

**MOVING FROM *EX ANTE* TO *EX POST* REGULATION OF THE TARIFFS
OF PCCW-HKT TELEPHONE LIMITED**

AND

**THE PROPOSED FIXED CARRIER LICENCE
TO BE ISSUED TO
PCCW-HKT TELEPHONE LIMITED**

CONSULTATION PAPER

8 October 2004

Introduction

1. On 8 August 2003 and 22 October 2003, PCCW-HKT Telephone Limited (PCCW-HKTC) filed two applications (the BDEL Application and the RDEL Application) with the Telecommunications Authority (TA) for a declaration of non-dominance in the markets for business and residential direct exchange line (BDEL and RDEL) services respectively. The BDEL and RDEL applications were made in accordance with General Condition (GC) 44 of PCCW-HKTC's Fixed Telecommunications Network Services (FTNS) licence (the Licence), requesting the TA to direct that GC 17, 20, 21, 22 and 23 shall not apply to PCCW-HKTC in respect of the markets for BDEL and RDEL services.

2. On 23 September 2003 and 28 November 2003, the TA issued two consultation papers on the applications for declaration of non-dominance for PCCW-HKTC in the markets of BDEL and RDEL services (the BDEL Consultation Paper and the RDEL Consultation Paper), seeking views from the industry as to whether the TA should accede to the BDEL and RDEL Applications respectively with or without conditions, or to refuse them. At the end of the consultation periods, the TA received submissions from ten different parties as follows (in alphabetical order):

- CM Tel (HK) Limited (CMT) (responded to BDEL Consultation Paper only)
- Consumer Council (responded to RDEL Consultation Paper only)
- Hong Kong Broadband Network Limited (HKBN)

- Hong Kong Cable Television Limited (HKCTV)
- Hong Kong Telecommunications Users Group (HKTUG) (responded to BDEL Consultation Paper only)
- Hutchison Global Communications Limited (HGC)
- Mr. Paul C. K. Ho, a consumer of telecommunications services (Mr. Ho)
- New World Telecommunications Limited (NWT)
- PCCW-HKTC
- Wharf T&T Limited (WT&T)

The Applications, together with non-confidential versions of the above submissions, are available for download from the web site of the Office of Telecommunications Authority (OFTA) at <http://www.ofta.gov.hk>.

3. In the BDEL Consultation Paper and the RDEL Consultation Paper¹, the TA floated the idea of moving to *ex post* regulation on PCCW-HKTC's fixed telephony tariffs as a 'proportionate' regulatory response measure. However, it appears the industry did not fully take this concept on board. Most of the industry responses focused narrowly on the market analysis questions without paying close attention to the proposals of a structural shift in the TA's approach to tariff regulation. None of the submissions addressed the appropriateness of applying a test of dominance intended for the assessment of conduct as the criterion for a structural deregulation of fixed telephony tariffs. For this reason, the TA would like to take this opportunity to gather the views from the industry on this specific issue.

4. In this further consultation paper, the TA first identifies the *ex post* regime which may be the right 'proportionate' regulatory measure for the market circumstances from this point forward. Next, there is a discussion of the potential damage of strict adherence to the method provided for in the licence conditions of a positive opinion of non-dominance to the viability of the overall *ex post* regime contained in the Telecommunications Ordinance (the Ordinance). The TA then identifies a possible alternative approach to modernisation via replacing PCCW-HKTC's FTNS licence with a fixed carrier (FC) licence to overcome the legal risks associated with GC 44. Finally, a draft new FC licence, which might be the replacement licence for PCCW-HKTC under the possible alternative approach, is provided in the **Appendix** for the purposes of consultation with members of the public and affected parties.

¹ Paragraphs 40 – 41 in the BDEL Consultation Paper and paragraphs 41 – 42 in the RDEL Consultation Paper

5. The TA invites views, opinions and comments pursuant to section 6C of the Ordinance from the public and affected persons on the issues associated with the possible implementation of General Condition 44 in respect of PCCW-HKTC. As a separate but related matter, the TA also seeks the views, opinions and comments of members of the public and affected persons on the possible replacement of PCCW-HKTC's FTNS licence with a FC licence, and the specific provisions of the draft FC licence.

6. It is not the purpose of this consultation paper to deal with the issues of market definition in relation to BDEL and RDEL services and whether or not PCCW-HKTC is market dominant in respect of its provision of either of those services. Those issues remain the subject of consideration by the TA. Nothing in this paper should be construed as indicating that the TA has formed any opinion on those issues.

Development of the FTNS markets in Hong Kong

7. Historically, FTNS services used to be provided by PCCW-HKTC² as a monopoly operator. In 1995, the TA issued three new wireline-based FTNS licences to WT&T³, HGC⁴ and NWT⁵. After the 1995 liberalisation, the number of FTNS licences was frozen for an initial period of three years to allow the new entrants reasonable time to establish themselves in the market before facing more intense competition. In 1998, the Government initiated a review of the market situation and in 1999 decided that the initial moratorium on entry of wireline-based network operators was to be extended until the end of 2002⁶, on condition that the three new licensees committed to further capital investments of HK\$3 billion on network infrastructure and achieving certain levels of coverage within the concession period.

8. In 2000, the TA issued five new wireless-based FTNS licences. Since then, two of the licensees had surrendered their licences to the TA. The licences for HKBN and Eastar Technology Limited⁷ were subsequently modified in 2002 to become both wireline- and wireless-based as from 1 January 2003. The fifth wireless-based licensee had remained dormant. To date, HKBN is the only one out of the five wireless-based

² Then known as Hong Kong Telephone Company Ltd

³ Then known as New T&T Hong Kong Ltd

⁴ Then known as Hutchison Communications Ltd

⁵ Then known as New World Telephone Ltd

⁶ With the exception of the licensing of HKCTV for the operation of a cable modem service over its hybrid fibre-coaxial cable network

⁷ Now re-named Towngas Telecommunications Fixed Network Limited.

licensees that is active in the fixed telephony markets.

9. In 2000, the TA also issued a wireline-based FTNS licence to HKCTV authorising it to provide telecommunications services over its hybrid fibre coaxial cable network constructed initially for the distribution of subscription television programme services. To date, HKCTV only provides broadband Internet access service. Although the TA has recently waived HKCTV's *ex ante* tariff obligations for its fixed telephony service⁸, the service has not yet been launched.

10. With the expiry of the moratorium on entry at the end of 2002, the fixed-line market has now been fully liberalised. There is no longer any regulatory limit on the number of licences. The TA has also issued three further licences. These are Fixed Carrier licences with no performance commitments in terms of capital investment and network coverage. To date, none of these three new licensees has been active in the fixed telephony markets.

11. The competitors to PCCW-HKTC are often collectively referred to as "new entrants" (or "2Ns"). According to latest figures available to the TA till the end of June 2004, the 2Ns collectively claim around 30% of total fixed telephony lines in the market. The 2N's collective market share has been steadily and consistently increasing since the initial market liberalisation in 1995 although the level of competition in the RDEL market was insignificant before 1999.

12. At the time the present FTNS licence were issued to PCCW-HKTC, there were no competition law provisions in Hong Kong for telecommunications or any other market. Therefore, safeguards against anti-competitive conduct and abuse of dominant position were incorporated into the FTNS licence as GC 15 and 16. In 2000, the the Ordinance was amended to include sections 7K and 7L in substantially the same terms as GC 15 and 16. These provisions now apply to all telecommunications licensees including PCCW-HKTC.

13. In 1998, the Government concluded a negotiation with Hong Kong Telecommunications Limited (HKT), the parent company of PCCW-HKTC⁹, on an accelerated expiry of its external service monopoly and as a result, the external telecommunications services market was liberalised in 1999, followed by the external telecommunications facilities market in 2000. As part of the compensation package, the TA allowed PCCW-HKTC to progressively rebalance its RDEL tariffs towards cost

⁸ TA Statement *Application of Ex Ante Tariff Controls to Hong Kong Cable Television Limited – Statement Concerning Opinions and Directions Further to General Condition 44 of the Fixed Telecommunications Network Services Licence* dated 20 August 2004.

⁹ Then called Hong Kong Telephone Company Limited (HKTC).

plus reasonable return.

14. From July 1998, the subsidiary legislation which imposed price caps on PCCW-HKTC's fixed telephony services was repealed, but residential telephony services were still subject to a price cap specified in the agreement between the Government and HKT, until completion of the tariff rebalancing process in 2001. Without tariff rebalancing, competition in the market might never have developed, because PCCW-HKTC would have continued to run its operations at deficit levels.

