



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

Submission by PCCW-HKT Telephone Limited

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Introduction

1. PCCW-HKT Telephone Limited (“**PCCW**”) writes in relation to the proposed subsidiary legislation by the Commerce and Economic Development Bureau (“**CEDB**”) to create a new Unified Carrier Licence (“**UCL**”) under the Telecommunications Ordinance. Under these proposals, the CEDB intends to, amongst other things:

- (i) Increase the licence fees currently payable by the fixed line operators under their Fixed Carrier Licence by raising the per customer connection fee by 14%; and
- (ii) Charge all operators a new fee of \$3 per annum for each telephone number which has been allocated to them (“**Number Fee**”).

2. PCCW disagrees with these proposals and has previously written to the CEDB and the Office of the Telecommunications Authority (“**OFTA**”) to state its objections. The CEDB and OFTA have replied to PCCW’s comments.

3. Taken together, these two fee changes will increase the licence fees of the fixed line operators by about \$45 million. The fixed line operators cannot see any justification for this very substantial cost increase in terms of OFTA’s workload, any shortage of numbers, or market factors. Indeed, on top of the \$600 million in possible lost revenues by the fixed line operators resulting from the Government’s deregulation of fixed-mobile interconnection charges, this is simply adding insult to injury.

4. PCCW would now like to take this opportunity to explain why this substantial fee increase is inappropriate and to respond to the explanations put forward by the CEDB and OFTA regarding the increased licence fees payable by fixed line operators under the UCL and the new Number Fee which the CEDB is seeking to introduce.

Level of Licence Fees payable by Fixed Line Operators

5. The increase in the customer connection fee for fixed line operators is accompanied by a *decrease* in the fee for mobile operators. Coupled with the introduction of the Number Fee, in total terms, OFTA claims that it neither gains nor loses financially from the revision of these licence fees. OFTA therefore insists that the fees proposed under the UCL have a neutral impact on its Trading Fund.

6. The fact that the revised set of licence fees do not affect OFTA's revenues is irrelevant. The plain truth is that, under the UCL, fixed line operators end up paying substantially more licence fees than under their present Fixed Carrier Licences, and this cannot be disguised. This is unreasonable given that OFTA has failed to justify the increased fees for fixed line operators on any increased work load in areas involving fixed line operators. Indeed, as the fixed line market has become more competitive and OFTA is gradually withdrawing from regulation, there should be less for OFTA to do.

7. Logically, if OFTA is no longer required to devote as many resources as before in administering the licences of a particular sector of the industry then the fees for that group of operators should rightfully be reduced or at least not increased. However, OFTA cannot be permitted to increase the licence fees of one sector to compensate for increased work in another sector. To be clear, the major issues before OFTA appear to be more concentrated in the mobile sector or are neutral between fixed line and mobile operators. These include: Broadband Wireless Access, 2G mobile spectrum refarming, mobile television, fixed-mobile number portability, fixed-mobile interconnection charges, CDMA 2000 mobile services.

Number Fee

8. PCCW agrees with the CEDB and OFTA that expanding the Hong Kong Numbering Plan to 9 or 10 digits will be a costly and time-consuming exercise. It is also reasonable to expect that the present Numbering Plan cannot be maintained indefinitely. However, the current 8 digit Numbering Plan is not presently at risk and will not be at risk for years to come.

9. There are still blocks of unused numbers in the existing number ranges used by the fixed line and mobile operators (i.e. digits "2", "3", "6" and "9"), and whole blocks of numbers still remain unused or severely under-utilized in the "5" and "7" number ranges. Just in the "5"

and “7” number ranges alone, there are almost 20 million numbers available. In addition, the CEDB has acknowledged that only around 20 million numbers have been assigned to fixed line and mobile customers. In total, therefore, taking into account the unused numbers in the “2”, “3”, “6” and “9” number ranges and the “5” and “7” number ranges (assuming these latter two number ranges will also be used for fixed line and/ or mobile services), PCCW estimates that up to 40 million numbers remain available for assigning to fixed line and mobile users. As this represents a massive 200% of the total quantity of numbers already assigned, it hardly justifies the CEDB characterizing the current situation as dire or the introduction of severe measures to curb the use of telephone numbers.

10. In addition, other more proportionate measures could be imposed by the TA to ensure that the present Numbering Plan is being used in the most effective manner (e.g. raising the % number utilization threshold to 70% before operators can apply for more numbers, opening up the “5” number range and releasing number blocks under the “7” number range for use, instituting procedures for the return of unused numbers) before the TA considers introducing a Number Fee. The Number Fee should only be imposed as a last resort as it does create a financial burden, however small or large, on all the operators in the industry. We have not yet reached the point where a Number Fee needs to be implemented.

