

Press Release

OFTA Issues Fair Usage Policy Guidelines to Facilitate Informed Consumer Choices of Broadband Services

To provide guidance to broadband service providers on how they may implement Fair Usage Policy (FUP) and to enhance the transparency of service information to facilitate better informed consumer choices, the Office of the Telecommunications Authority (OFTA) today (9 November 2011) promulgated a set of mandatory guidelines setting out the relevant guiding principles for compliance by service providers.

Currently, mobile and fixed broadband service providers offer a variety of service plans, including unlimited usage plans, to cater for the needs of customers in the fiercely competitive telecommunications market. The so called “unlimited” service plans are however subject to limitation, in the name of the FUP. For example, service providers may impose restriction through reducing access speed for customers whose data usage has exceeded a specified threshold. Service providers apply FUP to ensure their customers as a whole may have a fair opportunity to enjoy and access to their services and to prevent possible abuses by a small number of customers.

Consumers in general are not aware of the existence of FUP, nor do they understand the relevant terms and conditions. Users of unlimited service plans in particular feel aggrieved when their usage is subject to restriction because of FUP. This has given rise to consumer complaints. In 2010 and the first ten months of 2011, OFTA received 160 and 74 FUP-related customer complaints respectively.

To better protect consumer interest, the Telecommunications Authority (TA) has set out clearly in the guidelines the principles governing the application of FUP, as follows:

- Service providers shall not impose any limitations, including any forms of FUP on subscribers of unlimited local data service plans;
- Service providers promoting service plans with the word “unlimited” included in the name thereof shall set out clearly in the advertising and sales materials the necessary qualifications if any

form of FUP is applicable;

- Service providers shall set out in their websites, customer service agreements and related advertising and sales materials whether their plans are subject to FUP, the forms of FUP applicable etc;
- Service providers shall clearly advise customers before any contract is concluded whether their service plans are subject to FUP, and if so, the triggering mechanism and the forms of restrictions applicable;
- Service providers may only restrict service level in such a manner that commensurate with what an average customer would normally perceive as a broadband service;
- Service providers shall give customers sufficient notice before varying unilaterally the salient terms specified in the FUP;
- FUP shall not be intermixed with provisions unrelated to FUP; and
- Service providers shall provide advance notice to customers with excessive usage before triggering FUP, and provide detailed record of data usage upon request.

“Under our light-handed regulatory policy, service providers are free to offer unlimited service plans, with or without qualifications, so long as they adhere to the principles stipulated in the guidelines governing FUP’s application,” a spokesperson of OFTA said.

“Service providers offering unlimited plans without qualifications must ensure that their networks are equipped with sufficient capacity so that they are truly capable of providing unlimited services to the relevant customers. Otherwise, they may risk contravening the guidelines and section 7M of the Telecommunications Ordinance, which prohibits licensees from engaging in misleading or deceptive conduct in providing telecommunications services,” the spokesperson added.

To allow sufficient time for service providers to make the necessary preparations, the guidelines will take effect in about three months’ time, on 13 February 2012. Service providers are required to comply with the guidelines on a mandatory basis for all new/renewed service contracts signed on or after 13 February 2012.

More details about the guidelines can be found in the document entitled “Guidelines for the Implementation of Fair Usage Policy for the Provision of Mobile and Fixed Broadband Services” posted on OFTA’s website

(http://www.ofta.gov.hk/en/report-paper-guide/guidance-notes/gn_201124.pdf). The submissions that the TA has received during the consultation process and his responses to these submissions are also available at (<http://www.ofta.gov.hk/en/consultations/circulardoc/20111003/table.html>) and (http://www.ofta.gov.hk/en/consultations/circulardoc/circular_20111109_annex-1.pdf) respectively.

Office of the Telecommunications Authority
9 November 2011