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LEGISLATIVE COUNCIL BRIEF

Telecommunications Ordinance

(Chapter 106)

TELECOMMUNICATIONS (CARRIER LICENCES) REGULATION

INTRODUCTION

This brief aims to brief Members on the Telecommunications (Carrier Licences) Regulation, attached at Annex, made under section 7(2) of the Telecommunications Ordinance.

BACKGROUND

2. One main purpose of the Telecommunication (Amendment) Ordinance 2000 (the Amendment Ordinance) is to streamline the licensing procedures to cope with the rapid development of the telecommunications industry. For this purpose, the Amendment Ordinance provides for a new licensing regime categorised broadly into four types of licences, namely, exclusive licence, carrier licence, class licence and licences that fall outside the former three categories.

3. In respect of the carrier licence, the Secretary for Information Technology and Broadcasting (the Secretary) is empowered under section 7(2) of the Telecommunications Ordinance to make regulations to prescribe the general conditions, including the period of validity and the licence fees payable. Before making a regulation under section 7(2), 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. The consultation ended in October 2000 and the Legislative Council Panel on Information Technology and Broadcasting was briefed on 17 November 2000.

4. Our proposals received general support from the industry and Legislative Council members. The Secretary therefore made the Telecommunications (Carrier Licences) Regulation on 10 January 2001 to prescribe matters on carrier licences under section 7(2) of the Telecommunications Ordinance.

THE PROPOSAL

5. The carrier licence, as defined in section 2 of the Telecommunications Ordinance, will encompass a number of telecommunications licences in existence. They include:

- ◆ Fixed Telecommunications Network Services (FTNS) licence for local and external facilities-based telecommunications services
- ◆ Public Radiocommunications Service (PRS) licence for personal communications services (PCS)
- ◆ PRS licence for public mobile radiotelephone services (PMRS)
- ◆ PRS licence for services other than land mobile services
- ◆ Licence issued for the operation of satellite space stations
- ◆ Satellite television uplink and downlink licence
- ◆ Commercial television broadcasting licence and subscription television broadcasting licence issued under the repealed Television Ordinance¹.

6. Our proposal is to group the licensing and regulation of telecommunications transmission facilities under the carrier licence system. The facilities to be regulated would involve substantial investment and provide, or have the potential to provide, services to a

¹ The Television Ordinance was repealed by the Broadcasting Ordinance. Under the Broadcasting Ordinance, the commercial television broadcasting licence and subscription television broadcasting licence are deemed to be both a licence granted under the Broadcasting Ordinance and a licence granted under the Telecommunications Ordinance.

wide sector of the public. We set out in paragraphs 7 – 17 below the details of our proposals on –

- (a) the scope and categorisation of carrier licence;
- (b) the general conditions of carrier licence;
- (c) the fee structures;
- (d) the period of validity; and
- (e) the implementation with regard to existing licences.

A. Scope and Categorisation of Carrier Licence

7. We propose to divide the carrier licence system into three major types –

- (a) ‘fixed carrier licence²’;
- (b) ‘mobile carrier licence³’; and
- (c) ‘space station carrier licence’.

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

B. General Conditions of Carrier Licence

9. As a general principle to ensure a level playing field, 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. Therefore, the general licence conditions of the fixed carrier, mobile carrier and space station carrier licences should be similar to those of the respective licences under the existing licensing regime, with the exception that those

² Under the fixed carrier licence, there will be a sub-category called ‘fixed carrier (restricted) licence’, which entitles the licensee to establish or maintain a fixed telecommunications network for carrying television programmes only.

³ Under the mobile carrier licence, there will be a sub-category called ‘mobile carrier (restricted) licence’, which will only cover radiocommunications where moving stations primarily for use in locations other than on land are used.

redundant conditions are deleted and the necessary textual amendments are made. To ensure consistency, the various types of carrier licence should all possess the same set of general conditions.

