Ordinance 2000**

8 September 2000

Introduction

The Telecommunication (Amendment) Ordinance 2000 (Amendment Ordinance) was passed by the Legislative Council on 7 June 2000. The Amendment Ordinance, except those provisions relating to the new licensing regime and the repeal of the existing regime, commenced operation on 16 June 2000, the date on which the Amendment Ordinance was published in the Gazette.

2. One main purpose of the Amendment Ordinance is to streamline the licensing procedures to cope with the rapid development of the telecommunications industry. The Government has introduced a new type of licence known as "carrier licence" and the Secretary for Information Technology and Broadcasting (Secretary) is empowered under section 7(2) of the amended Telecommunications Ordinance to make regulations to prescribe the general conditions, including the period of validity, as well as the annual licence fees of the carrier licence.

3. Before making a regulation under section 7(2) of the amended Telecommunications Ordinance, the Secretary is required under section 7(3) to, by notice in the Gazette, invite members of the public who are interested to make representations. This consultation paper explains the concept of carrier licence and elaborates on the types of services which will be covered by the carrier licence. The general conditions which are proposed to be incorporated into a carrier licence, as well as the proposed period of validity and fees for various types of carrier licences, are set out. The Government would welcome comments on the proposals in this consultation paper.

Current and New Licensing Regimes

4. Under the current licensing regime, the Chief Executive-in-Council (CE in C) and the Telecommunications Authority (Authority) may grant licences under the Telecommunications Ordinance, but the power of the Authority to grant licences is restricted to those licences specified by the CE in C in the Telecommunications Regulations (Regulations). The form, general conditions, validity periods and fees of licences which may be granted by the Authority are prescribed by the Regulations. In issuing the licences, the Authority must incorporate the general conditions specified in the Regulations, and may incorporate, within the power conferred on him under the Telecommunications Ordinance, additional special conditions that he considers necessary for the purposes of carrying out the object of the Telecommunications Ordinance on the grant or renewal of licences.

5. At present, telecommunications transmission facilities of operators which have been regarded as "carriers"¹ by the Authority are regulated under the fixed telecommunications network services (FTNS) licence for fixed networks and the public radiocommunications service (PRS) licence for mobile networks. These are licences included in the Regulations and issued by the Authority.

6. The Amendment Ordinance introduces a new licensing regime, in which licences issued under the amended Telecommunications Ordinance are categorised broadly into four types, namely, exclusive licences, carrier licences, class licences and licences that fall outside the former three categories.

Proposed Licensing Regime for Carrier Licence

7. Under section 7(5) of the amended Telecommunications Ordinance, the Authority is empowered to issue a carrier licence. The Secretary may by regulations prescribe the general conditions, including the period of validity, and the fees payable for a carrier licence (section 7(2)), and the Authority may attach special conditions that are consistent with the amended Telecommunications Ordinance and are not inconsistent with the general

¹ Although the term "carrier" was not defined in the legislation prior to the enactment of the Amendment Ordinance, the Authority has been treating operators of fixed telecommunication networks and public mobile radiotelephone networks, which are networks with significant coverage, as "carriers" in the regulatory framework, e.g. see Authority's Statements issued on 19 May 1995 and 20 May 1995 on "Interconnection and Related Competition Issues".

conditions prescribed by the Secretary (section 7A).

8. "Carrier licence" is defined in section 2 of the amended Telecommunications Ordinance to mean "a licence issued for the establishment or maintenance of a telecommunications network for carrying communications to or from the public between fixed locations, between moving locations or between fixed locations and moving locations, within Hong Kong, or between Hong Kong and places outside Hong Kong, on a point-to-point, point-to-multipoint or broadcasting basis, such locations within Hong Kong being separated by unleased Government land, but does not include the licences listed in the Schedule²".

9. The definition is wide and general enough to encompass a number of telecommunications licences currently in existence. The intent is to group under one single category, for regulatory purposes, telecommunications transmission facilities across unleased Government land. Transmission facilities within buildings or single property developments would not be covered under carrier licences. The facilities to be regulated under a carrier licence would involve substantial investment and provide, or have the potential to provide, services to a wide sector of the public. However, for those transmission facilities which cross unleased Government land but are not significant enough to warrant the regulatory control under the carrier licence system, they are exempted by the Schedule to the amended Telecommunications Ordinance.

