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Paper for the House Committee meeting on 27 June 2008

**Report of the Subcommittee on Subsidiary Legislation to
Introduce a Unified Carrier Licence under the Telecommunications Ordinance**

Purpose

This paper reports on the deliberations of the Subcommittee on Subsidiary Legislation to Introduce a Unified Carrier Licence under the Telecommunications Ordinance (the Subcommittee).

Background

2. Distinction between fixed and mobile networks and services is becoming increasingly blurred because of market and technology developments, giving rise to "Fixed-Mobile Convergence" (FMC). To ensure that Hong Kong's regulatory environment remains conducive to the development of FMC, the Telecommunications Authority (TA) conducted two public consultation exercises in 2005 and 2006. The TA subsequently issued a statement on "Deregulation for Fixed-Mobile Convergence" on 27 April 2007 recommending creating a Unified Carrier Licence (UCL) as a single vehicle for licensing fixed, mobile and/or converged services.

3. On 21 December 2007, the Secretary for Commerce and Economic Development issued the "Consultation Paper on the Creation of a Unified Carrier Licence under the Telecommunications Ordinance" setting out the proposals on the general conditions, period of validity and fee structure for the UCL. In parallel, the TA issued a separate consultation paper entitled "Licensing Framework for Unified Carrier Licence" covering the special conditions proposed to be attached to the UCL, the general approach for granting a UCL under different scenarios and the arrangement for migration of existing carrier licences to UCLs. The consultation exercises ended on 4 March 2008.

The subsidiary legislation

4. To enable the introduction of the UCL, the Telecommunications (Carrier Licences) (Amendment) Regulation 2008 (L.N. 132) and the Telecommunications

(Level of Spectrum Utilization Fees) (Second Generation Mobile Services) (Amendment) Regulation 2008 (L.N. 133) under the Telecommunications Ordinance (Cap. 106) were gazetted on 16 May 2008 and tabled at the Council meeting on 21 May 2008. Subject to the completion of the negative vetting process within the 2007-2008 legislative session, the two amendment regulations shall come into operation on 1 August 2008. The TA will use the UCL as the licensing vehicle for the broadband wireless access (BWA) service to tie in with the auction of BWA spectrum in the fourth quarter of 2008.

Telecommunications (Carrier Licences) (Amendment) Regulation 2008 (L.N. 132)

5. The major proposals of the Telecommunications (Carrier Licences) (Amendment) Regulation 2008 are:

(a) Definition of unified carrier licence

The UCL will be defined as a new type of carrier licence under the Telecommunications (Carrier Licences) (Amendment) Regulation (Cap. 106 sub. leg. V) for all types of fixed, mobile and converged telecommunications services (or any combination thereof) which are currently authorized under the Fixed Carrier Licence, Fixed Carrier (Restricted) Licence, Mobile Carrier Licence (MCL) and Mobile Carrier (Restricted) Licence, except for the Space Station Carrier Licence.

(b) General conditions

The same set of general conditions currently applied to carrier licences will also apply to the UCL.

(c) Period of validity

The UCL will be granted with a validity period of 15 years, except where a UCL is granted for conversion of an existing carrier licence without change in scope of service in which case the period of validity will be the same as the remaining term of the original carrier licence.

(d) Fees

(i) *Fixed fee* – A UCL licensee is required to pay a fixed annual fee of \$1 million if it is authorized to provide fixed local services or mobile services or both. A lower amount of \$100,000 will apply if it provides fixed external services and/or radiocommunications services where moving stations are primarily for use in locations other than on land (i.e. mobile services other than land mobile services) only.

- (ii) *Customer connection fee* – There will be a subscriber-based fee component of \$8 per customer connection payable per annum under the UCL.
- (iii) *Number fee* – There will be an annual fee of \$3 for each subscriber number allocated to the UCL licensee regardless of whether the number has been assigned to end customers or not.
- (iv) *Spectrum management fee and base station / land station fee* – The calculation of spectrum management fee and base station/land station fee under the UCL will remain at the same levels as those under the current carrier licences.

Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) (Amendment) Regulation 2008 (L.N. 133)

6. Consequential amendments are proposed under L.N. 133 to amend the Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) Regulation (Cap. 106 sub. leg. AA) to the effect that where a MCL has been converted to a UCL utilizing the same spectrum, the period of validity of the relevant UCL shall be counted as from the first issue of the relevant MCL, for the purpose of calculating the spectrum utilization fee as if the licence has not been converted.

The Subcommittee

7. At the House Committee meeting held on 23 May 2008, Members agreed to form a subcommittee to study the two amendment regulations. Hon Bernard CHAN was elected Chairman of the Subcommittee. The membership list of the Subcommittee is in **Appendix I**. The Subcommittee has held three meetings with the Administration and received views on the amendment regulations from the industry players. A list of organizations which have given views to the Subcommittee is in **Appendix II**.