15. Since initial market liberalisation in 1995, the TA has implemented various regulatory measures including road opening coordination¹⁰, facilitating in-building access¹¹, open access to in-building wiring¹², number portability¹³, as well as mandatory Type I¹⁴ and Type II interconnection. These measures all share the common policy objective to lower the barriers to entry for the provision of fixed-line services. The Government recently announced a new regulatory policy on Type II interconnection which will be progressively implemented till 2008¹⁵, upon the satisfaction that barriers are not significant enough to deter facilities-based entry to customer access networks for buildings accommodating up to 75% – 80% of households.

Alternative products to fixed telephony

16. As well as new competition from fixed telephony operators, new services such as mobile and voice over Internet Protocol (VoIP) services have emerged. It is not the subject matter of this consultation paper to address whether those products are now, or in the timeframe relevant for the GC44 review of BDEL and RDEL services, will be sufficiently effective substitutes for BDEL and RDEL services, so as to be properly regarded as in the same market for competition purposes. However, to various extents and in various circumstances, these new services in Hong Kong may have diminished the 'necessity' status of traditional fixed line services for consumers, as well as operators' dependence on the revenue streams from such services.

17. In other words, the relative significance of traditional fixed telephony services within the broader portfolio of telecommunications services is in decline. By

¹⁰ *Road Opening Guidelines (Issue 2)* dated 12 December 2001.

¹¹ Section 14 of the Ordinance and the Building (Amendment) Ordinance 2000.

¹² TA Statement *Class Licence for In-Building Telecommunications Systems* dated 11 October 2002.

¹³ TA Directions issued to licensees under GC 14 of FTNS licences and SC 4 of fixed carrier licences

¹⁴ GC 13 of FTNS licences

¹⁵ TA Statement *Review of Type II Interconnection Policy*, dated 6 July 2004

2002, fixed telephony accounted for around 16% of total telecommunications services revenues in Hong Kong. This percentage is believed to have declined further since then. In addition, the number of mobile subscribers in Hong Kong now exceeds the number of fixed lines. The TA considers that this change in the relative significance of traditional fixed telephony services justifies a review of whether the 1995 rules for *ex ante* supervision of RDEL and BDEL tariffs are a properly proportionate regulatory intervention going forward.

Tariff regulation on PCCW-HKTC at present

18. The present regulatory procedures on PCCW-HKTC's tariffs for various telecommunications services operated under its FTNS licence were established in 1995 when the TA issued the licence following the liberalisation of the FTNS markets. In particular, GC44 was inserted into the licence (as well as all the other FTNS licences), stipulating that if and when the TA forms the opinion that the licensee is not in a dominant position with respect to any market for telecommunications services provided under the Licence, it may be directed that, for such period and on such conditions as TA determines, either one or any combination of GC 17, 20, 21, 22 and 23, either completely or as to particular obligations imposed thereunder, shall not apply to the licensee. GC 17 is related to the requirement for accounting separation and reporting in accordance with an Accounting Manual while GC 20, 21, 22 and 23 are primarily related to the requirement for prior approval of tariffs by the TA and transparency of the licensee's tariffs¹⁶.

19. As a matter of legislative history, statutory language, and practicability, a licensee holding the present form of an FTNS licence is to be presumed dominant by virtue of GC 44 for the purpose of tariff supervision, unless and until the TA forms the contrary opinion.

20. The TA has in the past, as a matter of formality, formed the opinion under GC44 that various new FTNS entrants did not have 'presumed dominance' at the time their licences were issued. In addition, since 1995, the TA has also reached the same opinion a number of times in relation to PCCW-HKTC in markets such as retail external call services and external bandwidth services¹⁷. However, there has been no such opinion to date in relation to PCCW-HKTC's fixed telephony services.

¹⁶ GC 20(1) and 20(4) together require the licensee to charge customers no more or less than the published tariff unless any of these conditions is waived by the TA under GC 44.

¹⁷ See the corresponding TA statements dated 8 October 2002 and 1 June 2002.

21. Accordingly, PCCW-HKTC remains presumed dominant and obliged to apply to the TA for prior approval for every individual discount, promotion or change in tariff of its fixed telephony services. For each application, PCCW-HKTC must submit the relevant cost information for the TA to carry out a profitability analysis and therefore to conclude whether there is any prohibited pricing behaviour. According to GC 21-23, the TA must approve or reject any tariff revision within 30 days and tariff for new services within 45 days upon receipt of the application. Under GC 20, PCCW-HKTC must also publish its individual tariff plans in the Government Gazette before such tariffs become effective.

22. In 2003, the TA approved 58 out of 66 fixed telephony tariff applications filed by PCCW-HKTC. Of the few cases of rejection, apart from discounts that the TA considered were in contravention of GC 15 or 16, a common problem was insufficient costing information for the TA to perform a profitability analysis. It is therefore desirable that any possible modernisation of the price regulation of PCCW-HKTC should include provisions to tackle this information barrier.

23. The TA has not drawn any conclusion as to whether PCCW-HKTC is not dominant in relation to BDEL and RDEL services. The two requests from PCCW-HKTC related to that test are still being considered by the TA. Nonetheless, the present procedures have been in place for nine years and market conditions have changed since then. Arguably, PCCW-HKTC is no longer the monopoly it was at the beginning of liberalisation in 1995. The TA therefore considers it important to review the 1995 *ex ante* requirements to ensure that they stay proportionate. The TA also considers that this review should not be confined just to any specific service of the subject FTNS licence.

The principle of proportionality

24. It is well recognized internationally that close price regulation is only justified as a ‘remedy’ in the absence of effective competition in the relevant market. Moreover, any remedial measures should be ‘proportionate’ to the anticipated state of competition in the market from time to time. For example, Article 8 of the *EC Framework Directive*¹⁸ requires national regulatory authorities (NRAs) to “take all reasonable measures which are aimed at achieving the [policy] objectives... Such measures should be proportionate to those objectives”. Recital 27 of the *Framework Directive* provides

¹⁸ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a Common Regulatory Framework for Electronic Communications Networks and Services (Framework Directive)

that *ex ante* regulation should only be imposed where there is not effective competition and where *ex post* competition law remedies are not sufficient to address the problem. In implementing this regulatory framework, the NRA of UK (Ofcom) is obliged to impose at least one appropriate remedial condition on a service provider found to have significant market power (SMP) in the relevant market, but the condition, among other things, must be “*proportionate to what the condition is intended to achieve*”¹⁹.

25. The TA’s preliminary view is that, looking forward, it may no longer be proportionate to subject PCCW-HKTC’s pricing of traditional fixed services to the TA’s prior approval. Essentially, this is because of the way competition has developed since 1995 and is set to evolve further, and because the relative significance of traditional services has changed as other communication services and technologies have emerged. Accordingly, the TA proposes the possible modernisation of the regulation over PCCW-HKTC from *ex ante* to *ex post*. In the TA’s view, this development would also reflect international best practice²⁰. The differences between *ex ante* and *ex post* regulation are discussed further in the next section of this paper.

Ex ante and *ex post* regulation

26. Internationally, *ex ante* and/or *ex post* controls on incumbent telecommunications operators are a standard feature of regulatory regimes. In the context of the Hong Kong telecommunications markets, *ex ante* regulation refers to the general conditions in a FTNS licence whereby an operator must seek TA approval before launching any tariff, discount or similar price promotion. In contrast, *ex post* regulation in the Hong Kong context refers to the fair competition provisions of sections 7K to 7N of the Ordinance whereby a tariff or other pricing can, after the event, be sanctioned as an abuse of a dominant position, or as other anti-competitive conduct.