10. The Amendment Ordinance has incorporated some of the general conditions in the existing licences into the Telecommunications Ordinance. The relevant 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). These provisions will not be repeated in the carrier licences to avoid duplication.

C. Fee Structures

11. The fee structures for the various types of carrier licences would be of the same or comparable level as those for the respective licences, if existing, under the existing regime. 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. We will monitor the fee structures and review the structures as appropriate.

D. Period of Validity

12. Except for the mobile carrier licences as elaborated in paragraph 13 below, we do 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.

13. In the light of the rapid development of the mobile services market, we have reviewed the adequacy of the length of validity period for the mobile carrier licences. As licences for the third generation mobile services will fall under the category of mobile carrier licence, it is necessary to ensure that the validity period for mobile carrier licences would be sufficient for operators to recoup their substantial investment.

We therefore propose a validity period of 15 years from the day on which it is granted. In comparison, the validity period of the existing licences for mobile services is 10 years.

14. 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 15 – 17 below.

E. Implementation with Regard to Existing Licences

15. 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 Telecommunications Ordinance provides that an existing licence should, for the unexpired period of validity it has left to run and subject to the same conditions to which it was subject immediately before the commencement of the new licensing regime, be deemed to be a licence granted under the Telecommunications Ordinance and the provisions of the Telecommunications Ordinance shall apply accordingly. Where an existing licence allows for renewal or extension 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 or extension period under the new carrier licence regime.

16. 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 the fact that section 70 of the Telecommunications Ordinance has already provided 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 Telecommunications Ordinance.

17. 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 fixed carrier (restricted) licence the scope of which is restricted to using fixed telecommunications networks to transmit television programmes. 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 of the Broadcasting Ordinance or the Telecommunications Ordinance, 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. 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 full-fledged fixed carrier licence and be subject to any relevant licensing requirements.

THE REGULATION

18. **Section 3 and Schedule 1** set out the general conditions for the newly issued carrier licences. The conditions of the existing licences are not affected (paragraphs 9 and 10).

19. **Section 4 and Schedule 2** set out the different periods of validity as applicable to different types of carrier licences (paragraphs 12 – 14).

20. **Section 5 and Schedule 3** set out the fees payable for various types of carrier licence (paragraph 11). They are payable on grant and anniversary of the grant of licences (for new licences) or on payment dates under their existing licences (for licences issued upon surrender of existing licences for new licences). The only exception is the

commercial television broadcasting licence and subscription television broadcasting licence issued under the repealed Television Ordinance which are deemed by the Broadcasting Ordinance to be licences granted under the Broadcasting Ordinance and licences granted under the Telecommunications Ordinance by virtue of section 2 of Schedule 8 to the Broadcasting Ordinance. The fees payable under the Broadcasting Ordinance are prescribed in the Broadcasting (Licence Fees) Regulation and those payable under the Telecommunications Ordinance are prescribed in this Regulation on 7 July of each year starting from 2001. Generally speaking, assuming that there are no changes to the operating environment⁴ of the services concerned, the aggregate licence fees payable under the Broadcasting Ordinance and under the Regulation will not exceed the fees currently payable by the licensees concerned.

21. **Section 6** is a technical transitional arrangement to ensure that references to existing licences in conditions of existing licences would include references to corresponding carrier licences.

LEGISLATIVE TIMETABLE

22. The legislative timetable will be as follows –

| | |
|------------------------------------|-----------------|
| Publication in the Gazette | 12 January 2001 |
| Tabling at the Legislative Council | 17 January 2001 |
| Commencement | 1 April 2001 |

BASIC LAW IMPLICATIONS

23. The Department of Justice advises that the Regulation does not conflict with those provisions of the Basic Law carrying no human rights implications.

⁴ For example, the spectrum used for the carriage of the service and the number of channels of/subscribers to the service.