8. To allow sufficient time for members to scrutinize the amendment regulations, a resolution under section 34(4) of the Interpretation and General Clauses Ordinance (Cap.1) was passed at the Council meeting on 18 June 2008 to extend the scrutiny period for the two amendment regulations to 9 July 2008.

Deliberations of the Subcommittee

9. The Subcommittee notes that the Consumer Council, Hong Kong Telecommunications Users Group and mobile operators giving views to the Subcommittee have indicated support for the proposal to create the UCL and restructure the UCL fee as it will provide operators with the incentive to use

telecommunications numbers more efficiently, so as to help prolong the current 8-digit numbering plan and defer migration to a longer-digit numbering plan. The deputations express the views that the introduction of number fee is the right self-regulating tool for striking the balance between the interest of the end-users, the operators and the public resource; and the alignment of licence fee for all fixed and mobile operators under UCL is unavoidable in order to create a unified regulatory environment.

10. The fixed operators giving views to the Subcommittee consider that the proposed increase of customer connection fee from \$7 to \$8 for fixed services and the introduction of a \$3 number fee are unreasonable, premature and unnecessary. They are of the view that there is no imminent need for imposing the proposed number fee as there is still more than 20 million unused numbers held by the Office of the Telecommunications Authority (OFTA) for allocation. As OFTA has achieved good financial results in 2006-2007, fixed operators consider that it should at least maintain the existing level of licence fee. One of them claims that the proposed fee represents an annual increase of 160% in licence fee for fixed services, which will lead to pressure on passing the costs to consumers. Fixed operators therefore urge OFTA to work closely with them to implement administrative measures to promote the efficient use of numbers, such as recycling unused numbers, instead of imposing a number fee.

Telephone numbers as scarce resource

11. As regards the subscriber numbers under the current 8-digit numbering plan, the Administration has advised that there are 54 million numbers available for distribution, of which 36.8 million have been allocated to operators. Unallocated numbers held by OFTA and unused numbers held by operators are about 17.2 million and 16.5 million respectively at present. While the annual consumption of new numbers is 1.6 million on average (1.2 million for mobile services and 0.4 million for fixed services), it is estimated that the current 8-digit numbering plan will be exhausted by 2015 when all numbers designated for mobile services are exhausted. Therefore, it is necessary to introduce timely measures with a multi-pronged approach to prolong the life span of the 8-digit numbering plan, or else the migration to a longer digit plan (9- or 10-digit) will entail high cost on users.

Licence fee

12. The Subcommittee notes that OFTA has all along strived to reduce its operational cost, and the savings achieved will be ploughed back to operators by way of reducing their licence fee. Since the inception of OFTA, licence fee payable by mobile operators per mobile station has reduced from \$75 in 1999 to \$18 at present, and will be further reduced to \$8 under the UCL, which is based on OFTA's cost in regulating the mobile services. Regarding fixed services, the licence fee is proposed to be increased from \$7 to \$8 per customer connection because of the loss incurred by OFTA in the past in regulating the fixed services and that OFTA's workload in administering fixed line services, such as handling of determinations, interconnection disputes, consumer complaints, building access/exchange co-location issues as well as

the review of regulatory issues like directory services, is not expected to decrease in the near future. OFTA stresses that the licence fee for UCL is set with a view to recovering the cost of OFTA in administering the licences, aligning the fees for fixed and mobile services and providing incentive for efficient use of numbers. The Administration considers it fair to apply an across-the-board licence fee to all licensees under the UCL.

13. The Subcommittee has discussed the reason for implementing the number fee. Members note that the utilization rate of allocated numbers is about 60% for both fixed and mobile operators. The number fee will be introduced under the UCL from August 2008 regardless whether the number has been assigned to end users or not. This will provide financial incentive for operators to return idle numbers to OFTA to reduce their operating cost. However, this will not be applicable to existing operators if they opt not to convert their licences to the UCL before expiry of their current licences. The Subcommittee also notes that the number fee is revenue-neutral on the part of OFTA. The amount per number per annum is a relatively small portion which constitutes about 0.5% of the total operating cost for a fixed telephone line. Therefore, it will only bring minimal impact on the cost of fixed operators. The Administration anticipates that given a highly competitive telecommunications market in Hong Kong, operators will carefully consider the market situation before making a decision to pass on the increased operating cost to consumers. As the number fee will constitute one of the fee components of UCL which will be used as the licensing vehicle for new telecommunications services, such as BWA service to be issued in the second half of 2008, the licence fee under UCL has to be determined without delay in order to provide a certain business environment for investors in the market. If the number fee is introduced at a later stage during the validity period of a UCL issued, it will be perceived as unfair to the licence holder.