27. It is recognized in most overseas jurisdictions that in the transition from a legacy monopoly structure, where the incumbent has discretionary market power, it is desirable to have pre-emptive, *ex ante* regulation to protect the development of new competition. This is because the risk of below-cost or ‘predatory’ pricing by the incumbent might otherwise dissuade new parties entering the market at all. Moreover

¹⁹ section 47 of the Communications Act 2003 in the UK

²⁰ For example, the *ex ante* regulation in Australia was replaced by an *ex post* regime in 1997 when the market was fully liberalised and when Telstra was still dominant in the market. Under this regulation, Telstra is required to file tariffs with Australian Competition and Consumer Commission (ACCC). ACCC may publish the filed tariffs if benefits to public outweigh detriments due to lessening of competition and prejudice to commercial interest. Prior approval of the tariffs from ACCC is not a requirement under the *ex post* regulation. See also footnote 22 for the practice in UK.

even after entry, in the early stages of competition, an intervention which is essentially after the event under *ex post* provisions may not be enough to avert damage to the new competition. Such damage is particularly severe and irrecoverable for telecommunications infrastructure businesses that are especially vulnerable to anti-competitive conduct continuing within the timeframe of regulatory intervention because of the very significant sunk investment involved in a network rollout. As telecommunications markets continue to develop, however, it is recognized that *ex ante* regulation of an incumbent should be progressively scaled back into *ex post* even if it retains significant market power.

28. In the BDEL Consultation Paper and the RDEL Consultation Paper, the industry responses focused on the dominance test, without directly addressing whether *ex ante* regulation would remain proportionate under likely future market conditions. Respondents seem to have taken the view that *ex ante* regulation can only be implemented in an ‘all-or-nothing’ manner, turning on a TA opinion under GC 44. The TA however considers that this ‘all-or-nothing’ result may not be satisfactory for the circumstances in Hong Kong where competition is still evolving. However, the regime of the existing FTNS licence does not provide the TA with the flexibility to remove individual elements of *ex ante* regulation. An example of the elements of *ex ante* regulation which may now be disproportionate is the requirement for PCCW-HKTC to seek prior approval of its tariffs from the TA. The TA notes that this is not the practice of some other regulators even for operators with either dominance or SMP²¹.

29. In the following section, attention is also drawn to the risks of applying the dominance test under GC 44 to the policy objective of proportionate regulation on tariffs. Accordingly, a possible alternative approach to the implementation of strictly *ex post* regulation is proposed via a replacement of PCCW-HKTC’s FTNS licence with an FC licence issued by the TA pursuant to section 7(5) of the Ordinance and the Telecommunications (Carrier Licences) Regulation.

The dominance test under GC 44

30. Further to GC 44 of the 1995 form of licence, an FTNS licensee is subject to *ex ante* regulation unless and until the time the TA forms an opinion that the licensee is

²¹ In the UK, the *ex ante* conditions imposed by Ofcom in November 2003 on British Telecom (BT) found to have SMP in the “fixed narrowband retail services markets” do not include a requirement for BT to obtain prior approval from Ofcom of its tariffs. The “remedies” imposed on BT include price cap (compliance with which is to be reviewed annually), no undue discrimination, price publication and notification to Ofcom and accounting separation.

not market dominant in respect of the services provided within the scope of the licence. The other aspect of the GC 44 test is that the TA cannot waive any of the *ex ante* tariff obligations under GC 20-23 without a positive finding of non-dominance.

31. As discussed in paragraph 19, PCCW-HKTC is presumed dominant by virtue of GC 44. Any finding of non-dominance for the purpose of removing *ex ante* regulation under GC 44 ought not to prejudice the future application of the *ex post* competition provisions in section 7L of the Ordinance. However, GC 44 requires the TA to form an opinion “*within the meaning of GC 16(2)*”²². Uncertainty thus arises in PCCW-HKTC’s case as to whether the TA could still reach a finding of dominance against the licensee for the purposes of section 7L in the face of a recent non-dominance opinion formed for the purpose of waiving the *ex ante* regulation.

32. In principle, the concept of undertaking a market analysis and competition assessment but not in relation to a specific conduct that a licensee has engaged in, does not sit comfortably with the origins of the dominance test as a feature of a behavioural sanction. The considerations for having *ex ante* tariff supervision and those involved in imposing a specific *ex post* behavioural sanction on market power are not co-extensive. The respective market analyses which need to be undertaken are distinctly different. In the *ex ante* situation, the subject is whether prior TA approval on service tariffs is warranted. Therefore, a broad forward-looking analysis of competition structures should be undertaken. In the *ex post* case, the subject is whether specific conduct of a specific licensee is abusive of an existing market position. Therefore, a primarily real-time analysis needs to be conducted in relation to the historical period during which the conduct was engaged in²³.

33. The TA notes that under the *EC Framework Directive*, the assessment criterion for the need of *ex ante* regulation is “*significant market power*” (SMP)²⁴ which is “*a position equivalent to dominance*”²⁵. However, despite this reference to a dominance test, the EC further clarifies in the *SMP Guidelines*²⁶ that:

“the markets defined... for the purpose of ex-ante regulation are without prejudice to those defined... under competition law in specific cases”

“Markets defined under Article 81 and 82 EC Treaty are generally defined on

²² As explained in paragraph 10, GC 16 is the prototype of section 7L of the Ordinance.

²³ The analysis nevertheless takes account of some prospective factors such as potential competition.

²⁴ Recital 7 of the *EC Framework Directive*.

²⁵ Article 14(2) of the *EC Framework Directive*.

²⁶ *Commission Guidelines on Market Analysis and the Assessment of Significant Market Power under the Community Regulatory Framework for Electronic Communications Networks and Services (the SMP Guidelines)*

an ex-post basis. In these cases, the analysis will consider events that have already taken place in the market and will not be influenced by possible future developments... On the other hand, relevant markets defined for the purposes of sector-specific regulation will always be assessed on a forward-looking basis.”

“The designation of an undertaking as having SMP in a market identified for the purpose of ex-ante regulation does not automatically imply that this undertaking is also dominant for the purpose of Article 82 EC Treaty... It merely implies that, from a structural perspective, and in the short to medium term, the operator has or will have, on the relevant market identified, sufficient market power... solely for purposes of Article 14 of the framework Directive [i.e. ex ante regulation]”²⁷

34. Unlike the EC where the designation of SMP for the purpose of *ex ante* regulation is clearly distinguished from *ex post* dominance under competition law provisions, GC 44 provides no such distinction. Indeed it could not have done so because in 1995, the current *ex post* provisions of section 7L were not in existence. With this background in mind, the TA would prefer not to make a ‘structural’ decision on the basis of a ‘conduct’ test, and therefore does not purport to, or intend to, reach any opinion on whether PCCW-HKTC is dominant (or non-dominant) for the purpose of any of the provisions of sections 7L and 7N, GC16 or 44. The TA is concerned that a strict adherence to the method provided for in the licence conditions of a positive opinion of non-dominance could, in a way not anticipated in 1995, block or prejudice any subsequent application of section 7L of the Ordinance against abusive conduct in the future.

35. The TA notes that PCCW-HKTC has not sought to advance this argument to date or to otherwise argue against the application of *ex post* regulation to its business. The TA’s position is that the *ex post* legal provisions against abuse of dominance must remain intact in the event that tariff regulation is modernised. Should the TA find that a licensee is dominant on an *ex post* basis, in relation to any defined market, and that the licensee has abused its position in that market, the TA should be able to take action under section 7L or other relevant provisions of the Ordinance.

36. The principal consequence of adopting this possible approach is that there would no longer be any presumption of dominance (or non-dominance), meaning that the TA must bear the burden of proof on a case-specific basis that the licensee in question is dominant before establishing whether a specific conduct is abusive. This is

²⁷ Paragraph 25-27, 30 of the *SMP Guidelines*

the normal situation in competition law regimes in other jurisdictions.

37. Since the efficacy of section 7L is crucial to the long term success of the telecommunications deregulation in Hong Kong, the TA wishes to consider a possible alternative approach to the implementation of *ex post* regulation. This would avoid the strict adherence to the method provided for in the licence conditions of a positive opinion of non-dominance for the waiver of the *ex ante* regulation under GC 44 that could jeopardise the overall *ex post* regime. This possible alternative approach involves replacing PCCW-HKTC's FTNS licence with a new fixed carrier (FC) licence pursuant to section 7(5) of the Ordinance and the Telecommunications (Carrier Licence) Regulation.