HUMAN RIGHTS IMPLICATIONS

24. The Department of Justice advises that the Regulation has no human rights implications.

BINDING EFFECT OF THE LEGISLATION

25. The Regulation is consistent with the binding effect of the Telecommunications Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

26. The Office of Telecommunications Authority (OFTA) will recover the costs for administration of the Regulation with the fees levied for the issue or renewal of licences under the Regulation.

ECONOMIC IMPLICATIONS

27. Streamlining of the licensing procedures, as in the case of carrier licences here, is conducive to further development of the telecommunications industry in Hong Kong.

ENVIRONMENTAL IMPLICATIONS

28. There are no environmental implications.

PUBLIC CONSULTATION

29. As mentioned in paragraph 3, a public consultation was conducted in September and October 2000. The Secretary issued on 8 September 2000 a consultation paper (Consultation Paper) pursuant to section 7(3) of the Telecommunications Ordinance. The Consultation

Paper contained the Government's proposal on the implementation of the carrier licence regime and elaborated on the types of services which would be covered by it. The general conditions which were proposed to be incorporated into a carrier licence, the proposed periods of validity and fees for various types of carrier licences were also set out.

30. The consultation ended on 8 October 2000. We have received a total of 13 submissions from the telecommunications and broadcasting industry. The Consultation Paper and all of the submissions have been published on the web sites of the Information Technology and Broadcasting Bureau at <http://www.info.gov.hk/itbb/> and OFTA at <http://www.ofta.gov.hk>. The Legislative Council Panel on Information Technology and Broadcasting was briefed on outcome of the consultation exercise on 17 November 2000. Both Legislative Council members and the industry are generally supportive of our proposals.

PUBLICITY

31. A press release will be issued on the date of gazettal of the Regulation. A spokesman will be made available to answer media enquiries.

ENQUIRIES

32. For any enquiries relating to this Brief, please contact –

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January 2001
Information Technology and Broadcasting Bureau

**TELECOMMUNICATIONS (CARRIER LICENCES)
REGULATION**

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**TELECOMMUNICATIONS (CARRIER LICENCES)
REGULATION**

(Made under section 7(2) of the Telecommunications Ordinance
(Cap. 106))

1. Commencement

This Regulation shall come into operation on 1 April 2001.

2. Interpretation

In this Regulation, unless the context otherwise requires -

"carrier licence" (傳送者牌照) does not include an exclusive licence;

"earth station" (地球站) means a station located on the Earth's surface or within the major portion of the Earth's atmosphere and intended for communications with or reception from -

- (a) one or more space stations; or
- (b) one or more stations of the same kind by means of one or more reflecting satellites intended to reflect radiocommunications signals or other objects in space;

"existing licence" (現有牌照) means a licence -

- (a) deemed to be granted under the Ordinance by virtue of section 70 of the Ordinance; and
- (b) which falls within the definition of "carrier licence";

"fixed carrier licence" (固定傳送者牌照) does not include a space station carrier licence;

"fixed carrier (restricted) licence" (固定傳送者(有限制)牌照) means a fixed carrier licence which only entitles the licensee to establish or maintain a telecommunications network for carrying television programmes within the meaning of section 2(1) of the Broadcasting Ordinance (48 of 2000);

"mobile carrier licence" (移動傳送者牌照) means a carrier licence issued for communications between -

- (a) moving locations; or
- (b) fixed locations and moving locations,

but does not include a space station carrier licence;

"mobile carrier (restricted) licence" (移動傳送者 (有限制) 牌照) means a mobile carrier licence -

- (a) mentioned in paragraph (a) or (b) of the definition of "mobile carrier licence"; and
- (b) issued for radiocommunications where moving stations primarily for use in locations other than on land are used;

"space station" (空間電台) means a radiocommunications station located on a space object;

"space station carrier licence" (空間電台傳送者牌照) means a carrier licence issued for the licensee to establish, possess, maintain, use and operate a space station or earth station for telemetry, tracking, control and monitoring of a space object and for space radiocommunications;

"station" (電台) means one or more transmitters or receivers or a combination of transmitters and receivers, including the accessory equipment, necessary at one location for carrying a radiocommunications service.

