

**For information
on 14 January 2008**

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

**Public Consultations on the Creation of a Unified Carrier Licence
under the Telecommunications Ordinance**

Purpose

This paper briefs Members about the two consultation papers issued on 21 December 2007 by the Secretary for Commerce and Economic Development (“SCED”) and the Telecommunications Authority (“TA”) concerning the proposals for creation of a unified carrier licence (“UCL”) and the detailed licensing framework for the UCL respectively.

Background

2. Distinction between fixed and mobile networks and services is becoming increasingly blurred due to market and technology developments. This phenomenon is commonly referred to as “Fixed-Mobile Convergence” (“FMC”). To ensure that our regulatory environment remains conducive to the emergence of FMC, the 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. In that statement, the TA indicated that he would recommend to the SCED the creation of a Unified Carrier Licence (“UCL”) as a single vehicle for licensing fixed, mobile and/or converged services.

3. Before the making of necessary regulation(s) under the Telecommunications Ordinance (“Ordinance”) for creation of the UCL, the SCED is required under section 7(3) of the Ordinance to carry out a

consultation on the general conditions (“GCs”), period of validity and fee structure for the UCL. We have issued a consultation paper for this purpose. In addition, the TA issued a separate consultation paper covering the special conditions (“SCs”) 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 two consultation papers aim to give a full picture to the industry on the Government’s proposal for the new carrier licensing regime. The executive summaries of these two consultation papers are at **Annexes A and B** respectively.

Details of the Proposal

Scope of UCL

4. It is proposed that the UCL should be the general and single licensing vehicle for facility-based operators providing public telecommunications services, including those services authorised under the four existing types of carrier licences, namely fixed carrier licence (“FCL”), fixed carrier (restricted) licence (“FCRL”), mobile carrier licence (“MCL”) and mobile carrier (restricted licence) (“MCRL”). The applicable scope of service for a UCL will depend on the application proposal of the individual licensee and will be specified by the TA when the licence is issued. As such, the proposed UCL will allow operators to provide different services under a single and flexible licensing framework, thereby paving the way for FMC.

Licence period for UCL

5. The validity period of the proposed UCL issued for a new application or replacement of an existing carrier licence upon its expiry would be 15 years, which is the same as the existing FCL and MCL. In the circumstance where an existing carrier licensee applies to convert its licence to UCL without any change of service scope, the validity period will be the same as the remaining term of the original carrier licence. For other conversion cases, such as the case where multiple fixed / mobile carrier licences are combined and converted to a single UCL, it would be

treated as if UCLs are applied for replacement of the existing carrier licence(s) and the UCLs which may be granted will have a full validity period of 15 years.

Licence fee

6. The proposed licence fees for UCL, which are set out in Table 1 below, follow a similar structure of fee components in the existing carrier licences. The level of licence fees is set with a view to recovering the costs of the Office of the Telecommunications Authority (“OFTA”) in administering the licences and unifying the fees for fixed and mobile services under the UCL in the light of FMC.

Table 1 : Proposed fees for UCL

Fixed fee component	Subscriber-based fee components	Non-subscriber-based fee components
(1) Annual fee (\$1,000,000 ¹ ; or \$100,000 for external fixed service only and/or for radiocommunications services where moving stations are primarily for use in locations other than on land only)	(2) Customer connection fee (\$8 per connection ²)	(3) Number fee: (\$3 per subscriber number) (4) Spectrum management fee ³ (5) Base station / land station fee ⁴

7. To encourage the efficient use of scarce resources of telecommunications numbers, it is proposed that a new annual fee of \$3 per number will be imposed irrespective of whether the allocated numbers are used by end customer or not. At present, fixed and mobile network operators may apply to the TA for telecommunications numbers at no charge. With the existing consumption rate, the 8-digit numbering

¹ The annual fixed fee is at the same level as the existing FCL for local fixed services.

² The existing fee is \$7 per customer connection for FCL and \$18 per mobile station (the equivalent of a customer connection) for MCL respectively.

³ The calculation methodology is basically the same as the existing FCL and MCL.