14. Some members consider it contradictory to introduce the proposed number fee as a means to discourage operators from using numbers while OFTA will rely on it as part of its revenue. The Administration has explained that as telecommunications numbers are scarce public resource, it is reasonable to impose a fee on operators who use the public resource for commercial purpose to cover the cost of the regulator in managing the resource. Similar fee is being charged for operators' use of spectrum which is likewise a scarce public resource. In budgeting the licence fee income, OFTA has made projections such that the variation in income from the number fee should not adversely affect OFTA in achieving the prescribed return on fixed assets. The present proposal has carefully balanced the need to encourage efficiency in using telecommunications numbers and to cover OFTA's cost in regulating the industry.

Assessment of different scenarios for charging number fee

15. Hon Albert CHAN considers that OFTA has proposed an across-the-board number fee merely for administrative convenience. He suggests that OFTA should agree with the operators on the quantity of numbers required for operational need, and that those exceeding the agreed quantity should be returned to OFTA, thereby releasing the pressure on number exhaustion without jeopardizing the industry's

normal operation. He also suggests that a certain amount of the proposed number fee should be waived based on the actual usage of each operator in the past three years, and a penalty should only be imposed on idle numbers held by operators. Hon Albert CHAN has called on operators to propose options for exempting the number fee for the Subcommittee's consideration.

16. Noting that any material change to the proposed fee structure should be subject to public consultation, members of the Subcommittee have asked the Administration to assess different options for charging number fee under UCL, as follows:

- (a) whether the number fee can be applied only for idle numbers;
- (b) whether the proposed number fee can be abolished with a penalty charge imposed only on idle numbers; and
- (c) whether a certain amount of the number fee can be waived for all UCL licensees.

Applying number fee only for idle numbers

17. The Administration has advised that the option of applying number fee for idle numbers only cannot achieve the policy objective of promoting the efficient use of numbers. It will encourage operators to assign numbers in a less than disciplined manner so as to reduce or evade the number fee payable, thus leading to unnecessary consumption of numbers. At present, OFTA only has information on the amount of numbers allocated to operators, but not on idle numbers held by them. OFTA therefore cannot accurately assess the amount of idle numbers for charging a number fee. It is also difficult to define "idle numbers". Whether numbers reserved for expansion by customers (such as users of private automatic branch exchange), numbers given up by users due to service termination and cannot be immediately re-assigned to other users, and numbers for internal use by operators, trials and testing should be classified as "idle numbers" are subject to argument. In fact, no other administration overseas has adopted a scheme of charging number fee for idle numbers only.

18. In discussing the option of applying number fee for idle numbers only, the Subcommittee notes that OFTA will need to raise the level of other fee components like the customer connection fee in order to compensate for the shortfall of income so as to cover OFTA's cost. Based on OFTA's initial assessment, the customer connection fee has to be increased up to \$12 per connection so as to maintain the same level of revenue. As a result, there will be adverse impact on some operators, in particular the mobile operators, as compared with the original proposal of the Administration.

Abolishing the proposed number fee and imposing a penalty charge only on idle numbers

19. If a penalty charge is imposed only on idle numbers, the Subcommittee notes that operators will seek to keep the numbers "not idle" so as to avoid the penalty. As licence fee designed for collection by the OFTA Trading Fund only aims at recovering cost, charging a penalty element in the licence fee may be subject to challenge of being ultra vires. It is therefore not feasible to introduce a penalty charge on idle numbers.

20. The Subcommittee also notes that OFTA will suffer even greater reduction in income than that under the option of charging idle numbers only and abolishing the proposed number fee. Based on OFTA's initial assessment, the customer connection fee has to be increased up to \$15 per connection so as to maintain the same level of revenue. The adverse impact on mobile operators will be even greater as compared with the original proposal of the Administration.

Waiving a certain amount of the number fee

21. In discussing whether a certain amount of the number fee can be waived for all UCL licensees, the Subcommittee notes that it is difficult to apply an aligned and objective standard on what amount or percentage of numbers should be exempted from the number fee since different operators have different operational needs. To ensure a level playing field, OFTA cannot negotiate with individual operators on the amount of numbers for which the number fee can be waived. This option will not help promote the policy objective of encouraging more efficient use of numbers. Operators may take advantage of the waiver and apply for the exempted amount of numbers, irrespective of whether there is actual operational need for these numbers, which can be kept by operators at no cost.

22. Having carefully examined these options and the alternative proposals made by operators, the Administration has advised that such proposals are not feasible, or not worth pursuing for achieving the policy intent to encourage operators to use number resources efficiently.

Review of UCL regime after imposition of the number fee

23. Hon SIN Chung-kai considers that the imposition of the number fee is a policy change which will have significant implications to operators and their existing users. In taking forward the proposal, the Administration should review the UCL regime and study whether the number fee has achieved its intended purpose of prolonging the current 8-digit numbering plan three years after its commencement. At the Subcommittee's request, the Administration has undertaken to report to the Panel on Information Technology and Broadcasting (ITB Panel) on the outcome of the review.