10. The Secretary proposes that the following existing licences are to fall within the carrier licence system: FTNS licence, PRS licence for personal communications service (PCS licence), public mobile radiotelephone service (PMRS licence), and services other than land mobile services (such as maritime mobile or aeronautical mobile services), licence issued for the operation of satellite space stations (which include the radio stations on board satellites registered in Hong Kong and the associated telemetry and control stations) and, as elaborated in paragraph 11 below, television broadcasting licences deemed to be telecommunications licences.

11. In the 1998 Review of Television Policy, one of the policy decisions made was to separate the regulation and licensing of transmission facilities and

² The Schedule is attached at the end of the amended Telecommunications Ordinance and lists out those licences which are expressly stated not to be carrier licences.

service provision of television broadcasting. The transmission facilities are to be regulated under the amended Telecommunications Ordinance while the service provision of broadcasting is to be regulated under the Broadcasting Ordinance. The Broadcasting Ordinance has come into effect since 7 July 2000. The establishment or maintenance of television broadcasting transmission facilities will fall within the meaning of "carrier licence". Thus the current television broadcasting licences³ which are, or deemed to be, licences issued under the amended Telecommunications Ordinance, by virtue of the fact they are also licences to operate transmission facilities, will fall into this category of licence. These licences are the commercial television broadcasting licences and the subscription television broadcasting licence issued under the repealed Television Ordinance⁴ and the satellite television uplink and downlink licences issued under the amended Telecommunications Ordinance.

12. The Secretary proposes to divide the carrier licence system into the following types

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- (a) 'carrier (fixed) licence';
- (b) 'carrier (mobile) licence'; and
- (c) 'carrier (space stations) licence'.

13. The scopes of services for each of the carrier licences above will be specified in the individual licences as determined by the Authority. Appendix 1 sets out the proposed scopes of services for licences that correspond to the existing telecommunications or broadcasting licences. The Authority will review from time to time the scopes of services for carrier licences in the light of the development in the telecommunications market.

14. The three types of carrier licence will have the same form and general conditions, but the validity periods and fees payable are different. Upon the issue of the licences, the Authority will attach the special conditions that are appropriate to the particular type of licence.

³ Sound broadcasting licences will continue to be licences issued by the CE in C rather than carrier licences under the amended Telecommunications Ordinance. A review will be conducted later this year on whether the separate regulatory regimes for "carriage" and "provision" of broadcasting service under the technology-neutral Broadcasting Ordinance should be extended to sound broadcasting.

⁴ Under the Broadcasting Ordinance, these licences are deemed to be both a licence granted under the Broadcasting Ordinance and a licence granted under the amended Telecommunications Ordinance.

15. *The Secretary welcomes views on the proposed categorisation of carrier licences as set out in paragraphs 10 to 12 above.*

Conversion of Existing Licences

16. As a general principle to ensure a level playing field, the Secretary considers that the existing operators of a certain kind of network and the new operators of the same kind of network to be licensed under the new licensing regime should operate under similar obligations and rights. We therefore propose that the general licence conditions of the carrier (fixed), carrier (mobile) and carrier (space stations) licences should be similar to those of the respective licences under the existing licensing regime, with the exception that those redundant conditions are deleted and the necessary textual amendments are made. To ensure consistency, we also propose that the various types of carrier licence should all possess the same set of general conditions.

17. Pursuant to the principles stated above, the Secretary has reviewed all the general conditions of the existing FTNS, PRS and satellite space station licences with a view to identifying those conditions which are generally applicable to all types of carrier licence. In respect of those general conditions which are relevant only to the individual existing licences, they will become special conditions in the corresponding types of carrier licence provided that it is within the power conferred on the Authority under the amended Telecommunications Ordinance to impose such special conditions. In case the special conditions of individual existing licences duplicate the general conditions in the carrier licence, the special conditions will be removed.

18. The Amendment Ordinance has incorporated some of the general conditions in the existing licences into the amended Telecommunications Ordinance. The concerned provisions include those relating to the inspection and testing of installations (section 7J), anti-competitive conduct (section 7K), abuse of position (section 7L), requirement to furnish information (section 7I), inspection of records, documents and accounts (section 35A), and provision, use and sharing of facilities (section 36AA). As these matters are already regulated under the amended Telecommunications Ordinance, the corresponding general conditions will become redundant and will not be included in the carrier licences to avoid duplication.