⁴ The calculation methodology is basically the same as the existing FCL and MCL.

plan may be exhausted in seven years if appropriate preventive measures are not taken in time. Migration to a longer-digit plan will have wide social implications, in terms of cost and inconvenience, to society and as such, more efficient use of telecommunications numbers by the operators is encouraged. Under the proposal, the more number resources a licensee consumes, the higher amount of total number fee it has to pay. Alternatively, the licensee may return unused numbers to the TA in order to reduce the number fee payable. The proposed number fee should therefore provide the necessary economic incentive for the licensees to make use of their numbers more efficiently, thereby helping to prolong the lifetime of the existing 8-digit numbering plan.

General Conditions

8. It is proposed that the same set of GCs for the existing fixed and mobile carrier licences, which is prescribed in Schedule 1 to the existing Telecommunications (Carrier Licence) Regulation (Cap. 106V), will continue to apply for UCL. This is to ensure that the same basic obligations will be followed by all new and existing carriers licensed to provide public telecommunications services.

Special Conditions

9. A common set of SCs, basically modelled on corresponding SCs in existing carrier licences, is proposed for all unified carriers. As a general principle, the existing differential licensing obligations between fixed and mobile network operators should be aligned under the UCL as far as practicable. For example, all unified carrier licensees, irrespective of whether they provide fixed, mobile and/or converged services, will have to observe the same requirement on interconnection so as to ensure any-to-any connectivity among users of telecommunications services. Where directed by the TA, all unified carriers are required to support number portability at their own expenses. All unified carrier licensees are required to publish tariffs according to the methods prescribed by the TA and the licensees shall charge no more than the published tariffs. Furthermore, based on the general support given by the respondents to the two FMC consultation exercises, the ex post tariff regulation will be adopted under the unified carrier regime i.e. there will be no prior

approval requirement for introducing new or revised tariffs or discounts by a unified carrier licensee. Nonetheless, the TA will monitor the price competition in the market and if the need arises, he will have the power to carry out investigation in a timely manner to ensure compliance with the competition provisions in the Ordinance.

10. Depending on the services that an individual licensee may provide and subject to the circumstances, the TA may impose other specific SCs on the licensee. Where a UCL is granted for conversion of an existing carrier licence before its expiry or for replacement of an existing licence upon its expiry, existing obligations in the original licence may be maintained under the UCL if it is in the public interest to do so.

11. To address Member's concerns about licensee's service quality in a forward-looking manner, the TA indicated in a paper for the meeting of the Panel on Information Technology and Broadcasting held on 10 December 2007⁵ that he would impose a SC in the licences for broadband wireless access (“BWA”) services requiring the licensees to comply with any code of practice or guideline which the TA might issue for the purpose of providing practical guidance in respect of the protection and promotion of consumers’ interests for telecommunications goods and services. The said SC has been included in the current proposal as a common licence obligation for all unified carrier licensees, including the future BWA licensees⁶. In addition, in order to deal more effectively with consumer complaints on telecommunications services, the TA proposes to add a common SC⁷ under the UCL requiring the licensee to comply with the codes of practice to be issued by the TA in respect of contractual requirements on telecommunications services, including contract documentation, entering into or terminating service contract, settlement of disputes, etc. The new SC should enhance consumer protection and improve the handling of consumer complaints in relation to contractual issues.

⁵ See LC Paper No. CB(1)383/07-08(03)

⁶ See the proposed Special Condition 1 on “Compliance with Codes of Practice” of the UCL in Annex B to the TA’s consultation paper.

⁷ See the proposed Special Condition 36 on “Service Contracts and Dispute Resolution” of the UCL in Annex B to the TA’s consultation paper.

Migration to UCLs

12. To facilitate migration to the unified licensing regime, it is proposed that the UCLs will be issued for new applications and replacement of the existing carrier licences upon their expiry. Furthermore, existing carrier licensees may choose to convert their licences to UCLs on a voluntary basis. The spectrum right assigned and the validity period specified in the existing licence will be transferred upon the granting of the new UCL. Spectrum rights have to be acquired separately from the licence and existing licence holder should not have any expectation of the spectrum rights being renewed automatically upon expiry of assignment even if the UCL has not expired.