Telecommunications (Carrier Licences) Regulation

38. Under the Telecommunications (Carrier Licences) Regulation²⁸ which came into operation on 1 April 2001 (the Carrier Regulation), an existing FTNS licensee is entitled to surrender its existing FTNS licence²⁹ in exchange for the TA issuing an FC licence³⁰. General conditions for an FC licence are prescribed by the Secretary³¹ under the Carrier Regulation, but the TA is empowered to attach special conditions that are consistent with the Ordinance and not inconsistent with the prescribed general conditions³². In particular, the equivalents of GC 17, 20-23 and 44 of PCCW-HKTC's existing FTNS licence are not prescribed as general conditions of an FC licence, although in the case of licence replacement, it is envisaged that the existing rights and obligations of the licensee should be carried over. In those FC licences issued by the TA to various licensees since the beginning of 2003, the TA has attached the equivalents of GC 17, 20-23 and 44 of an FTNS licence as special conditions, although in those occasions, the TA has waived the tariff obligations by forming the opinion of non-dominance in respect of those new entrants. Should PCCW-HKTC surrender its existing FTNS licence in exchange for the new FC licence under consideration, the opportunity would arise for the equivalents of GC 17, 20-23 and 44 to be modified so that a relaxation of *ex ante* regulation could be implemented without jeopardising the *ex post* regime (as discussed in paragraph 34-35). However, it is emphasised that in raising these issues for consultation the TA has not reached any opinion that PCCW-HKTC is not dominant for the purpose of GC 44, or that it is or is not dominant for the purposes

²⁸ Made under section 7(2) of the Ordinance

²⁹ Regulation 4(3) of the Carrier Regulation

³⁰ Section 7(5) of the Ordinance

³¹ See *Interpretation* under section 2 of the Ordinance

³² Section 7A of the Ordinance

of section 7L or other relevant provisions of the Ordinance.

39. In the BDEL Consultation Paper and the RDEL Consultation Paper, the TA indicated that this approach would represent an important change to the existing licensing regime and could not be implemented without:

- (a) the consent of PCCW-HKTC on the special conditions attached under the replacement FC licence and the surrender of its existing FTNS licence; and
- (b) consultation of the public and affected parties pursuant to section 6C of the Ordinance.

40. Following the BDEL Consultation Paper and the RDEL Consultation Paper, the TA has been in contact with PCCW-HKTC about the terms which it might consent to and as a result, a preliminary draft FC licence relevant to PCCW-HKTC has been prepared and is attached in the **Appendix** for the purposes of a separate consultation pursuant to section 6C of the Ordinance. The TA considers it important that members of the public and affected parties in particular have the opportunity to consider the details of how the possible alternative methodology for amending the *ex ante* provisions might be implemented, so that they can respond with detailed and constructive comments. All responses will be taken into account. In the following sections, the major differences between the draft FC licence and PCCW-HKTC's existing FTNS licence are highlighted, together with the key issues involved:

General Conditions 15, 16, 19, 20(3), 20(5), 31 and Special Conditions 2, 4 of the existing FTNS licence of PCCW-HKTC

41. GC 15, 16, 19, and 31 of PCCW-HKTC's existing FTNS licence are redundant to the Ordinance (because the corresponding provisions have now been incorporated into the Ordinance pursuant to the 2000 amendments) and are therefore deleted in the draft FC licence. GC 20(3) and GC 20(5) are tariffs provision which are similarly found and covered in section 7F of the Ordinance. The equivalent provisions also do not appear as general conditions in those FC licences that the TA has issued to the various licensees since the enactment of the Carrier Regulation. Special Conditions (SC) 2 and 4 are merely interpretations of the deleted GCs.

GC 4(2), 20(6), 41(1)(a), 44 and SC 1.3 of the existing FTNS licence of PCCW-HKTC

42. The part or whole of these general conditions refers to a test of dominance within the meaning of GC 16(2) of PCCW-HKTC's existing FTNS licence which is equivalent to section 7L(2) of the Ordinance. As discussed above, the TA considers it inappropriate to apply a test specifically for the purpose of assessment of market conduct for a different regulatory purpose. These conditions, or parts of them which refer to the test of dominance, are therefore deleted in the draft FC licence. They also do not appear as general conditions in any of the FC licences which the TA has issued to various licensees since the enactment of the Carrier Regulation.

43. As for GC 4(2), the original intention of this licence condition was to prevent any disruption of basic utility services provided by the legacy incumbent carrier in the event of any transfer of network assets. The TA recognizes that, with the reference to the test of dominance deleted from the original GC 4(2), it will be unfair to impose such an obligation on PCCW-HKTC without qualifying conditions. On the other hand, the TA is not prepared to withdraw this licence condition altogether, notwithstanding this review on *ex ante* regulation of tariffs, in the light of his duty to protect the public interest. In particular, transfer of network assets is not covered under section 7P of the Ordinance which concerns transfer of holding interests. Accordingly, the TA proposes including this provision as a sub-paragraph 1.6 under SC 1 of the draft FC licence on universal service obligation (USO), so as to effectively link the requirement to PCCW-HKTC's universal service carrier status.

GC 20(4) of the existing FTNS licence of PCCW-HKTC / SC X of the draft FC licence

44. GC 20(4) of the existing FTNS licence of PCCW-HKTC is removed to a new Special Condition 8 under the draft FC licence entitled "Notification of Discounts". The purpose of this separation is to clearly distinguish between the requirements of publication for consumer protection and access to information by the TA to protect competition. In addition, the reference to a dominance test under the original GC 20(4) has been deleted in the new SC of the draft FC licence.

45. The TA considers that in the possible transition from *ex ante* to *ex post* regulation, especially during the initial stage of implementation, there must be access to the effective prices offered by PCCW-HKTC in the market, including discounts and promotional offers, so that any abusive pricing conduct can be detected in a prompt and efficient manner. For this reason, the TA is proposing that PCCW-HKTC would have to notify the TA of any discount to its published tariffs at least seven days before the discount became effective in the market. A new Schedule 5 into the draft FC licence is

also proposed which would describe the principal terms of a discount that must be furnished to the TA, so as to facilitate the notification process.

46. The TA notes that the purpose of publishing standard tariffs under the original GC 20(1) and (2) is for the purposes of consumer protection and transparency, in the sense that the licensee may not refuse to provide service at the maximum price it has published. Discounts to standard tariffs are a separate matter. Publication of such discounts is not currently required of any FTNS or FC licensees other than PCCW-HKTC. Because the market has continued to develop, it may no longer be justified to impose such obligation on PCCW-HKTC without qualification, such that its competitors would have access to its prices via the public domain. In some other jurisdictions, excessive transparency of prices in the market is even prohibited by competition law due to the risk that it may facilitate of collusive behaviour. On the other hand, the TA also recognizes that, during the initial adaptation to the possible modernisation of tariff regulation, transparency of effective prices offered by the legacy incumbent operator may be justified for particular service segments and in particular circumstances. Accordingly, the TA proposes to insert a qualification for the PCCW-HKTC's discounts to be published when protection of consumer interest so justifies. For example, publishing discounts of PCCW-HKTC's RDEL services may protect consumers in areas where choice is limited, and also protect competition in other areas.

47. The advance notice period of seven days is substantially shortened from 45 and 30 days for new tariffs and changes to existing tariffs respectively under the original GC 21-23. This is in line with the telecommunications regulatory regime in other jurisdictions such as the Singapore, Australia and US. It also reflects the streamlined approach from a full tariff approval assessment currently into the detection of any suspected breach of competition provisions under the Ordinance for *ex post* action under the TA's proposed modernisation of tariff regulation.

GC 21, 22, 23 of the existing FTNS licence of PCCW-HKTC

48. These GCs are deleted in the draft FC licence, reflecting the migration from *ex ante* regulation towards *ex post*. In particular, the TA is proposing not to retain the power to disapprove or suspend PCCW-HKTC's tariffs or discounts, notwithstanding the advance notification and publication requirements. However, if the TA finds reasons to suspect a breach of the competition provisions under the Ordinance in respect of any tariff or discount filed to the TA, the licensee will be notified and the TA

will conduct an investigation. If the licensee proceeds with the effect of such tariffs and discounts, it must bear the risk of the civil consequences of financial penalties, damages or other remedies. This is the normal situation in competition law regimes in other jurisdictions.

GC 17 & 18 of the existing FTNS licence of PCCW-HKTC

49. Accounting separation is crucial to the TA's detection of potential abusive conduct such as predatory pricing, cross subsidisation and margin squeezing, especially under an *ex post* regime. With the proposal to move towards reliance of an *ex post* regime for pricing behavior, the TA is also considering whether to modernise the accounting separation requirements on PCCW-HKTC. Under the present *ex ante* mechanism, the TA has directed PCCW-HKTC to implement the accounting practices, including accounting separation, specified in the Accounting Manual³³. Under the Accounting Manual, PCCW-HKTC must file its separated financial accounts to the TA on a quarterly basis.