19. A draft carrier licence containing the proposed general conditions applicable to all types of carrier licence is attached in Appendix 2. *The Secretary welcomes views from the industry on the general conditions proposed.*

Fee Structures

20. The Secretary proposes that the fee structures for the carrier (fixed), carrier (mobile) and carrier (space stations) licences would be of the same or comparable level as those for the respective licences, if exist, under the existing regime. The fee structures for the entire carrier licence regime are shown in Appendix 3. It is our policy that the licence fee should recover the cost incurred by the Authority in granting the licence and regulating the licensed activities. The Secretary will monitor the fee structures and review the structures as appropriate. *The Secretary would like to seek comments on the fee proposal as set out above.*

Period of Validity

21. Except for the carrier (mobile) licences as elaborated in paragraph 22 below, the Secretary does not propose to make any changes to the validity periods currently applicable to the existing licences (including the broadcasting licences) at the present stage. Any new carrier licence issued will therefore carry the same period of validity as the corresponding type of existing licence it replaces.

22. In the light of the rapid development of the mobile services market, the Secretary has reviewed the adequacy of the length of validity period for the carrier (mobile) licences. As licences for the third generation mobile services would fall under the category of carrier (mobile) licence, it is necessary to ensure that the validity period for carrier (mobile) licences would be sufficient for operators to recoup their substantial investment. The Secretary therefore proposes a validity period of 15 years from the day on which it is granted.

23. The respective validity period of each type of carrier licence is set out in Appendix 4.

24. Upon the implementation of the carrier licensing regime, there may be occasions where a carrier licence is issued other than as a completely new

licence (e.g., pursuant to a surrender arrangement or upon renewal of the existing licence), the period of validity for these kinds of carrier licences will be subject to different arrangements set out in paragraphs 26 - 28 below.

25. *The Secretary invites comments from the industry on her proposal on the period of validity mentioned in paragraphs 21-24 above.*

Implementation

26. Upon the implementation of the carrier licence framework, the Authority will not issue any new FTNS, PRS or satellite space station licences in the existing format. Instead, various types of carrier licence will be issued thereafter. The existing licences will however remain in full force until expiry. Section 70 of the amended Telecommunications Ordinance provides that the existing licences should, for the unexpired period of validity it has left to run and subject to the same conditions to which it was subject before the commencement of the new licensing regime, be deemed to be a licence granted under the amended Telecommunications Ordinance and the provisions of the amended Telecommunications Ordinance shall apply accordingly. Where an existing licence allows for renewal on its expiry for a stated period of validity, then, upon grant of such renewal, the Authority will issue a corresponding type of carrier licence for the renewal period under the new carrier licence regime.

27. For better administration of licences, the Authority considers that it may be worthwhile to allow the existing FTNS, PRS and satellite space station licensees to apply to the Authority for the corresponding new carrier licences, despite that section 70 of the amended Telecommunications Ordinance already provides for transitional arrangements. However, the validity period of the new carrier licences will remain the same as the remaining validity period of the existing licences. The new annual licence fee will also be payable on the same dates as the fee is due under the existing licence. Nevertheless, the decision whether to grant such application will rest with the Authority after taking into account factors like the remaining validity period of the existing licences and the requirements of the amended Telecommunications Ordinance.

28. For existing television broadcasting licensees who operate their own transmission facilities, they may surrender their licences in exchange for an appropriate "television programme service" licence under the Broadcasting Ordinance and a carrier (fixed) licence whose scope of service is restricted to

using fixed telecommunications networks to transmit television programmes of their own or of third parties under the amended Telecommunications Ordinance. The existing rights and obligations in an existing licence will be carried forward in the respective licences unless they are in conflict with the provisions in the Broadcasting Ordinance or the amended Telecommunications Ordinance, or the general conditions of the carrier licence to be prescribed by regulations, as the case may be. The validity period of the new licences will be the unexpired portion of the validity period of the old licence. The licence fees payable are as set out in Appendix 3. It is up to individual licensees to decide whether to surrender their existing licences in this manner. Alternatively, existing operators may wish to take the opportunity to expand their carriage capacity and scope of services. They may apply for a fully-fledged carrier (fixed) licence and be subject to any relevant licensing requirements.

29. *The Secretary would like to seek comments on the proposal on the implementation of the new carrier licensing regime.*

Timing

30. The whole consultation process will complete on 8 October 2000. After consideration of the comments received, the Secretary will proceed to prepare the regulations under section 7(2) of the amended Telecommunications Ordinance. The Secretary aims at tabling the regulations for negative vetting by the Legislative Council in the next legislative session. The carrier licence framework is targeted to be in operation by end 2000.

Invitation of Comments

31. The Secretary would welcome comments on the proposals in this consultation paper. All submissions should be made in writing and in electronic form in Microsoft Word 97 version and should reach the Information Technology and Broadcasting Bureau on or before 8 October 2000. The Secretary reserves the right to publish all views and comments and reveal the identity of source. Any part of the submission which is considered commercially confidential should be marked. The Secretary would take such markings into account in making her decision as to whether to disclose such information or not. Submissions should be addressed to:

Information Technology and Broadcasting Bureau

2/F., Murray Building
Garden Road
Hong Kong

Fax comments can be sent to : 2511 1458 (open)
2827 0119 (confidential).