13. While there should be common rights and obligations under the UCL irrespective of whether a UCL is granted for a new application, for replacement of an existing carrier licence upon its expiry or for conversion of existing carrier licence(s), there may be a need to transplant the rights and obligations in their existing carrier licences for the replacement and conversion of existing carrier licences to UCLs, depending on whether these existing rights and obligations are still applicable to the licensees under their new UCL. For example, under the MCLs for the existing second generation (“2G”) and third generation (“3G”) mobile services, there are certain special obligations imposed on the licensees at the time they acquired the right to use spectrum for the 2G / 3G services (e.g compliance with auction rules, payment of spectrum utilisation fee, open network access). These special obligations would continue to apply under the UCL to be granted for conversion of the MCLs. The FCLs of free-to-air broadcasters also contain special licence obligations which are related to the transmission or distribution of broadcasting signals (e.g. combined transmitting systems, standby equipment and spare parts). These special obligations, to the extent that they are still applicable under the then prevailing regulatory environment, will be maintained in the UCLs to be granted to replace these FCLs upon their expiry.

Replacement of Four Fixed Carrier Licences issued in 1995

14. The four fixed telecommunications network services (FTNS) / fixed carrier licences issued in June 1995 to PCCW-HKT Telephone Limited (“PCCW”), Hutchison Global Communications Limited (“HGC”), New World Telecommunications Limited (“NWT”) and Wharf T&T Limited (“WT&T”) will expire in June 2010. In order that these four licensees may maintain continuity of service and network operation when their licences expire, it is proposed that they may apply for UCLs for replacement of their existing licences. It is also proposed under the new UCLs that the existing rights of these four licensees in relation to the use of radio spectrum and telecommunications numbers would basically remain unchanged, while their rights on road opening and building access would be aligned with other fixed carriers whose licences are granted after the liberalization of the local fixed market in 2003. Furthermore, and particularly for PCCW, certain special obligations under its existing licence which are considered to be necessary are proposed to be maintained in the new licence. For example, PCCW is presently the only fixed carrier having a universal service obligation (“USO”) under section 35B of the Ordinance. It is proposed that PCCW will continue to be required to have a USO under the UCL.

Conversion of Mobile Carrier Licences

15. There are four MCLs granted in October 2001 for the provision of 3G mobile service, three MCLs granted in end 2005/early 2006 for renewal of the previous licences providing 2G mobile service based on the GSM 900 standard, and six MCLs granted in September 2006 for renewal of the previous licences providing 2G mobile service based on the GSM 1800 standard. In addition, one MCL will be granted by the TA in November 2008 to the successful bidder of spectrum in the 850 MHz band for providing 3G mobile service based on the CDMA2000 standard. These existing mobile carriers may apply to convert their licences before the expiry of their MCLs on a voluntary basis. All existing rights in their licences in relation to spectrum and number allocation will be transferred to UCLs, but as stated in paragraph 12 above the existing spectrum rights shall not be extended beyond the remaining terms of the existing MCLs. Obligations under the existing

licences which are associated with the spectrum rights (e.g. payment of spectrum utilisation fee, performance bond) will also be maintained in the new licence.

Way forward

16. The consultation exercises will end on 20 February 2008. After considering the submissions received, the SCED will finalize the proposal and proceed to make the necessary subsidiary regulation(s) under section 7(2) of the Ordinance. To tie in with the auction of the BWA spectrum, which is scheduled in the fourth quarter of 2008, the plan is to table the amendment regulation(s) for negative vetting by the Legislative Council within this legislative session so that the UCL may be put in place in the second half of 2008.

Commerce and Economic Development Bureau
4 January 2008

**Consultation Paper on the Creation of A Unified Carrier Licence
under the Telecommunications Ordinance
issued by the Secretary for Commerce and Economic Development**

EXECUTIVE SUMMARY

With market and technological developments, fixed-mobile convergence (“FMC”) is emerging which blurs the distinction between fixed and mobile networks. To ensure that the regulatory environment remains conducive to the emergence of FMC, the Telecommunications Authority (the “Authority”) conducted two public consultation exercises in 2005 and 2006 respectively. As a conclusion of the regulatory review on FMC, the Authority recommended, among the others, the introduction of the UCL to facilitate the provision of converged telecommunications services.