50. In the draft FC licence, although the original wording of GC 17 remains unchanged in SC 5, the TA is considering whether a new direction should be issued to PCCW-HKTC together with a modified Accounting Manual which aims to provide information relevant to enforcement in an *ex post* regime, but which would not be unnecessarily onerous to the licensee. The TA would make requests for PCCW-HKTC to furnish information, pursuant to SC 6 of the draft licence and/or section 7I of the Ordinance, to ensure compliance with the provisions of the Ordinance, licence conditions or for other regulatory purposes. However, this change concerns only the requirement for periodic filing, not the requirement for accounting separation itself. Any amendment to the Accounting Manual should apply equitably to all FTNS or FC licensees and therefore a separate industry consultation would be warranted.

51. Schedule 4 of the draft FC licence is intended to reflect the original GC 18, with details of the accounting and cost information requirements relevant to the possible *ex post* mechanisms. The objective is to facilitate the information provision process to the TA and to avoid unnecessary delays. In particular, the requirement for PCCW-HKTC to furnish cost information that is sufficient to establish the long run average incremental cost (LRAIC) basis is in line with international best practice of current cost accounting for regulatory purposes, and is crucial for the effectiveness of

³³ *Telecommunication Ordinance (Chapter 106), Fixed Telecommunication Network Services Licence - Hong Kong Telephone Company, Direction (General Condition 17)* dated 29 June 1995.

the possible *ex post* regulatory regime.

Scope of services

52. The TA is also mindful that the proposed licence replacement approach will relax the *ex ante* regulation for all the services within the scope of an FTNS or FC licence, rather than for fixed telephony services only. However, as noted in paragraph 23, the TA proposes a broader review of the *ex ante* regulation regime than just BDEL and RDEL services, and this review is not solely dependent on whether a particular licensee is dominant in a particular market in respect of specific conducts.

53. Against this background, the TA considers that the review of the current *ex ante* regime may be extended to the following services:

- *Local Bandwidth Services* (e.g. local leased circuits (LLC), Asynchronous Transfer Mode (ATM), Frame Relay (FR) and Metro Ethernet (ME) services):

The TA has been monitoring development of competition in local bandwidth services. Some parties in the industry have indicated that competition in this fixed-line segment is insufficient and LLC prices in Hong Kong are relatively high compared with the equivalents in other economies. In a recent study of LLC in Hong Kong³⁴, the TA has recognized that competition is developing in the market, and alternatives are available to some users from ATM, FR and ME services. Moreover, the international comparisons with Hong Kong prices did not provide conclusive evidence to prove that the Hong Kong prices were particularly high. Nevertheless, the TA invited the industry to provide any feedback or information regarding local bandwidth services so that the TA can continue monitoring the status of competition in this segment and consider appropriate regulatory measures where necessary.

Even if evidence is available to prove that LLC prices in Hong Kong are relatively high due to insufficient competition, the *ex ante* regulation on PCCW-HKTC's LLC prices in its existing form (i.e. subjecting each individual LLC tariff of PCCW-HKTC to prior approval of the TA) may not be an effective cure of such problem. Under the *ex ante* tariff regulation conditions of PCCW-HKTC's FTNS licence, the TA has no power to require

³⁴ See OFTA report dated 16 September 2004

PCCW-HKTC to lower its prices. The TA may only disallow tariffs proposed to the TA if the TA considers that the tariffs are anti-competitive. High prices are not necessarily anti-competitive, and may encourage market entry.

In other jurisdictions, where the incumbent still has significant market power in the supply of leased circuits, the remedies imposed by the regulators are price control arrangements and mandating the access to ‘partial leased circuits’ of the dominant operators at regulated prices³⁵. Such remedies do not include the form of *ex ante* regulation presently incorporated into the existing FTNS licence conditions. Accordingly, the TA considers that the existing form of *ex ante* regulation in the FTNS licence as applied to LLC may be out of line with international best practice and that it may be appropriate to include local bandwidth services in the review of the requirement for *ex ante* tariff approval.

- *Broadband Conveyance Services:*

Although PCCW-HKTC is currently the principal provider of broadband conveyance service to third-party internet service providers, there are other facilities-based competitors conveying broadband services via their own infrastructure. The TA has also observed a gradual decline trend in PCCW-HKTC’s tariff for broadband conveyance services over the past 12-24 months.

Broadband conveyance services are wholesale telecommunications services supplied to other service providers for the provision of public telecommunications services. Although the broadband conveyance services are at present supplied under tariffs by PCCW-HKTC, the terms and conditions for the supply of the services are subject to the interconnection regime under section 36A of the Ordinance. The interconnection between the broadband conveyance service and the systems or services of the public telecommunications services is within the scope of section 36(3D) and in deciding whether to make a determination, the TA will have regard to the factors set out in section 36A(10).

The regime under section 36A is similar to the access regimes in other jurisdictions imposed on operators found to have significant market power in

³⁵ See UK Ofcom’s Final Statement and Notification on “*Review of the retail leased lines, symmetrical broadband origination and wholesale trunk segments markets*” issued on 24 June 2004. See also Singapore iDA’s decision “*Designation of SingTel’s Local Leased Circuits as Mandated Wholesale Service*”

the supply of facilities or services as input for the provision of public telecommunications services³⁶. Anti-competitive pricing of the wholesale conveyance services (e.g. prices leading to ‘margin squeezing’) can also be tackled under sections 7K and 7L on an *ex post* basis. Accordingly, the TA considers that it may be appropriate to include broadband conveyance services in the review of the requirement for *ex ante* tariff approval.

- *Interconnection services* (e.g. fixed-mobile interconnection, PNETS, Type I and II interconnection, local access charge): Similar to the broadband conveyance services discussed above, interconnection services are supplied to other providers of telecommunications services. An interconnection charge can be tariffed, commercially negotiated or determined by the TA under section 36A of the Ordinance. When an interconnection charge is commercially negotiated, the tariff approval requirement becomes irrelevant. When an interconnection charge is tariffed, parties seeking interconnection can still request the TA for determination. When an interconnection charge is determined by the TA on a reasonable cost basis, prior tariff approval is again irrelevant. Accordingly, the TA considers that it may be appropriate to include the tariffed interconnection services in the review of the requirement for *ex ante* tariff approval.

54. Above all, the international best practice recognizes that non-dominance is not a pre-requisite for a review of individual elements of *ex ante* tariff regulation³⁷. Moreover, the TA reiterates that any anti-competitive conduct in relation to the above services will always be subject to *ex post* regulation, particularly under sections 7K, 7L and 7N of the Ordinance, regardless of whether *ex ante* regulation is to be modernised or not.

Invitation for comments

55. The TA first invites responses from members of the public and affected persons on the issues raised in this consultation paper relevant to the possible

³⁶ For example, see *Access Directive* 2002/19/EC (Access Directive) of the EU and the *Telecommunications Access Regime* under the Trade Practices Act 1974, Australia.

³⁷ Under the *EC Framework Directive*, for example, in markets where one or more undertakings have been designated to have SMP, the NRA must impose at least one *ex ante* measure, following the principle of proportionality, but not necessarily all measures. See also Footnote 20 and 21.

implementation of GC 44 of PCCW-HKTC's FTNS licence. In addition, and as a distinct but related exercise, the TA invites responses from members of the public and affected persons on the possible replacement of PCCW-HKTC's FTNS licence with an FC licence and specific terms of the draft FC licence.

56. Responses should be made in writing and must reach the Office of the Telecommunications Authority **by close of play 19 November 2004**. The TA reserves the right to publish responses and, accordingly, any part of a submission considered commercially confidential must be clearly identified and supported with full reasons for its claimed confidential status.

57. Submissions should be addressed to:

Office of the Telecommunications Authority
29/F Wu Chung House
213 Queen's Road East
Wanchai
Hong Kong
[Attention: Mr. Herbert Fung]
Fax: 2803-5112
E-mail: hchfung@ofta.gov.hk

An electronic copy of the submission should be provided by e-mail to the address indicated above.

Office of the Telecommunications Authority

8 October 2004

APPENDIX

**THE DRAFT NEW FIXED CARRIER LICENCE
TO BE ISSUED TO
PCCW-HKT TELEPHONE LIMITED**

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Licence No. xxx

**TELECOMMUNICATIONS ORDINANCE
(Chapter 106)**

FIXED CARRIER LICENCE

DATE OF ISSUE: dd mmm yyyy (replaced the Fixed Telecommunications Network Services Licence issued on 29 June 1995 and amended on 31 March 1998 and 31 January 2001)

PCCW-HKT Telephone Limited

of 39th Floor, Hongkong Telecom Tower, Taikoo Place, 979 King's Road,
Quarry Bay, Hong Kong

(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.