E-mail comments can be sent to itbbenq@itbb.gcn.gov.hk

Information Technology and Broadcasting Bureau
8 September 2000

SCOPE OF CARRIER LICENCE

Table 1: Carrier (fixed) licence

Corresponding existing licence and means of providing the service	Service under existing licence	Scope of carrier licence
Wireline-based FTNS	Services for telecommunications between network termination points (fixed points) <ul style="list-style-type: none"> (a) within HKSAR (internal telecommunications services) (b) between one or more points in HKSAR and one or more points outside HKSAR, and between two or more points outside HKSAR but routed in transit via HKSAR (external telecommunications services) 	No change
Local wireless FTNS	Internal telecommunications services between fixed points	No change
Satellite-based external FTNS	External telecommunications services between fixed points by means of satellite	No change
Submarine cable-based external FTNS	External telecommunications services between fixed points by means of submarine cable and satellite	No change
Overland cable-based external FTNS	External telecommunications services between fixed points by means of overland cable and satellite	No change
FTNS over the hybrid fibre coaxial cable network of Hong Kong Cable Television Limited	Local Telecommunications services between fixed points	Other than the services already permitted under the existing licence, the licensee is also allowed to transmit subscription television signals upon the enactment of the Broadcasting Ordinance

Corresponding existing licence and means of providing the service	Service under existing licence	Scope of carrier licence
Renewed subscription television broadcasting licence	<p>The establishment, maintenance and operation of a cable network and of a network using multi-point microwave distribution system (MMDS) for distributing</p> <ul style="list-style-type: none"> (a) domestic pay television programme services licensed under the Broadcasting Ordinance (b) teletext signals (c) subcarrier information ancillary to the domestic pay television signals of domestic pay television service (d) non-programme associated information over the vertical blanking interval (VBI) of the television signals (e) any test or experimental transmissions (f) station identification signal <p>The establishment and maintenance of associated telecommunications apparatus and services incidental to the operation of a broadcasting service</p>	The same as existing licence
Satellite television uplink and downlink licence	<p>The establishment, maintenance and operation of</p> <ul style="list-style-type: none"> (a) a radiocommunications station to transmit television and associated sound and data signals to those satellites for the distribution of the licensee's services licensed under the Broadcasting Ordinance (b) a radiocommunications station to receive television and associated sound and data signals containing such programming and other material as the licensee may require for its services (c) such microwave stations to transmit television and associated sound and data signals between any points in Hong Kong and to the uplink station for the purpose of providing the services <p>The offer or provision of services or facilities to transmit or receive television and associated sound and data signals for others as approved by the Authority.</p>	The same as existing licence

Corresponding existing licence and means of providing the service	Service under existing licence	Scope of carrier licence
Commercial Television Broadcasting Licence	<p>The establishment, maintenance and operation of radiocommunications stations for transmitting</p> <ul style="list-style-type: none"> (a) the domestic free television programme service of the licensee (b) subcarrier information ancillary to the domestic free television signals of domestic free television service licence (c) non-programme associated information over the VBI of the television signals (d) test signals or experimental transmissions (e) station identification signal <p>The establishment and maintenance of such associated telecommunications apparatus and services incidental to the operation of a broadcasting service</p>	The same as existing licence, except that the licensee may also be allowed to transmit or receive television and associated sound and data signals for others

Table 2: Carrier (mobile) licence

Corresponding existing licence and means of providing the service	Service under existing licence	Scope of carrier licence
Personal Communications Services (PCS)	<p>Public mobile radiocommunications service using the cellular communication technology within the 1.7-1.9 GHz band to enable a customer to conduct both way communications between the mobile station of the customers and any apparatus, station or service connected to any public telecommunications networks in HKSAR</p> <p>Establishment of direct radiocommunications circuits between the mobile stations of customers of the service with the base stations on the full-duplex channels within the 1.7-1.9 GHz band</p> <p>Exclusion of any direct radiocommunications between a station in HKSAR and a station outside HKSAR</p> <p>Provision for the carriage of telephonic and</p>	No change