Administrative measures for improving number utilization

24. The Subcommittee notes that OFTA has set up a Working Group on Numbering Issues, with participation of various stakeholders (including operators, vendors, the Consumer Council, Hong Kong Telecommunications Users Group and the Hong Kong Institution of Engineers) to examine administrative measures for improving number utilization. These include allocating smaller number blocks (to be reduced from the existing size of 100,000 to 10,000 numbers per block), raising the threshold for operators' eligibility to request the allocation of new numbers from 60% to 70% or 80%, and permitting operators to return non-consecutive idle numbers.

25. The Administration has proposed to introduce the number fee to paging operators and mobile virtual network operators with a view to providing financial incentives for them to return idle numbers to OFTA. As for Service-Based Operators Licence, an annual number fee of \$7 has been implemented since its inception in 2006. OFTA has also started to allocate numbers beginning with the digit "5" for mobile services from May 2008, and will consider allocating numbers beginning with the digit "7" for mobile services after exhaustion of the digit "5".

26. As the introduction of the proposed financial and administrative measures to increase the utilization rate of numbers will enable the reclamation of idle numbers, thereby prolonging the current numbering plan to beyond 2026, Hon SIN Chung-kai has requested the Administration to provide the ITB Panel with detailed statistics on the utilization rate of numbers allocated to operators, after a conclusion has been reached between OFTA and operators on the definition of idle numbers.

Other proposed measures

27. Hon SIN Chung-kai notes that numbers returned by operators will, in the first place, be allocated to the same operator when they apply for new allocation, thereby saving operating cost of OFTA and operators in managing numbers, and at the same time preventing operators from hoarding auspicious numbers by returning unwanted numbers. He suggested that OFTA should inform the operators concerned before re-allocating their returned numbers to another operator (i.e. the operators be given a right of first refusal). OFTA has confirmed that the suggestion is in line with the approach being considered by it for re-allocation of numbers returned by operators.

28. Noting the progress of the proposal to implement Fixed Mobile Number Portability (FMNP) and its implications on the UCL, members of the Subcommittee consider that the advantage of FMNP should be advocated as it should prolong the life span of the current numbering plan. They also suggest that OFTA, in the long run, should consider the feasibility of abolishing the fixed length concept (i.e. telephone numbers with a unified and fixed amount of digits) and adopt a flexible numbering plan with specific digits signifying the start and end of a telephone number. This will avoid investments required for migrating to a longer numbering plan in future. The Administration has advised that flexible numbering plan is only used in international direct dial in view of the variable length of numbers used by overseas countries and the

end of the overseas telephone numbers is signified by the "#" key. To enable more effective call processing by the telephone network, a unified numbering scheme with fixed amount of digits for each subscriber number, i.e. the 8-digit numbering plan, was adopted in 1995. While there are on-going studies on other codification method (e.g. by keying in the called party's name), appropriate measures should be adopted as soon as possible to prolong the life span of the current numbering plan.

Conclusion

29. The Subcommittee has completed scrutiny of the amendment regulations. The majority of the members of the Subcommittee support the Administration's legislative proposals and the implementation of various measures to prolong the life span of the 8-digit numbering plan.

30. The Subcommittee notes that Hon Albert CHAN has given notice to move a motion to repeal the regulations at the Council meeting on 9 July 2008.

Advice sought

31. The House Committee is invited to note the deliberations of the Subcommittee.

Council Business Division 1
Legislative Council Secretariat
26 June 2008

**Subcommittee on Subsidiary Legislation to Introduce a Unified Carrier Licence
under the Telecommunications Ordinance**

Membership List

Chairman Hon Bernard CHAN, GBS, JP

Members Hon SIN Chung-kai, SBS, JP

Dr Hon Philip WONG Yu-hong, GBS

Hon Jasper TSANG Yok-sing, GBS, JP

Hon Howard YOUNG, SBS, JP

Hon Albert CHAN Wai-yip

Hon Ronny TONG Ka-wah, SC

(Total : 7 members)

Clerk Ms YUE Tin-po

Legal Adviser Mr Kelvin LEE

**Subcommittee on Subsidiary Legislation to Introduce a Unified Carrier Licence
under the Telecommunications Ordinance**

List of organizations which have given views to the Subcommittee

1. PCCW Limited
2. Hong Kong Broadband Network Limited
3. Hong Kong CSL Limited and New World PCS Limited
4. Consumer Council
5. Wharf T&T Limited
6. Smartone Mobile Communications Limited
7. PACNET
8. Hong Kong Cable Television Limited
9. Hong Kong Telecommunications Users Group
10. New World Telecommunications Limited