3. General conditions for carrier licences

(1) Subject to subsection (2), the general conditions for a carrier licence are the general conditions specified in Schedule 1.

(2) Subsection (1) does not apply to an existing licence.

4. Period of validity of carrier licences

(1) Subject to subsections (2) to (7), the period of validity of a fixed carrier licence, fixed carrier (restricted) licence, mobile carrier licence or space station carrier licence is the period of validity specified in Schedule 2 in relation to the licence.

(2) Subsection (1) does not apply to an existing licence.

(3) Where an existing licence has been surrendered to the Authority in return for the Authority issuing under section 7(5) of the Ordinance a carrier licence -

- (a) to the holder of the existing licence; and
- (b) which is, in the opinion of the Authority but subject to subsection (4), equivalent to the existing licence,

then the period of validity of the carrier licence, and notwithstanding the provisions of Schedule 2, shall commence upon the surrender of the existing licence and expire at the expiration of the period of validity which the existing licence had left to run immediately before it was so surrendered.

(4) For the purposes of subsection (3), a carrier licence is equivalent to an existing licence -

- (a) where the frequency band, if any, to which the carrier licence relates is the same frequency band to which the existing licence relates; and
- (b) irrespective of whether any fee payable for the carrier licence is different from any fee payable for the existing licence.

(5) Where -

- (a) under the Telecommunications Regulations (Cap. 106 sub. leg.) an existing licence may have been extended or renewed for up to, or not exceeding, a period specified in the Telecommunications Regulations (Cap. 106 sub. leg.) ("the specified period"); and
- (b) the Authority has issued under section 7(5) of the Ordinance a carrier licence -
 - (i) to the holder of the existing licence; and

- (ii) which is, in the opinion of the Authority, equivalent to the existing licence (but regardless of the fee payable for the carrier licence),

then the period of validity of the carrier licence, and notwithstanding the provisions of Schedule 2, shall commence upon the expiry of the existing licence and expire, as specified in the carrier licence, not later than the specified period applicable to the existing licence.

(6) Where subsection (5) would have applied to an existing licence but for the surrender of the licence to the Authority in return for a carrier licence as mentioned in subsection (3), then the period of validity of any extension or renewal of the carrier licence, and notwithstanding the provisions of Schedule 2, shall expire, as specified in the carrier licence, not later than the period specified in the Telecommunications Regulations (Cap. 106 sub. leg.) for which the existing licence may have been extended or renewed, as the case may be.

(7) For the avoidance of doubt, it is hereby declared that nothing in this section shall be construed to confer any right or privilege on a person to -

- (a) be issued a carrier licence; or
- (b) have the period of validity of a carrier licence extended or renewed.

5. Fees payable for carrier licences

(1) Subject to subsections (2) and (3), the fees payable for a fixed carrier licence, fixed carrier (restricted) licence, mobile carrier licence, mobile carrier (restricted) licence or space station carrier licence are the fees specified in Schedule 3 in relation to the licence.

(2) Subsection (1) does not apply to an existing licence except an existing licence mentioned in section 2(1)(b) or (2)(b) of Schedule 8 to the Broadcasting Ordinance (48 of 2000).

(3) The annual date of payment for a fee specified in Schedule 3 in relation to -

- (a) subject to paragraph (b), a carrier licence mentioned in section 4(3) shall, and notwithstanding the provisions of that Schedule, be the annual date for which a fee was payable -
 - (i) under the Telecommunications Regulations (Cap. 106 sub. leg.); or
 - (ii) as specified by the Chief Executive in Council, as the case may require, in relation to the existing licence surrendered to the Authority in return for the carrier licence;
- (b) a fixed carrier (restricted) licence which is a licence mentioned in section 2(1)(b) or (2)(b) of Schedule 8 to the Broadcasting Ordinance (48 of 2000) shall, and notwithstanding the provisions of Schedule 3, be 7 July of each year.