Corresponding existing licence and means of providing the service	Service under existing licence	Scope of carrier licence
	<p>non-telephonic messages Voice and facsimile mailbox service enabling any member of the public to deposit voice or facsimile messages into the electronic mailboxes allocated to customers of the service through a public telecommunications service licensed under the amended Telecommunications Ordinance for subsequent retrieval by customers</p> <p>Dealing in and demonstration with a view to sale in the course of trade or business such apparatus or material for radiocommunications as may be necessary to supply customers of the service</p>	
Public Mobile Radiotelephone Services (PMRS)	Same as above for PCS except that the 800/900 MHz band is used instead of the 1.7-1.9 GHz band	No change
Public radiocommunication service (for services other than land mobile services)	<p>Public radiocommunications service including:</p> <p>(a) maritime mobile service, which means a mobile radiocommunications service between the coast stations operated by the licensee in the territory of HKSAR and customers' ship stations (regardless of whether the ship stations are within HKSAR waters or outside the territory of the HKSAR), or between customers' ship station (regardless of whether the ship stations are within HKSAR waters or outside the territory of HKSAR) routed in transit via the coast stations operated by the licensee in the territory of HKSAR</p> <p>(b) maritime mobile-satellite service, which means a mobile radiocommunications service via satellite between the coast earth stations operated by the licensee in the territory of HKSAR and customers' ship earth stations (regardless of whether the ship earth stations are within HKSAR waters or outside the territory of HKSAR), or between customers' ship earth stations (regardless of whether the ship earth stations are within HKSAR waters or outside the territory of HKSAR) routed in transit via the coast earth stations operated by the licensee in the territory of HKSAR</p>	No change

Corresponding existing licence and means of providing the service	Service under existing licence	Scope of carrier licence
	(c) aeronautical mobile service, which means a mobile radiocommunications service between the aeronautical stations operated by the licensee in the territory of HKSAR and customers' aircraft stations (regardless of whether the aircraft stations are located within the territory of HKSAR or outside the territory of HKSAR), or between customers' aircraft stations (regardless of whether the aircraft stations are located within the territory of HKSAR or outside the territory of HKSAR) routed in transit via the aeronautical stations operated by the licensee in the territory of HKSAR.	
	(d) aeronautical mobile-satellite service, which means a mobile radiocommunications service via satellite between the aeronautical earth stations operated by the licensee in the territory of HKSAR and customers' aircraft earth stations (regardless of whether the aircraft earth stations are located within the territory of HKSAR or outside the territory of the HKSAR), or between customers' aircraft earth stations (regardless of whether the aircraft earth stations are located within the territory of HKSAR or outside the territory of HKSAR) routed in transit via the aeronautical earth stations operated by the licensee in the territory of HKSAR	
	(e) Land mobile-satellite service, which means a mobile radiocommunications service via satellite between the gateway earth stations operated by the licensee in the territory of HKSAR and customers' land mobile earth stations (regardless of whether the land mobile earth stations are located within the territory of HKSAR or outside the territory of HKSAR), or between customers' land mobile earth stations (regardless whether the land mobile earth stations are located within the territory of HKSAR or outside the territory of HKSAR) routed in transit via the gateway earth stations operated by the licensee in the territory of HKSAR	

Corresponding existing licence and means of providing the service	Service under existing licence	Scope of carrier licence
	<p>The operation of coast stations, coast earth stations, aeronautical stations, aeronautical earth stations and gateway earth stations for the maritime mobile service, maritime mobile-satellite service, aeronautical mobile service, aeronautical mobile-satellite service and land mobile-satellite service respectively</p> <p>Exclusion of the operation of any mobile station or space station for the services</p> <p>Availability of access from and provision of access to any public telecommunications services lawfully operated in the HKSAR</p> <p>Provision of the carriage of telephonic and non-telephonic messages</p>	

Table 3: Carrier (space stations) licence

Corresponding existing licence and means of providing the service	Service under existing licence	Scope of carrier licence
<p>Licence issued for the operation of satellite space stations</p>	<p>The establishment, maintenance, possession, use and operation of radiocommunications stations as follows:</p> <ul style="list-style-type: none"> (a) earth stations for telemetry, tracking and control of space objects (b) earth stations for monitoring space objects (c) space stations on board the satellite for radiocommunications (d) space stations on board the satellite for telemetry, tracking and control of space objects 	<p>Other than the services already permitted by the existing licence, the licensee is also allowed to sell or lease the transmission capacities associated with the space stations on board the satellite for radiocommunications</p>

TELECOMMUNICATIONS ORDINANCE

(Chapter 106)

CARRIER () LICENCE⁵

DATE OF ISSUE:

.....
of

.....
(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;
- (b) to establish and maintain a telecommunications network (the "Network") described in Schedule 2 to provide the Service;
- (c) to possess and use the radiocommunications installations described in Schedule 3 to provide the Service; and
- (d) to deal in, import and demonstrate, with a view to sale in the course of trade or business, such apparatus or material for radiocommunications as may be necessary to supply customers of the Service.

