

**For Discussion
on 8 June 2009**

**Legislative Council Panel
on Information Technology and Broadcasting**

**Review of the Public Non-Exclusive Telecommunications Services
and Services-Based Operator Licensing Regimes**

Introduction

This paper briefs Members on the review conducted by the Telecommunications Authority (“TA”) on the Public Non-Exclusive Telecommunications Services (“PNETS”) and Services-Based Operator (“SBO”) licensing regimes.

Background

Existing Licensing Regimes

2. Public telecommunications services can be provided either by facility-based operators or service-based operators. Facility-based operators establish their own networks for provision of public telecommunications services. Service-based operators provide public telecommunications services (such as external telecommunications services (“ETS”), international value-added network services (“IVANS”), Internet access services and voice over IP (“VoIP”) services) by using the networks established by facility-based operators. At present, facility-based operators are in general regulated under the carrier licensing regime whereas the service-based operators are licensed under two discrete telecommunications licences, namely the PNETS Licence and the SBO Licence.

3. The PNETS Licence was introduced in the 1980’s when local and external fixed telecommunications services were provided under exclusive franchises. As the name suggests, the PNETS Licences were intended for licensing non-exclusive telecommunications services which were outside the scope of the exclusive franchises. Currently, there are

eight major categories of services¹ licensed under the PNETS licensing regime with over 500 licensees who are mainly ETS and IVANS providers. However, except for mobile virtual network operator (“MVNO”) service, local voice telephony services are excluded from the scope of the PNETS Licence. In January 2006, the TA introduced the SBO Licence adopting a two-tier (i.e. Class 1 and Class 2) approach² under which service providers are allowed to operate local fixed voice telephony services with various technologies, including VoIP. Apart from local fixed voice telephony services, the SBO licensees may also offer most of the services covered by the PNETS Licence³.

4. With the full liberalisation of the telecommunications market, all services are now provided on a competitive basis. The name of the PNETS Licence has become obsolete, as it no longer reflects the market situation. With SBO Licences covering voice-telephony services and most of the services under PNETS Licences, the TA plans to streamline the licensing arrangement for service-based operators by subsuming the outdated PNETS Licence under the SBO Licence. This arrangement will enable a service-based operator to provide a variety of telecommunications services under a single licensing framework (i.e. the SBO Licence) and should be conducive to the further development of the market.

Proposed New Licensing Regime

Scope of service and licence conditions

5. Given that the services covered by the PNETS and SBO Licences are similar in nature, the TA proposes to subsume the PNETS licence under the SBO Licence by expanding the scope of the SBO licensing regime with the creation of a new “Class 3” type of service to replace the PNETS Licence. The modified SBO Licence (the “Modified SBO Licence”) will contain a common set of general conditions and special conditions with some updates to reflect the latest regulatory requirements. In addition, some specific licence conditions in the

¹ They are ETS, IVANS, miscellaneous value-added service, mobile virtual network operator (“MVNO”) services, private payphone service; public radio communications relay service, security and fire alarm signals transmission service, and teleconferencing service.

² Class 1 service is under the prefix of “2”/”3” with number portability (which is similar to the conventional local fixed telephony services) whereas Class 2 service is under the prefix of “57”/”58” without some attributes of a conventional local fixed telephony service, e.g. number portability, provision of directory service, etc.

³ Except for MVNO and public radio communications relay services.

existing PNETS Licence which are considered appropriate for regulation of the concerned services will be transplanted to the Modified SBO Licence for provision of the relevant Class 3 services. On the whole, the existing PNETS licensees will be required to observe similar obligations under the Modified SBO Licence as imposed under the existing PNETS Licence.

6. Under the existing licensing regime, SBO licensees may provide services (i.e. Class 1/Class 2 services) to fixed customers only. This is because when the SBO licence was introduced in 2005, mobile data services were not as popular as they are today and the TA did not then consider it necessary for the SBO Licence to cover mobile services. Recent developments (such as the introduction of high speed packet access service at affordable prices, the massive rollout of public Wi-Fi hotspots and the assignment of frequency spectrum for the deployment of broadband wireless access services) have transformed the landscape and made wireless broadband access services more pervasive. In view of this, the TA proposes to amend the SBO Licence so that Class 1/Class 2 service providers may offer fixed, mobile or converged services under the Modified SBO Licence.

7. To enhance consumer protection, the TA proposes to insert a special condition in the Modified SBO Licence requiring licensees to comply with codes of practice which may be issued by the TA with respect to service contracts and also the requirement to submit consumer disputes for handling under an independent dispute resolution scheme⁴. A similar licence condition has been included in the Unified Carrier Licence used for licensing facility-based operators. As such, this proposal will serve to align the consumer protection requirement imposed on the facility-based and service-based operators. The TA would encourage the industry to tackle these issues proactively and voluntarily. If the self-regulatory regime driven and supported by the industry operates satisfactorily, there will be no need for regulatory intervention for the purpose of this special condition.

Licence validity period and migration arrangement

8. Similar to the existing PNETS and SBO Licences, the Modified SBO Licence will have a validity period of one year and be renewable on an annual basis. When the Modified SBO Licence is put in place, the

⁴ The TA has introduced this licence condition under the new unified carrier licence in August 2008.