11. The CEDB has indicated that number *hoarding* is a driver for its fee proposal. The answer to this is firstly, no number shortage exists and secondly, no hoarding has occurred. But the logic of a number hoarding *tax* would simply be to impose a charge on the hoarded numbers (i.e. those numbers which have been allocated but not yet used). Yet, the CEDB’s approach is to tax all numbers regardless of whether or not they have already been assigned to customers. Thus, an operator would have to pay the Number Fee even for those numbers which it is clearly not *hoarding*.¹

12. Based on the CEDB’s own assessment of the extent of number utilization, there is no clear or urgent basis for imposing any taxes. But

¹ OFTA has suggested that the reason for also imposing the Number Fee on used, as well as unused, numbers is to discourage operators from assigning numbers *in a less than disciplined manner in order to avoid the number fee*. But it is not OFTA’s role to dictate how an operator runs its service and how it assigns telephone numbers to its customers. The rationale for introducing the Number Fee is to discourage number hoarding, but the Number Fee does not adequately achieve this objective and, on the contrary, penalizes operators for proper use of telephone numbers.

even if the CEDB were justified in taking action, the tax should only apply to unused numbers. In fact, this latter proposal was supported by the Hong Kong Telecommunications Users Group (“HKTUG”), which represents the business users in Hong Kong, in its submission under the TA’s *Consultation on Licensing Framework for Unified Carrier Licence* (“**UCL Consultation**”).

13. Whilst the CEDB suggests that there is some urgency in introducing the UCL (in order to be ready for the licensing of Broadband Wireless Access services in the fourth quarter of this year), the two items are not related and there is no reason why the imposition of the Number Fee cannot be deferred, or at least delayed, until OFTA has had a proper chance to:

- (i) Examine whether there is a real danger of Hong Kong running out of telephone numbers before 2010, as claimed (and if so, whether this is actually due to number hoarding by the operators); and
- (ii) Institute all the other *passive* measures suggested to encourage the more efficient use of numbers and assess whether these are sufficiently effective in extending the life of the Numbering Plan until, or beyond, 2010 before imposing the Number Fee.

14. The CEDB also seems to place great importance on a survey it conducted (but does not appear to have been made public) regarding the introduction of the Number Fee in which 64% of the respondents *agreed or did not object to the proposed number fee*. PCCW does wonder about:

- the percentage of respondents who did not object;
- the percentage of respondents who disagreed or did not support the proposed Number Fee;
- exactly who the respondents were;
- the exact questions asked; and
- whether this group of respondents, in putting forward their views, were made aware of the possibility that fixed line and/ or mobile operators might be inclined to increase their charges if such a fee were imposed².

² In any case, it is misleading to suggest that *not objecting* to the Number Fee equates to supporting the imposition of this charge.

With respect, we all know that polling answers can be driven by how the questions are worded.

15. Indeed, whilst the CEDB suggests that both the HKTUG and Consumer Council were heavily in favour of introducing the Number Fee, closer inspection of the comments they made under the UCL Consultation seem to indicate a concern that such fees might be passed onto consumers by the operators if they were to be imposed. This tends to suggest that their support for the introduction of such a charge would depend on whether consumers would be required to pay for the Number Fee and the reality of whether there was indeed a number shortage at all. Given the total increase in licence fees experienced by the fixed line operators under the UCL (and the impending deregulation of fixed-mobile interconnection charges), it would be frivolous to suggest that none of the increased charges would be passed onto consumers.

Conclusion

16. PCCW finds the increase in licence fees for fixed line operators to be unjustified and unnecessary. There is no reason for OFTA to increase the licence fees of one particular group of operators when it has not explained how these fee increases have been reflected by an increased work load in administering the licences pertaining to these operators. The present customer connection fee payable by fixed line operators should be reduced, or at least remain unchanged under the UCL.

17. PCCW believes that there is no real danger of Hong Kong running out of telephone numbers before 2010 or beyond. Based on the figures stated by the CEDB, Hong Kong has up to 40 million numbers still left to be assigned to fixed line and mobile customers, representing a massive 200% of the total quantity of numbers that have already been used today. If the CEDB is still minded to take preventative action, however, there are non-financial measures that can be deployed to encourage more efficient use of numbers. These should be implemented first and only if necessary should the Bureau consider imposing a Number Fee. The introduction of such a fee is both unnecessary and undesirable.

Submitted by
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