⁵ This is a form of carrier licence generally applicable to all carrier licences, which are currently classified as carrier (fixed) licence, carrier (mobile) licence and carrier (space stations) licence.

GENERAL CONDITIONS⁶

1. DEFINITIONS AND INTERPRETATION *FTNS PRS(PCS) Satellite*

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 (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. 2

1.2. This licence shall not be construed as granting an exclusive right to the Licensee to provide the Service. *GC 1 GC 1*

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. *GC 2 GC 2*

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 ordinances. *GC 3)* 7

2. TRANSFER

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. *GC 4 GC 5(1)(2)* 13

⁶ In the margin of each General Condition, there is marked, where applicable, the corresponding condition (general or otherwise) of the FTNS, PRS(PCS) and satellite space stations licences.

3. INTERNATIONAL CONVENTIONS *GC 6 GC 4, 9*
SC 6

- 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

The Licensee shall comply with the Ordinance, *GC 7 SC 7 2*
Regulations made under the Ordinance, licence conditions or any other instruments which may be issued by the Authority under the Ordinance.

5. PROVISION OF SERVICE *GC GC3 SC*
10(1) 2(1)

The Licensee shall, subject to Schedule 1 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. CUSTOMER CHARTER

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. *GC 11 SC 4*

7. CONFIDENTIALITY OF CUSTOMER INFORMATION *GC 12 SC 5 10*

7.1. 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.

7.2. 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.

8. RECORDS AND PLANS OF THE NETWORK

8.1. The Licensee shall keep records and plans (including overall network plans and cable route maps) of the telecommunications installations, radiocommunications installation and telecommunications nodes and exchanges provided under this licence and any other details concerning the Network as may be reasonably required by the Authority, including but not limited to information from operational support systems, traffic flow information, and database information relating to the manner in which the Network treats calls of a particular kind ("Network Information"). *GC 27(1) SC 18*

8.2. As required by the Authority, the Licensee shall make the Network Information available, within reasonable time, to the Authority or to a person authorized in writing by the Authority for inspection for the Authority's own purposes. *GC 27(2)*

9. CONTROL OF INTERFERENCE AND OBSTRUCTION *GC 8 GC 6(8), SC 8 6*

- 9.1. The Licensee shall take reasonable measures to install, maintain and operate the Service and the Network 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.
- 9.2. 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.
- 9.3. The Authority may give such reasonable directions as he thinks fit to avoid harmful interference or physical obstruction referred to in General Condition 9.1. The Licensee shall comply with the directions.

10. RESTRICTIONS ON ATTACHMENT TO PUBLIC BUILDINGS AND TREES *GC 33 SC 20*

No part of the Network shall be attached to any Government building except with the prior written consent of the Government Property Administrator, or to any tree on any Government land except with the prior written consent of the Director of Agriculture Fisheries and Conservation, the Director of Leisure and Cultural Services.

11. COMPLIANCE

If the Licensee employs any person under contract for the purpose of the Service, or for the installation, operation or maintenance of the Network (a "Contractor"), the Licensee shall continue to be responsible for compliance with the conditions of this licence, and the performance thereof, by any Contractor. *GC 5 8*

12. REQUIREMENTS OF TELECOMMUNICATIONS INSTALLATIONS FOR RADIOCOMMUNICATIONS GC 38 GC 6 5

- 12.1. Each radiocommunications installation operated by or on behalf of the Licensee shall be used only at the location and with emissions and at the frequencies and of the classes and characteristics specified in Schedule 3 and with such power and aerial characteristics as are specified in that Schedule in relation to the class and characteristics of the emission in use.
- 12.2. The apparatus comprised in each radiocommunications installation shall at all times comply with such technical standards as may be issued by the Authority.
- 12.3. The apparatus comprised in a radiocommunications installation shall be of a type approved by the Authority and shall be so designed, constructed, maintained and operated that its use shall not cause any interference to any radiocommunications.
- 12.4. A radiocommunications installation shall be operated only by the Licensee or a person authorized by the Licensee. The Licensee shall not allow an unauthorized person to have access to the apparatus comprised in a radiocommunications installation. The Licensee shall ensure that persons operating each telecommunication installation for radiocommunications shall at all times observe the conditions of this licence.
- 12.5. The Licensee shall not make a change -
- (a) to any radiocommunications installation; or
 - (b) of the location of any radiocommunications installation,
- without the prior approval in writing of the Authority.