2. Before the making of regulation to create the UCL, the Secretary for Commerce and Economic Development (“Secretary”) is required to carry out a consultation under section 7(3) of the Telecommunications Ordinance (“Ordinance”). This consultation covers the proposed general conditions (GCs), period of validity and fees for the UCL. In parallel, the Authority will conduct a separate consultation on the special conditions (SCs) to be attached to UCLs which may be granted by the Authority so as to enable the industry to have a full picture of the new licensing regime.

3. Under the existing Telecommunications (Carrier Licences) Regulation (Cap 106V) (“the Regulation”), there are five types of carrier licences, namely fixed carrier licence (“FCL”), fixed carrier (restricted) licence (“FCRL”), mobile carrier licence (“MCL”), mobile carrier (restricted) licence (“MCRL”) and space station carrier licence (“SSCL”). As a general licensing vehicle for carrier services, it is proposed that the scope of UCL should cover all types of fixed, mobile and converged telecommunications services under the FCL, FCRL, MCL and MCRL except for the SSCL which should be maintained by its distinctive nature.

4. To facilitate migration to the unified licensing regime, it is proposed that UCLs will be issued for new applications and replacement of the existing carrier licences upon their expiry. Furthermore, existing carrier licensees may choose to convert their licences to UCLs on a voluntary basis.

5. The validity period of a UCL issued for a new application or replacement of an existing carrier licence upon its expiry would be set at 15 years for all types of services which may be authorized under the licence. If an existing carrier licensee applies to convert its licence to UCL without any change in the scope of service, the validity period of the UCL should be the same as the remaining term of its original carrier licence. For all other cases of conversion, they would be treated as if UCLs are applied for replacement of the existing carrier licence(s) and the UCLs which may be granted will have a full validity period of 15 years.

6. For avoidance of doubt, the spectrum right assigned and the validity period specified in the existing licence will be transferred upon the granting of the new UCL. Spectrum rights have to be acquired separately from the licence and existing licence holder should not have any expectation of the spectrum rights being renewed automatically upon expiry of assignment even if the UCL has not expired.

7. It is proposed that the same set of GCs for the existing carrier licences as specified in the Regulation will continue to apply for UCLs.

8. The licence fees for the UCL will basically adopt the similar structure of fee components in the existing carrier licences, and the level of fees will be set to recover the costs of OFTA in administering the licences. 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; while a lesser amount of \$100,000 will apply if it provides fixed external services and/or mobile services other than land mobile services only. There will be a subscriber-based fee component of \$8 per customer connection payable per annum under the UCL. As any proposal for extending the existing 8-digit plan to longer digit plan will have wide implications, in terms of cost and convenience, to existing consumer and the business sector, more efficient use of telecommunications numbers by the operators is encouraged. Therefore, an annual fee of \$3 for each subscriber number allocated to the UCL licensee is proposed, regardless of whether the number has been assigned to end customers or not. As regards the calculation of spectrum management fee and base station/land station fee under the UCL, they will remain at the same level as that under the existing carrier licences.

9. Please send your comments on the proposals to the Communications and Technology Branch of the Commerce and Economic Development Bureau by 20 February 2008 by any of the following means:

Post: Communications and Technology Branch
Commerce and Economic Development Bureau
2/F Murray Building
Garden Road
Hong Kong
(Attention: Assistant Secretary (B) 1)

Fax: (852) 2511 1458
(852) 2827 0119

E-mail: ucl@cedb.gov.hk

**Licensing Framework for Unified Carrier Licence
A Consultation Paper by the Telecommunications Authority**

EXECUTIVE SUMMARY

Introduction

The Secretary for Commerce and Economic Development published a consultation paper on 21 December 2007 to set out his proposals on the making of regulation to create the Unified Carrier Licence (“UCL”), and the proposals cover the general conditions (“GCs”), period of validity and licence fees of UCL. This consultation paper sets out the proposals of the Telecommunications Authority (“TA”) on the new licensing framework, including the special conditions (“SCs”) 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 two papers aim to provide a full picture of the proposed licensing regime of UCL to the industry.