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GENERAL CONDITIONS

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

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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

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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

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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

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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.

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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.

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- 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.

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SPECIAL CONDITIONS

1. UNIVERSAL SERVICE OBLIGATION

1.1 The licensee shall provide, maintain and operate the network to the satisfaction of the Authority in such manner as to ensure that, subject to Special Conditions 1.3 and 1.4, a good, efficient and continuous **basic service** is reasonably available, subject to the Ordinance, to all persons in Hong Kong (the provision, maintenance and operation of the relevant part of the network and of the basic service together constituting the “**universal service obligation**”), provided that where the licensee is able to demonstrate, to the reasonable satisfaction of the Authority that the basic service in a specified area, or areas, is, or is capable of being met by any other fixed carrier or fixed telecommunications network service licensee and that in the circumstances it would be unreasonable or unnecessary for the licensee to be required to also provide the basic service, the Authority may, subject to such conditions as it thinks fit, including but not limited to conditions as to duration, exempt the licensee from all, or part of, the universal service obligation with respect to that area, or those areas.

1.2 The licensee shall supply the basic service to any person, on its usual terms and conditions, within a reasonable period of a request for basic service at the tariff as published in accordance with Special Condition 7.

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1.3 Basic Service means, subject to the Ordinance, the provision of:

- (a) a public switched telephone service including the service connection, continued provision of connectivity, provision of a dedicated telephone number, an appropriate directory listing (except where the customer otherwise directs), a standard telephone handset without switching capacity (except where the customer elects to provide the handset), standard billing and collection services and relevant ancillary services and facilities

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necessarily utilized by the licensee; and

- (b) a reasonable number of public payphones including payphones located within publicly or privately owned facilities to which the public have access, whether on a 24 hour basis or restricted to certain hours or days of the week; and
- (c) a reasonable number of public payphones, designed for ease of effective use by the hearing impaired; and
- (d) a reasonable number of public payphones, designed for access by the physically disabled, including but not limited to those persons using wheelchairs; and
- (e) operator provided directory enquiries, fault reporting, service difficulty and connection services; and
- (f) a tropical cyclone warning service; and
- (g) a thunderstorm and heavy rain warning service; and
- (h) a flood warning service; and
- (i) access to a number or numbers for emergency services; and
- (j) such other services, subject to the Ordinance, as the Authority may include.

1.4 The licensee is entitled to receive a universal service contribution to assist it in meeting its universal service obligation and the licensee shall pay a universal service contribution to any other licensee with a universal service obligation, if any.

1.5 Universal service contribution is that sum calculated in accordance with a formula adopted annually by the Authority, to ensure that the PCCW-HKT Telephone Ltd., where it has a universal service obligation, and any other licensee with such an obligation, as the case may be, receives a fair contribution from other fixed carriers, fixed

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telecommunications network services licensees or other types of licensees as specified by the Authority towards the costs, net of attributable revenues, of serving customers with basic service whom would otherwise not be served because it is not economically viable to do so but who are required to be served under the universal service obligation.

1.6 The licensee may not without the prior written consent of the Authority, which can be withheld for the purposes of General Condition 5.1, assign, transfer or otherwise dispose of more than 15% of the licensee's assets constituting the network, other than where the transfer or disposal of those assets is in the ordinary course of the licensee's maintenance, replacement or upgrading of the network.

2. PROVISION OF SERVICE

2.1 The licensee shall, subject to Schedule 1 and any special conditions of this licence relating to the provision of the service, provide the service on its published terms and conditions and at the tariff published in accordance with Special Condition 7 (as applicable) and at the discount notified to the Authority in accordance with Special Condition 8 (as applicable) on request of a customer whether or not the customer intends the service to be available for its own use or intends to utilize the service to provide a lawful telecommunications service to third parties.

2.2 Subject to Schedule 1 and any special conditions relating to the provision of the service, the licensee shall comply with a customer request for the service as tariffed by the licensee in accordance with Special Condition 7 where the service reasonably could be provided by the licensee to the customer at the location at which the service is requested utilizing the licensee's network in place at the time of the request.

3. REQUIREMENTS FOR INTERCONNECTION

3.1 The licensee shall interconnect the service and the network with the external public telecommunications network and services operated by

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Reach Networks Hong Kong Limited under its licence granted under the Ordinance and other fixed carrier or fixed telecommunications networks and services licensed under the Ordinance and, where directed by the Authority, other telecommunications networks and services licensed, or deemed to be licensed, or exempt from licensing under the Ordinance.

3.2 The licensee shall use all reasonable endeavours to ensure that interconnection is done promptly, efficiently and at charges which are based on reasonable relevant costs incurred so as to fairly compensate the licensee for those costs.

Deleted: 3.2 The licensee shall also interconnect the service and the network with the fixed telecommunications network and services provided by the PCCW-HKT Telephone Limited licensed under the Ordinance.

3.3 The licensee shall provide facilities and services reasonably necessary for the prompt and efficient interconnection of the service and the network with the telecommunications networks or services of the other entities referred to in Special Condition 3.1. Such facilities and services include –

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- (a) carriage services for codes, messages or signals across and between the interconnected networks;
- (b) those necessary to establish, operate and maintain points of interconnection between the licensee's network and the networks of the other entities, including the provision of transmission capacity to connect between the licensee's network and networks of the other entities;
- (c) billing information reasonably required to enable the other entities to bill their customers;
- (d) facilities specified by the Authority pursuant to section 36AA of the Ordinance; and
- (e) ancillary facilities and services required to support the above types of interconnection facilities and services.

4. NUMBERING PLAN

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- 4.1 The licensee shall conform to a numbering plan made or approved by the Authority and any directions given by the Authority in respect of the numbering plan.
- 4.2 The licensee shall at the request of the Authority or otherwise consult the Authority about the arrangements for the allocation and reallocation of numbers and codes within the numbering plan.
- 4.3 Where requested by the Authority, the licensee shall prepare and furnish to the Authority proposals for developing, adding to or replacing the numbering plan relating to the service.
- 4.4 The licensee shall, in such manner as the Authority may direct, facilitate the portability of numbers assigned to any customer of any fixed carrier or fixed telecommunications network service licensee, so that any number so assigned may be used by that customer should it cease to be a customer of any such entity and become a customer of any other fixed carrier or fixed telecommunications network service licensee, as the case may be.
- 4.5 Directions by the Authority under Special Condition 4.4 include reasonable directions concerning the equitable sharing of all relevant costs associated with providing portability of numbers as between the licensee, any other fixed carrier or fixed telecommunications network services licensee, and any other person.

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5. ACCOUNTING PRACTICES

- 5.1 Where directed by the Authority in writing, the licensee shall implement such accounting practices as specified by the Authority. Such accounting practices are to be consistent with generally accepted accounting practices, where applicable, and may include (but are not limited to) accounting practices which allow for the identification of the costs and charges for different services or types or kinds of services.

6. REQUIREMENT TO FURNISH INFORMATION TO THE AUTHORITY

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- 6.1 The licensee shall furnish to the Authority, in such manner and at such times as the Authority may request in writing, such information related to the business run by the licensee under this licence, including financial, technical and statistical information, accounts and other records, as the Authority may reasonably require in order to perform his functions under the Ordinance and this licence. Information referred to in this condition includes but is not limited to such information as is listed in Schedule 4.
- 6.2 Subject to Special Condition 6.3, the Authority may use and disclose information to such person as the Authority thinks fit.
- 6.3 Where the Authority proposes to disclose information obtained and the Authority considers that the disclosure would result in the release of information concerning the business or commercial or financial affairs of a licensee which disclosure would or could reasonably be expected to adversely affect the licensee's lawful business or commercial or financial affairs, the Authority will give the licensee a reasonable opportunity to make representations on the proposed disclosure before the Authority makes a final decision whether to disclose the information.

7. PUBLICATION OF TARIFFS

7.1 The licensee shall publish and charge no more than the tariffs for the service operated under this licence. The tariffs shall include the terms as defined under section 7F(2) of the Ordinance, for the provision of the service.

