

LN019-E

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" (有限制固定傳送者牌照) 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" (有限制移動傳送者牌照) 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 70 of the Ordinance in the case of that reference.

TABLE

Column 1	Column 2
Existing Licence	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 to this licence 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--

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- (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]

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.

Ms. Eva CHENG

Acting Secretary for Information Technology and Broadcasting

10 January 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).