(4) If the unexpired portion of the period of validity of a fixed carrier (restricted) licence mentioned in subsection (3)(b) immediately after the annual date mentioned in that subsection applicable to the licence is less than 1 year, then the fee payable mentioned in that subsection shall be calculated on a pro rata basis in respect of that portion.

6. References in existing licences to fixed telecommunications network services licences, etc.

(1) Subject to subsection (2), a reference in an existing licence to a term mentioned in column 1 of the table to this section (including grammatical variations and cognate expressions of such term) shall include a reference to the term mentioned opposite thereto in column 2 of that table (including grammatical variations and cognate expressions of the second-mentioned term) and, accordingly, the licensee shall comply with the provisions of the existing licence in accordance with that reference as so construed.

(2) Subsection (1) shall not apply to a reference mentioned in that subsection to the extent, if any, to which the operation of that subsection in the case of that reference is inconsistent with the operation of the provisions of section 7O of the Ordinance in the case of that reference.

TABLE

| Column 1 Existing Licence | Column 2 Carrier Licence |
|---|-------------------------------------|
| Fixed telecommunications network services licence | Fixed carrier licence |
| Public radiocommunications service licence for personal communications service | Mobile carrier licence |
| Public radiocommunications service licence for public mobile radiotelephone service | Mobile carrier licence |
| Public radiocommunications service licence (for services other than land mobile services) | Mobile carrier (restricted) licence |

SCHEDULE 1

[s. 3]

GENERAL CONDITIONS FOR CARRIER LICENCES

1. **DEFINITIONS AND INTERPRETATION**

1.1 In this licence, except as hereinafter provided or unless the context otherwise requires, words or expressions shall have the meanings assigned to them in the Telecommunications Ordinance (Cap. 106)(the "Ordinance") and, as the case may be, the Interpretation and General Clauses Ordinance (Cap. 1). For the purposes of interpreting this licence, headings and titles shall be disregarded.

1.2 This licence shall not be construed as granting an exclusive right to the licensee to provide the service.

1.3 This licence replaces any licence or any exemption from licensing, however described, which the Authority may have granted to the licensee for providing the service.

1.4 The grant of this licence does not authorize the licensee to do anything which infringes any exclusive licence granted under the Ordinance or any exclusive right to operate and provide telecommunications networks, systems, installations or services granted under any other Ordinance.

2. TRANSFER

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

3. INTERNATIONAL CONVENTIONS

3.1 The licensee shall at all times perform and observe the requirements of the Constitution and Convention of the International Telecommunication Union and the regulations and recommendations annexed to it, as are stated to be applicable to Hong Kong, and any other international convention, agreement, protocol, understanding or the like to the extent that the instruments described in this General Condition 3.1 impose obligations on Hong Kong of which the Authority gives notice to the licensee, except to the extent that the Authority may in writing exempt the licensee from such compliance.

3.2 Where the Government has been consulted about or is involved in the preparation or negotiation of an international convention, agreement, protocol or understanding or the like or amendments thereto which are on the subject-matter of telecommunications or which relate to another subject-matter

but which the Government anticipates could have a material impact on the provision of the service under this licence, the Government will, where practicable, provide the licensee with a reasonable opportunity to make a submission stating its views on the matter.

4. COMPLIANCE GENERALLY

4.1 The licensee shall comply with the Ordinance, regulations made under the Ordinance, licence conditions or any other instruments which may be issued by the Authority under the Ordinance.

5. PROVISION OF SERVICE

5.1 The licensee shall, subject to Schedule 1 to this licence and any special conditions of this licence relating to the provision of the service, at all times during the validity period of this licence operate, maintain and provide a good, efficient and continuous service in a manner satisfactory to the Authority. The Authority may, on application in writing by the licensee, exempt a part or parts of the service from the requirement of continuous provision.