7.2 Publication of a tariff shall be effected by –

- (a) submitting the tariff for publication in the Hong Kong Government Gazette on or before the date on which the tariff becomes effective;
- (b) having a copy of the tariff received by the Authority at least seven days before the date on which the tariff becomes effective;

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- (c) placing a copy of the tariff in a publicly accessible part of the principal business place and other business premises of the licensee as advised by the Authority, including the business website of the licensee for public access; and
- (d) sending a copy to any person who may request it. The licensee shall not levy a charge greater than that is necessary to cover reasonable costs involved.

8. NOTIFICATION OF DISCOUNTS

- 8.1 The licensee shall notify the Authority of any discount to its tariffs offered for any of the services operated under this licence at least seven days before the discount becomes effective.
- 8.2 Notification of a discount shall be effected by having a copy of the discount to a tariff received by the Authority, including such information listed in Schedule 5.
- 8.3 The Authority may publish any discount that the licensee notifies him under Special Condition 8.1 after the discount becomes effective, if the Authority considers that it is necessary to publish that discount to protect consumer interest.

9. METERING ACCURACY

- 9.1 The licensee shall take all reasonable steps to ensure that any metering equipment used in connection with the service is accurate and reliable.
- 9.2 Upon the written request of the Authority, the licensee shall conduct tests on metering equipment to assess its accuracy, reliability and conformity to the technical standards, if any, specified by the Authority. The licensee shall submit the test result to the Authority within 14 days after the date of the test or such other longer period as the Authority may determine.

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9.3 The licensee shall keep such records of any metering equipment in such form as may be specified by the Authority and shall supply such records to the Authority on the written request of the Authority.

10. DIRECTORY INFORMATION AND DIRECTORY INFORMATION SERVICE

10.1 For the purposes of this Special Condition –

- (a) “directory information” means information obtained by the licensee in the course of the provision of services under this licence concerning or relating to the name, address, business and telephone numbers of each of its customers; and
- (b) “raw directory information” means the licensee’s directory information held in a basic format relating to all of its customers other than its customers who request that directory information about them not be disclosed.

10.2 This Special Condition applies only in respect of standard printed directories and other directory databases and services which include all of the names of a licensee’s customers listed in alphabetical order and does not apply to classified directories where customers are listed by business or trade category or to other business or specialised directories.

10.3 The licensee shall –

- (a) unless otherwise agreed by the Authority, publish or arrange at least biennially for the publication of directory information in a printed or other form approved by the Authority, relating to all its customers, other than its customers who request not to be included in a directory to be published (“the printed directory”); and
- (b) establish, maintain and operate, or arrange for the establishment, maintenance or operation of a telecommunications service whereby customers may, upon request, be provided with directory

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information other than that of its customers who request the information not to be disclosed (“the telephonic directory service”).

10.4 The printed directory and the telephonic directory service provided under Special Condition 10.3 shall be made available free of charge to all of the licensee’s customers and shall be provided in a manner satisfactory to the Authority.

10.5 The licensee is permitted to make commercial arrangements with one or more of the other fixed carrier or fixed telecommunications network service licensees ~~to co-operate in the provision jointly by them of either or both of the printed directory and the telephonic directory service which the licensee is required to provide under Special Condition 10.3.~~

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10.6 The licensee’s printed directory shall be a unified printed directory and the licensee’s telephonic directory service shall be a unified telephonic directory service and shall utilise a unified directory database, containing directory information on all customers of all fixed carrier or fixed telecommunications network service licensees, ~~except for those customers who request that directory information about them not be disclosed. The licensee shall provide, and regularly update, raw directory information about its customers to each other fixed carrier or fixed telecommunications network service licensee, for which the licensee will be able to impose a charge to fairly compensate it for providing the raw directory information. The licensee shall endeavour to agree with each of the other licensees, on a reasonable mode of exchange and transmission format for the raw directory information.~~

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10.7 Where the licensee is unable to agree with another licensee pursuant to Special Condition 10.6 on what amounts to fair compensation for provision of, or the reasonable mode of exchange and transmission format of, raw directory information, the matter at issue may be referred by either licensee ~~to the Authority for determination.~~

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10.8 Except with the prior written approval of the Authority, the licensee

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shall not make use of raw directory information provided by another licensee ~~other than for discharging its obligations under Special Condition 10.~~

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11. EMERGENCY CALL SERVICE

11.1 The licensee shall provide a public emergency call service by means of which any member of the public may, at any time and without incurring any charge, by means of compatible apparatus connected to the network, communicate as quickly as practicable with the Hong Kong Police Emergency Centre or other entity as directed by the Authority to report an emergency.

12. RECORDS AND PLANS OF THE NETWORK

12.1 The Authority may disclose the network information in accordance with section 7I(3) of the Ordinance.

12.2 The licensee shall, at the reasonable request of any other licensee under the Ordinance ~~if so authorized by the Authority,~~ give reasonable access to its network information for the facilitation of network planning, maintenance and reconfiguration required for the purposes of Special Condition 3 and section 36AA of the Ordinance. The licensee shall be permitted to charge the requesting party so as to be fairly compensated for the reasonable relevant costs incurred in the provision of such network information.

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12.3 Where the licensee and any other licensee ~~that has requested access to the network information in accordance with Special Condition 12.2 are unable to agree what amounts to reasonable access (including confidentiality requirements and fair compensation for the reasonable relevant costs incurred) or a reasonable request,~~ the matter at issue may be referred by either the licensee ~~or the other licensee,~~ to the Authority for determination.

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13. NETWORK LOCATION

13.1 The licensee shall obtain the consent in writing of the Director of

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Lands before the commencement of any installation works for its network under, in, over or upon any unleased Government land.

- 13.2 The licensee shall keep accurate records of the location of the network installed under, in, over or upon any land.
- 13.3 The licensee shall record the information referred to under Special Condition 13.2 on route plans drawn on an Ordnance Survey Map background of a scale to be determined by the licensee in consultation with the Director of Highways and the Director of Lands.
- 13.4 The licensee shall, at the request of the Director of Highways, the Director of Lands, the Authority or any person who intends to undertake works in the vicinity of the network and who is authorized to do so by the Director of Highways, the Director of Lands or the Authority, provide free of charge information about the location of the network in diagrammatic or other form. The licensee shall make trained staff available on site to indicate the location and nature of the network to the Director of Highways, the Director of Lands, the Authority or any person authorized by the Director of Highways, the Director of Lands or the Authority.
- 13.5 The licensee shall mark or otherwise identify every wire laid or telecommunications installation installed by the licensee or any contractor on its behalf throughout the course of the wire, or at the location of the installation, so as to distinguish it from any other wire or telecommunications installation laid or installed in Hong Kong.
- 13.6 The licensee shall provide, at such intervals as the Authority may determine, distinguishable surface markers of the underground position of the network.

14. CHANGES TO THE NETWORK

- 14.1 For the purposes of this licence, a change in the network is a material change where the implementation of the change would result in the network no longer being in compliance with any relevant technical standard which the Authority has power to issue.

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14.2 The licensee shall notify the Authority of any proposals for material changes to the network and provide him with such information as the Authority reasonably requires.

14.3 The licensee shall not, without the prior consent in writing of the Authority, make any material changes which might reasonably be anticipated by the licensee to affect -

- (a) any telecommunications service or installation connected to the network;
- (b) a person producing or supplying telecommunications apparatus for connection to the network;
- (c) a licensee under the Ordinance;
- (d) a licensee under the Broadcasting Ordinance (Cap. 562); or
- (e) a customer or a consumer of goods and services provided by any person or entity,

if the change is in the opinion of the Authority likely to require modifications or replacements to, or cessation in the production or supply of any of the telecommunications apparatus involved, or if the proposed alteration would require substantial network reconfiguration or rerouting.

14.4 The licensee shall prepare and publish, after consultation with the Authority, its procedures for consulting with and giving notice to persons likely to be affected materially by changes to its network which are required to be notified in accordance with Special Condition 14.2 and any other changes required to be notified pursuant to any technical standard which the Authority has power to issue. Subject to approval of the Authority, the notification procedures to each of the classes of persons likely to be affected under Special Condition 14.3 may differ having regard to the practicality and costs of notifying them.

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15. REQUIREMENTS FOR ROAD OPENING

- 15.1 The licensee shall co-ordinate and co-operate with any other fixed carrier or fixed telecommunications network services licensee under the Ordinance, and any other authorized person in respect of road openings and shall, after being consulted by the Authority, comply with any guidelines issued by the Authority.