TA will process all new applications for service-based licences under the SBO licensing regime. The existing PNETS Licences will remain in force until their next annual renewal date, when they will be replaced by the Modified SBO Licence. Holders of existing SBO Licences should return their licences for amendment before the next annual renewal date if they wish to continue the operation of their existing services. They may also take the opportunity to expand the scope of their services so that they may provide other services that are permissible under the Modified SBO Licence.

Fee Structure

9. In principle, licence fees payable under licences issued by the Office of the Telecommunications Authority (“OFTA”) are designed for cost recovery of the expenses of OFTA in administering the licences. With regard to the licence fees of the Modified SBO Licence, the TA proposes to adopt a similar structure of fee components as the existing SBO and PNETS Licences. The licence fees under the existing and the proposed licensing regimes are listed in the table below.

<i>Licence / Service</i>	<i>Existing</i>	<i>Proposed</i>
<i>Fixed Annual Fee</i>		
SBO Class 1	\$90,000	\$25,000 ⁵
SBO Class 2	\$25,000	\$25,000 ⁶
PNETS Licence / SBO Class 3	\$750	\$750
<i>Variable Annual Fees</i>		
Base Station Fee per base or fixed station under PNETS Licence / SBO Class 3	\$750	\$750
Mobile Station Fee under PNETS Licence / SBO Class 3	\$8 ⁷	\$8
Number Fee per subscriber number	\$3 (for PNETS) or \$7(for SBO) ⁸	\$3

⁵ The fixed fee for provision of Class 1 service under the Modified SBO Licence is proposed to be aligned with that for Class 2 service. Furthermore, if Class 1 / 2 services are authorised for provision by a licensee, there will be no additional fixed fee for provision of any type of Class 3 service by the licensee under the Modified SBO Licence.

⁶ Ditto

⁷ Effective from 1 June 2009, the mobile station fee for the MVNO services provided under the PNETS Licence has been reduced from \$18 to \$8 per mobile station.

⁸ Under the existing SBO Licence, the number fee is \$7 per subscriber number. Under the PNETS Licence, a number fee of \$3 has been imposed for the MVNO services effective from 1 June 2009.

10. Since the launch of the SBO licensing regime in January 2006, the TA has issued twelve SBO Licences. All of the licensees provide Class 2 services only. With three years of experience in implementing the SBO, the TA has come to the view that the resources deployed to administer Class 1 and Class 2 licensees would not be too different. The TA therefore proposes to align the annual fixed fee for Class 1 services, currently pitched at the level of \$90,000, to that for Class 2 services (i.e. \$25,000). The alignment should simplify the administration of the SBO Licence. For SBO licensees, the lower licence fee would reduce their cost of providing Class 1 services and they may thus have an additional incentive to launch Class 1 services resulting in more choice for consumers.

11. In the existing SBO Licence, a fee of \$7 is charged for each subscriber number to recover the costs of administering the licence and to encourage efficient use of this scarce telecommunications resource. Under the Modified SBO Licence, the number fee will be reduced from \$7 to \$3 for each subscriber number. Such revision will bring the level of the number fee in line with that currently applied to other types of licences⁹.

12. Overall, under the Modified SBO Licence, the proposed licence fees for the new Class 3 services will be similar to the existing PNETS, while the licence fees for Class 1 / 2 services will be reduced. The streamlined licensing regime should encourage service-based operators to provide a greater variety of services under a single licence and enable them to respond to market demand in a timely manner. The proposed regulatory framework is pro-investment, pro-competition and should bring benefits to consumers with a wider choice of innovative services.

Public Consultation

13. The TA launched a two-month public consultation on this subject on 11 March 2009. A total of eight submissions were received (the respondents are listed in **Annex**). The consultation paper and the submissions are published on the website of the OFTA at www.ofta.gov.hk for public consumption.

⁹ The number fee for unified carrier licence, PNETS licence for MVNO services and public radiocommunications services licence for paging services is \$3 per subscriber number.

14. Respondents are in general supportive of the proposal of subsuming the PNETS Licence under the SBO licensing regime. There are views suggesting fine-tuning of certain proposed arrangements and the TA will take these into account before finalizing the new SBO licensing framework.

Way Forward

15. The TA will issue a statement setting out her decision on this subject and publish the Modified SBO Licence in the Government Gazette. It will take about one year from the effective date of the new SBO licensing regime to migrate all the existing SBO and PNETS Licences to the new regime.

Office of the Telecommunications Authority
1 June 2009

List of Respondents to the Consultation Paper on “Review of the Public Non-Exclusive Telecommunications Service and Services-Based Operator Licensing Regimes”

1. China Mobile Hong Kong Co. Limited
2. Citifax Information Management Limited
3. Hong Kong Broadband Network Limited
4. Macquarie Telecom Pty Limited
5. PCCW-HKT Telephone Limited and Hong Kong Telecommunications (HKT) Limited
6. V-Connect Limited
7. Zone Limited
8. Wharf T&T Limited