6. CUSTOMER CHARTER

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

7. CONFIDENTIALITY OF CUSTOMER INFORMATION

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 NETWORK

8.1 The licensee shall keep records and plans (including overall network plans and cable route maps) of the telecommunications installation (including radiocommunications installation) and telecommunications nodes and exchanges, if any, 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 any communication ("network information").

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.

9. CONTROL OF INTERFERENCE AND OBSTRUCTION

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

10.1 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, or the Director of Leisure and Cultural Services.

11. COMPLIANCE

11.1 If the licensee employs any person under contract for the purpose of the service, or for the installation, maintenance or operation 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.

12. REQUIREMENTS OF RADIOCOMMUNICATIONS INSTALLATION

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 radiocommunications installation 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 written approval of the Authority.

12.6 If any telecommunications installation (including 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

13.1 The radiocommunications installation operated by or on behalf of the licensee shall only be operated on such frequencies as the Authority may assign.

14. SAFETY

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 operated or 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
GOVERNMENT**

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

16. INDEMNITY

16.1 The licensee shall indemnify the Government against any losses, claims, charges, expenses, actions, damages or demands which the Government incurs or which may be made against the Government as a result of or in relation to the activities of the licensee or any employee, agent or contractor of the licensee in relation to the provision of the service or the installation, maintenance and operation of the network.

**17. CONTRAVENTION BEYOND
LICENSEE'S CONTROL**

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 is, after considering a report provided under General Condition 17.2, of the reasonable belief that the licensee would be able to provide the service within a reasonable period of time despite the circumstances outlined in that report, the Authority may direct that the licensee recommence the service within such reasonable period as the Authority may in writing direct. The licensee shall comply with such direction.

18. PUBLICATION OF LICENCE

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

SCHEDULE 2

[s. 4]

PERIOD OF VALIDITY OF CARRIER LICENCES

1. Fixed carrier licence

Subject to section 2, the period of validity of a fixed carrier licence is -

- (a) 15 years from the day on which it is issued; and
- (b) a further period of not more than 15 years, as specified by the Authority, in the case of a renewal, if any, of the licence.

2. Fixed carrier (restricted) licence

The period of validity of a fixed carrier (restricted) licence is -

- (a) not more than 12 years, as specified by the Authority, from the day on which it is issued; and
- (b) a further period of not more than 12 years, as specified by the Authority, in the case of a renewal (including any series of renewals), if any, of the licence.

3. **Mobile carrier licence**

The period of validity of a mobile carrier licence shall be 15 years from the day on which it is issued.

4. **Space station carrier licence**

The period of validity of a space station carrier licence shall be 20 years from the day on which it is issued.

SCHEDULE 3

[s. 5 & Sch. 1]

FEES PAYABLE FOR CARRIER LICENCES

PART 1

FIXED CARRIER LICENCES OTHER THAN FIXED
CARRIER (RESTRICTED) LICENCES

1. A fee of \$1,000,000 shall be payable on the issue of a fixed carrier licence (excluding a fixed carrier (restricted) licence) and, in each year while the licence remains in force, on the anniversary of the issue of the licence.
2. A fee of \$700 shall be payable on each anniversary of the issue or the renewal of a fixed carrier licence (excluding a fixed carrier (restricted) licence) for each 100 customer connections, made by telecommunications line or radiocommunications means, to the network established and maintained under the licence.
3. Subject to section 4, a fee for the management of radio frequency assigned shall be payable on the issue and on each anniversary of the issue of the fixed carrier licence concerned (excluding a fixed carrier (restricted) licence) and calculated as follows -

- (a) where the radio frequency is assigned exclusively to the licensee -
 - (i) \$50 for every 1 kHz or part thereof of frequency then assigned below 1 GHz;
 - (ii) $\$(50-4F)$ for every 1 kHz or part thereof of frequency 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 frequency 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 of frequency then assigned at or above 19 GHz;
- (b) where any part of the radio frequency is assigned to the licensee on a non-exclusive or shared basis, the fee calculated in accordance with the formula set out in paragraph (a) shall be proportionally reduced by a reduction factor -
 - (i) equal to the number of users authorized or reserved by the Authority to use that particular part of the radio frequency;
 - (ii) determined on the date on which the fee is payable.