Rights and Obligations under the UCL

2. A unified carrier may be granted with rights commensurate with its scope of service, including the right for use of radio spectrum, use of telecommunications numbers, road opening and building access. A unified carrier may acquire spectrum right through participation in an open, competitive bidding or tendering process for spectrum with competing commercial demand, or it may make application to the TA for assignment of spectrum where there is no competing commercial demand. A unified carrier may also apply for allocation of telecommunications numbers by the TA according to the existing practice which applies to fixed and mobile carriers. The right of road opening may be granted on a case-by-case basis to a unified carrier depending on the need to roll out public wireline-based services. The right of building access may be granted on a case-by-case basis to a unified carrier subject to the technology it uses for an installation in a building and whether the installation is for serving the residents and occupants of that building.

3. A set of SCs is proposed as the common obligations for all unified carrier licensees. These SCs are basically modelled on SCs in existing fixed / mobile carrier licences with alignments of certain obligations for fixed and mobile services under the UCL.

4. The TA may impose other SCs on an individual licensee depending on the specific circumstances applicable to the licensee. For an existing carrier licensee who is issued a UCL for conversion or replacement of its existing carrier licence, other SCs may be included because of the need to retain certain special obligations under the original carrier licence in the new UCL.

Interconnection Regime

5. Basically, unified carriers will follow the prevailing interconnection arrangements for carrier-to-carrier interconnection depending on whether they provide fixed or mobile services under the UCL. For converged type of service provided under the UCL, the TA will decide on a case-by-case basis whether the service is primarily a fixed or a mobile service should the TA consider it necessary to intervene in interconnection matters between a unified carrier and other carriers. The present regulatory guidance for fixed mobile interconnection charge (“FMIC”) and interconnection links will be withdrawn subject to a 2-year transition period commencing from 27 April 2007, and the TA will not replace it with any new guidance unless there are market changes that warrant his re-consideration.

Migration to the Unified Carrier Licensing Regime

6. There are four scenarios of granting a UCL, namely (1) new application, (2) replacement of an existing carrier licence upon its expiry, (3) conversion of an existing carrier licence with no change of scope, and (4) conversion of existing carrier licence(s) for other cases. Other than the common rights and obligations under the UCL, there may be a need to transplant certain existing rights and obligations in the original carrier licence(s) to the UCLs for cases (2) to (4).

Replacement of Four Fixed Carrier Licences issued in 1995

7. The TA will be prepared to grant UCLs to replace the four fixed telecommunications network service / fixed carrier licences issued in 1995 when they expire in 2010. While the existing rights for use of radio spectrum, use of numbers, road opening and building access will basically be preserved under the replacement licences, certain existing obligations which are still applicable to individual licensees will be retained under the replacement licences. In particular, for PCCW-HKT Telephone Limited (“PCCW”), the policy intention

is to require PCCW under section 35B of the Telecommunications Ordinance to continue to have a universal service obligation (“USO”) under the UCL which may be granted to replace its existing fixed carrier licence (“FCL”) when it expires in June 2010. Apart from the USO, the TA is of the preliminary view that two special obligations under PCCW’s existing FCL, i.e. the *ex ante* tariff approval requirement for certain interconnection services provided by PCCW and the notification requirement for discounts under the *ex post* tariff regulation regime should be preserved in its replacement UCL.

Conversion of Mobile Carrier Licences

8. For conversion of the existing mobile carrier licences, which will be entirely on a voluntary basis, all existing spectrum assignments and number allocations under the original licences would continue to be applicable under the UCLs during the remaining terms of the original licences, while the rights of opening and building access would remain inapplicable as the licensees provide mobile services only. Legacy obligations such as the payment of spectrum utilization fee and performance bond would be transplanted to the new licences.

Invitation for Comments

9. The industry and other interested parties are invited to give their views to the proposals in the consultation paper. Submissions, preferably in electronic format, should be sent to the following address on or before 20 February 2008:

Office of the Telecommunications Authority
29/F Wu Chung House, 213 Queen’s Road East,
Wan Chai, Hong Kong
[Attention: Senior Telecommunications Engineer (R13)]
Fax: 2803 5112
E-mail: ucl@ofta.gov.hk