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16. REQUIREMENTS OF INSTALLATION OF LINES OR CABLES

- 16.1 The network, or any part of it, if installed under, in, over or upon any public street or other unleased Government land, shall be at such depth, course, route and position as may be determined by the Director of Lands or the Director of Highways.
- 16.2 Without prejudice and in addition to the provisions of any law or Ordinance, in the course of providing, establishing, operating, adjusting, altering, replacing, removing or maintaining the network for the purposes of this licence, or any part of it, the licensee shall –
- (a) exercise all reasonable care, and cause as little inconvenience as possible to the public and as little damage to property as possible; and
 - (b) make good any physical damage caused to any person having a lawful interest in the land or being lawfully thereon and reinstate the land within a reasonable time in good and workmanlike manner. When it is not practicable to make good any damage or to reinstate the land to the condition in which it existed prior to the damage, the licensee shall pay, promptly and fully, compensation for any damage caused to any person having an interest or right in the land affected.

17. WORKS IN PUBLIC STREETS

- 17.1 Where in the course of installing or maintaining the network the licensee needs to open or break up any public street the licensee shall –

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- (a) apply to the Director of Highways or the Director of Lands for permission to open or break up the public streets;
- (b) complete the works for which the licensee has opened or broken up the public street with all due speed and diligence, fill in the ground and remove all construction related refuse caused by its works;
- (c) maintain the site of the works in a safe manner including the fencing of the site and the installation of adequate warning lighting at night; and
- (d) reinstate the street immediately after the completion of the works to the satisfaction of the Director of Highways or the Director of Lands.

17.2 If the licensee fails, within any period specified by the Director of Highways or the Director of Lands, to observe any of the requirements of Special Condition 17.1, the Director of Highways or the Director of Lands may take action to remedy the failure. The licensee shall reimburse the Government any such sum as may be certified by the Director of Highways or the Director of Lands to be reasonable cost for executing any works under the terms of this Special Condition 17.2.

18. INTERFERENCE WITH WORKS OF OTHERS

18.1 Where in the course of installing or maintaining the network, the licensee after obtaining the approval of the Director of Highways breaks up or opens any public street it shall not remove, displace or interfere with any telecommunications line, any gas pipe or water pipe or main or any drain or sewer or any tube, casing, duct, wire or cable for the carriage of electrical current and ancillary installations installed by any other person without that other person's consent.

18.2 In the case where the other person holds a licence under the Land (Miscellaneous Provisions) Ordinance (Cap. 28), any consent referred

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to in Special Condition 18.1 is refused, or cannot be obtained for any reason, the licensee may request the consent to proceed from the relevant authority in accordance with the terms of any licence issued to such other person under the Land (Miscellaneous Provisions) Ordinance, if any.

19. LICENSEE TO ALTER NETWORK ON NOTICE

19.1 The licensee shall, within such reasonable time and in such manner as may be directed by notice in writing by the Director of Highways or the Director of Lands, and at its own expense, alter the course, depth, position or mode of attachment of any apparatus forming part of the network.

19.2 Where the Director of Highways or the Director of Lands gives a direction under Special Condition 19.1, Special Condition 17 shall apply as if such alteration were part of the installation or maintenance of the network.

20. USE OF FREQUENCIES

20.1 The Authority may by notice require the licensee to cease operating the radiocommunications installations 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 frequency spectrum.

21. PURCHASE OF ASSETS

21.1 If a licensee is subject to a universal service obligation specified under Special Condition 1 of this licence and the Ordinance, the Government may elect to take over the licensee's undertaking and purchase its assets if any of the following circumstances occur –

- (i) this licence expires;
- (ii) this licence is revoked;
- (iii) the licensee goes into liquidation; or
- (iv) the licensee ceases to carry on business.

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Provided that if the Government elects to do so it shall give notice in writing not later than 90 days in advance of the expiry of this licence, or immediately upon revocation of this licence or within a reasonable time of the happening of the events at Special Condition 21.1 (iii) or 21.1 (iv).

- 21.2 The selling price shall be agreed between the Government and the licensee on the basis of the fair market value at the time of acquisition determined on the basis that this licence remains in force and that the network is continuing to be used for the provision of the service. If no agreement can be reached between the Government and the licensee, the matter shall be settled by arbitration in accordance with the provisions of the Arbitration Ordinance (Cap. 341).

22. CIRCUMSTANCES OUTSIDE LICENSEES CONTROL

- 22.1 For the avoidance of doubt, General Condition 17.1 of the licence shall apply to these special conditions and the Authority may at his discretion, and on such conditions as he thinks fit, extend any time period within which the obligations of the licensee under these special conditions may be met.
- 22.2 In exercising his discretion under Special Condition 22.1 with respect to any of the special conditions of the licence, the Authority shall take into account including, without limitation, whether circumstances are such that it would be unreasonable to require compliance by the licensee with the relevant special condition.

23. INSURANCE

- 23.1 Throughout the currency of this licence, the licensee shall have and maintain a valid insurance policy with a reputable insurance company to cover its third party liabilities in respect of personal injury, death and damage to property, arising out of or in connection with the installation, maintenance and operation of the network or provision of the service. The amount of insurance shall be at least HK\$10,000,000 per occurrence or such sum as the Authority may

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notify in writing in future.

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SCHEDULE 1

SCOPE OF THE SERVICE

1. Subject to General Condition 3 and Clause 3 of this Schedule 1, all internal and external telecommunication services between fixed points capable of being provided utilising the Network, other than telecommunication services the subject of an exclusive licence issued under the Ordinance, ~~a Mobile Carrier Licence,~~ a Public Radiocommunications Service Licence, a Radio Paging System Licence, a service subject to licensing under any other ordinance, or a satellite broadcasting service under a Satellite Television Uplink and Downlink Licence.

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2. For the purpose of this licence,

a “fixed point” means a network termination point and shall include such area within the immediate vicinity of such a point as the Authority may direct in writing, either generally or specifically, to allow limited mobility for access to that point in such manner as the Authority may approve in writing not inconsistent with Clause 1 of this Schedule 1;

an “internal” telecommunication service means a service for communications between points within the Hong Kong Special Administrative Region; and

an “external” telecommunication service means a service for communications

(a) between one or more points in the Hong Kong Special Administrative Region and one or more points outside the Hong Kong Special Administrative Region; and

(b) between two or more points outside the Hong Kong Special Administrative Region but routed in transit via the Hong Kong

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Special Administrative Region.

3. The licensee may establish and maintain an external telecommunications circuit based on an external cable network or non-cable based external network at the Hong Kong end. For the purpose of this Schedule,

“external cable network” means a network comprising a physical wireline system of overland cables or submarine cables, including without limitation the capacity under any right of use over such cables connecting one or more points in the Hong Kong Special Administrative Region and one or more points outside the Hong Kong Special Administrative Region;

“non-cable based external network” means a network based on satellite or other forms of wireless transmission connecting one or more points in the Hong Kong Special Administrative Region and one or more points outside the Hong Kong Special Administrative Region.

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SCHEDULE 2

DESCRIPTION OF NETWORK

All such telecommunications installations established, maintained, possessed or used whether owned by the licensee, leased, or otherwise acquired by the licensee for the purpose of providing the public internal and external telecommunications network services specified in Schedule 1.

SCHEDULE 3
TECHNICAL PARTICULARS OF RADIO STATIONS FOR
THE PROVISION OF THE SERVICE

Location

Frequency

Class and Characteristics of Emission

Power

Aerial characteristics

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SCHEDULE 4

REGULATORY ACCOUNTING AND INFORMATION PROVISION

REQUIREMENTS

1. Accounting information according to the practices as directed by the Authority under Special Condition 5 for each service provided under this licence or as specified by the Authority.
2. Costing information in respect of each service provided under this licence, or as otherwise specified by the Authority, that is sufficient for the Authority to establish a reasonable cost basis for the service, including but not limited to Long Run Average Incremental Cost on a current cost basis.

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SCHEDULE 5

TERMS OF DISCOUNT TO PUBLISHED TARIFFS

1. Prices of service after discount
2. Free gifts or any other form of rebate, allowances or credits
3. Duration of discount
4. Duration of offer
5. General description of promotion plan including but not limited to targeted customers and tie-in period
6. Conditions governing premature termination
7. Others as specified by the Authority

(Au Man-ho)
Telecommunications Authority

Date: dd mmm yyyy