4. No fee is payable under section 3 for the management of radio frequency 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 |

PART 2

FIXED CARRIER (RESTRICTED) LICENCES

1. A fee of \$100,000 shall be payable on the issue of a fixed carrier (restricted) licence and, in each year while the licence remains in force, on the anniversary of the issue of the licence.
2. A fee of \$700 shall be payable on each anniversary of the issue or the renewal of a fixed carrier (restricted) licence for each 100 customer connections, made by telecommunications line or radiocommunications means, to the network established and maintained under the licence.
3. Subject to section 4, a fee for the management of radio frequency assigned shall be payable on the issue and on each anniversary of the issue of the fixed carrier (restricted) licence concerned and calculated as follows -
 - (a) where the radio frequency is assigned exclusively to the licensee -
 - (i) \$50 for every 1 kHz or part thereof of frequency then assigned below 1 GHz;
 - (ii) $\$(50-4F)$ for every 1 kHz or part thereof of frequency 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 frequency 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 of frequency then assigned at or above 19 GHz;
- (b) where any part of the radio frequency is assigned to the licensee on a non-exclusive or shared basis, the fee calculated in accordance with the formula set out in paragraph (a) shall be proportionally reduced by a reduction factor -
- (i) equal to the number of users authorized or reserved by the Authority to use that particular part of the radio frequency;
 - (ii) determined on the date on which the fee is payable.
4. No fee is payable under section 3 for the management of radio frequency 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 |

PART 3

MOBILE CARRIER LICENCES OTHER THAN MOBILE
CARRIER (RESTRICTED) LICENCES

1. The annual fee payable on the issue and on the anniversary of the issue of a mobile carrier licence (excluding a mobile carrier (restricted) 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 service \$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 frequency assigned to the licensee \$50

2. For the purpose of determining the fees payable under section 1, the number of stations and the width of the frequency assigned shall be those authorized or in service at the time when the mobile carrier licence concerned is issued or on the anniversary of the issue.

PART 4

MOBILE CARRIER (RESTRICTED) LICENCES

1. The annual fee payable on the issue and on the anniversary of the issue of a mobile carrier (restricted) 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.

PART 5

SPACE STATION CARRIER LICENCES

1. For a space station carrier licence other than a space station carrier licence mentioned in section 2 -
 - (a) an initial fee of \$450,000 is payable on the issue of the licence; and
 - (b) a fee of \$150,000 is payable on the anniversary of the issue of the licence in each year while the licence remains in force.
2. For a space station carrier licence which permits the licensee to establish, possess, maintain, use and operate an earth station only -
 - (a) an initial fee of \$120,000 is payable on the issue of the licence; and
 - (b) a fee of \$80,000 is payable on the anniversary of the issue of the licence in each year while the licence remains in force.

Secretary for Information Technology
and Broadcasting

2001

Explanatory Note

This Regulation is made under section 7(2) of the Telecommunications Ordinance (Cap. 106) and provides for -

- (a) the general conditions applicable to carrier licences other than exclusive licences (section 3 and Schedule 1);
- (b) the period of validity of carrier licences, including existing licences which have been surrendered for, or replaced by, new carrier licences issued under section 7(5) of the Telecommunications Ordinance (Cap. 106)(see the definition of "existing licence" in section 2 and section 4 and Schedule 2);
- (c) the fees payable for carrier licences (section 5 and Schedule 3); and
- (d) the interpretation of certain terms used in existing licences (section 6).