- 12.6. If any telecommunications installation or radiocommunications installation crosses above or may fall or be blown onto any overhead power wire (including electric lighting and tramway wires) or power apparatus it shall be guarded to the reasonable satisfaction of the owner of the power wire or power apparatus concerned.

13. USE OF FREQUENCIES

GC 39 GC 7 5

The radiocommunications installation operated by or on behalf of the Licensee shall only be operated on such frequencies as the Authority may assign. The Authority may by notice require the Licensee to cease operating the radiocommunications installation on any frequency assigned to the Licensee if in the opinion of the Authority, the Licensee is not making efficient use of that portion of the radio spectrum.

13A. TRANSMISSION PLAN

The transmission plan employed in the Licensee's system shall be approved by the Authority. The licensee shall only carry services permitted under this licence in accordance with such approved plan and such approved plan may be modified by the Authority from time to time.

14. SAFETY

GC 40 SC 22 15

- 14.1. 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 used under this licence.
- 14.2. 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.

15. PROHIBITION OF CLAIMS AGAINST THE GOVERNMENT GC 36 SC 21

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 Network due to works carried out by or on behalf of the Government which result in disturbance to the Network.

16. INDEMNITY GC 42 SC 23 14

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 Network.

17. CONTRAVENTION BEYOND THE LICENSEE'S CONTROL GC 43 SC 24

17.1. 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.

17.2. Where the circumstances referred to in General Condition 17.1 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.

17.3. If the Authority, after considering a report provided under General Condition 17.2, is 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.

18. PUBLICATION OF LICENCE

GC 45 SC 25 18

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.

FEE STRUCTURES OF CARRIER LICENCE

(a) Carrier (fixed) licence

1. A fee of \$1,000,000 shall be payable on the grant of a licence and, in each year while the licence remains in force, on the anniversary of the grant of the licence.
2. A fee of \$700 shall be payable on each anniversary of the grant or the renewal of the licence for each 100 customer connections, made by telecommunications line or radiocommunications means, to the Network established and maintained under Schedule 2 to the licence provided by the licensee.
3. Save as provided in paragraph 4, a fee for use of radio spectrum assigned to the licensee shall be payable on the grant and on each anniversary of the grant of the licence and calculated in accordance with the formula set out below -
 - (a) where the radio spectrum is assigned exclusively to the licensee -
 - (i) \$50 for every 1 kHz or part thereof of spectrum then assigned below 1 GHz;
 - (ii) $\$(50-4F)$ for every 1 kHz or part thereof of spectrum then assigned within 1 GHz to 10.999 GHz, where F is the frequency rounded down to the nearest GHz in the band then assigned;
 - (iii) $\$(20-F)$ for every 1 kHz or part thereof of spectrum then assigned within 11 GHz to 18.999 GHz, where F is the frequency rounded down to the nearest GHz in the band then assigned;
 - (iv) \$1 for every 1 kHz or part thereof spectrum assigned at or above 19 GHz;
 - (b) where any part of the radio spectrum is assigned to the licensee on a non-exclusive or shared basis, the fee calculated in accordance with the formula set out in subparagraph (a) shall be proportionally reduced by a reduction factor equal to the number of users authorized or reserved by the Authority to use that particular part of the radio

spectrum. For the avoidance of doubt, the reduction factor is to be determined on the grant and on each anniversary of the grant of the licence.

4. No fee is payable for the use of spectrum within any of the following frequency bands —

6.765	—	6.795 MHz
13.553	—	13.567 MHz
26.957	—	27.283 MHz
40.66	—	40.7 MHz
2400	—	2500 MHz
5.725	—	5.875 GHz
24.0	—	24.25 GHz
61	—	61.5 GHz
122	—	123 GHz
244	—	246 GHz

For carrier (fixed) licence whose scope of service is restricted to using fixed telecommunications networks to transmit television programmes of their own or of third parties:

1. A fee of \$100,000 shall be payable on the grant of a licence and, in each year while the licence remains in force, on the anniversary of the grant of the licence.
2. A fee of \$700 shall be payable on each anniversary of the grant or the renewal of the licence for each 100 customer connections, made by telecommunications line or radiocommunications means, to the Network established and maintained under Schedule 2 to the licence provided by the licensee.
3. Save as provided in paragraph 4, a fee for use of radio spectrum assigned to the licensee shall be payable on the grant and on each anniversary of the grant of the licence and calculated in accordance with the formula set out below -

- (i) where the radio spectrum is assigned exclusively to the licensee -
 - (a) \$50 for every 1 kHz or part thereof of spectrum then assigned below 1 GHz;
 - (b) $\$(50-4F)$ for every 1 kHz or part thereof of spectrum then assigned within 1 GHz to 10.999 GHz, where F is the frequency rounded down to the nearest GHz in the band then assigned;
 - (c) $\$(20-F)$ for every 1 kHz or part thereof of spectrum then assigned within 11 GHz to 18.999 GHz, where F is the frequency rounded down to the nearest GHz in the band then assigned;
 - (d) \$1 for every 1 kHz or part thereof spectrum assigned at or above 19 GHz;
- (ii) where any part of the radio spectrum is assigned to the licensee on a non-exclusive or shared basis, the fee calculated in accordance with the formula set out in subparagraph (a) shall be proportionally reduced by a reduction factor equal to the number of users authorized or reserved by the Authority to use that particular part of the radio spectrum. For the avoidance of doubt, the reduction factor is to be determined on the grant and on each anniversary of the grant of the licence.

4. No fee is payable for the use of spectrum within any of the following frequency bands —

6.765	—	6.795 MHz
13.553	—	13.567 MHz
26.957	—	27.283 MHz
40.66	—	40.7 MHz
2400	—	2500 MHz
5.725	—	5.875 GHz
24.0	—	24.25 GHz
61	—	61.5 GHz
122	—	123 GHz
244	—	246 GHz

(b) Carrier (mobile) licence

1. The annual fee payable on the grant and on the anniversary of the grant of a licence in each year while the licence remains in force shall be the sum of -
 - (a) for the 1st to the 50th base station installed for the service: \$1,000 per base station
 - (b) for the 51st to the 100th base station installed for the service: \$500 per base station
 - (c) for the 101st base station installed for the service and any additional base stations: \$100 per base station
 - (d) for the 1st 200 mobile stations or less used by customers of the service⁷: \$6,000
 - (e) for every additional 100 mobile stations or less used by customers of the service: \$3,000
 - (f) for every 1 kHz of spectrum assigned to the licensee: \$50

2. For the purpose of determining the fees payable, the number of stations and the width of the spectrum assigned shall be those authorized or in service at the time when the licence is granted or on the anniversary of the grant.

For carrier (mobile) licence whose scope of service is restricted to services other than land mobile services:

The annual fee payable on the grant and on the anniversary of the grant of the licence in each year while the licence remains in force shall be the sum of -

- (a) \$50,000 per licence; and
- (b) \$1,000 per land station or land earth station operated by the licensee for the service.

⁷ For those mobile services using SIM cards, the number of mobile stations will be the number of activated SIM and prepaid SIM cards. An activated SIM or prepaid SIM card means a SIM card or prepaid SIM card which has been sold to customer and has at least been used once.

(c) Carrier (space stations) licence⁸

1. For licence that covers operation of radiocommunications equipment on board the satellite
 - (a) an initial fee of \$450,000 is payable on the grant of the licence
 - (b) a fee of \$150,000 is payable on the anniversary of the grant of the licence in each year while the licence remains in force.

2. For licence that only covers the earth stations for telemetry, tracking, control and monitoring
 - (a) an initial fee of \$120,000 is payable on the grant of the licence
 - (b) a fee of \$80,000 is payable on the anniversary of the grant of the licence in each year while the licence remains in force.

⁸ Under the existing regime, the fees for the satellite space station licences are approved and set on a case by case basis, having regard to the administrative cost of the Authority estimated at the time the licence is granted. Under the amended Telecommunications Ordinance, the licence fee for the carrier licence will be prescribed by regulations by the Secretary after public consultation. The Secretary proposes that the licence fees for the carrier (space stations) licences be standardized to increase transparency and efficiency. The proposed fee for the carrier (space stations) licence in this consultation paper has taken into account the latest estimate of the administrative cost incurred in the licensing of satellites "AsiaSat 4" and "APSTAR IIR".

PERIOD OF VALIDITY OF CARRIER LICENCE

(a) Carrier (fixed) licence

15 years from the day on which it is granted and, at the discretion of the Authority, be renewed for such further period not exceeding 15 years as the Authority thinks fit.

For carrier (fixed) licence whose scope of service is restricted to using fixed telecommunications networks to transmit television programmes of their own or of third parties:

No more than 12 years from the day on which it is granted.

(b) Carrier (mobile) licence

15 years from the day on which it is granted.

(c) Carrier (space stations) licence

20 years from the day on which it is granted.