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For Discussion
on 13 May 2008

Legislative Council Panel on Information Technology and Broadcasting

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

Purpose

This paper briefs Members on the outcome of the public consultations launched by the Secretary for Commerce and Economic Development ("SCED") and the Telecommunications Authority ("TA") in December 2007 in respect of the proposals for the creation of a unified carrier licence ("UCL") and the related licensing arrangements respectively. This paper also sets out the considerations given to the views expressed during the consultation, the conclusions reached on the relevant issues as well as the legislative proposal and the way forward for introduction of the new carrier licence.

Background

2. To ensure that the regulatory environment is conducive to the emergence of fixed mobile convergence ("FMC"), the SCED has proposed, on the recommendation of the TA, to introduce UCL as a single vehicle for licensing fixed, mobile and/or converged services. On 21 December 2007, the SCED issued a consultation paper entitled "Consultation Paper on the Creation of a Unified Carrier Licence under the Telecommunications Ordinance" setting out the proposals on the general conditions ("GCs"), period of validity and fee structure for the UCL ("SCED Consultation Paper"). In parallel, the TA issued a separate consultation paper entitled "Licensing Framework for Unified Carrier Licence" 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 ("TA Consultation Paper"). We briefed Members on the

proposals put forward in the two consultation papers at the meeting of this Panel held on 14 January 2008 (LC Paper No. CB(1)544/07-08(03) refers).

3. The two public consultations were originally scheduled for two months but were extended by two weeks to 4 March 2008 in response to industry request. The Administration received a total of 11 and 16 submissions in response to the SCED Consultation Paper and the TA Consultation Paper respectively. The respondents include major fixed network operators (“FNOs”) and mobile network operators (“MNOs”), two customer organizations, one professional body and some individuals. A full list of the respondents is given in **Annexes A and B** to this paper. Their views and comments as well as the Administration’s considerations and conclusions are summarised in the ensuing paragraphs.

Comments and Conclusions on the Key Proposals in the SCED Consultation Paper

Creation of a Unified Licensing Framework

4. The proposal to create UCL has received general support from the respondents, except three FNOs which considered that a unified carrier licensing regime need not be a prerequisite for FMC and that the present separate licensing regimes for fixed and mobile services work well.

5. We consider that there are genuine needs to create a unified carrier licensing regime. It is evident that the present separate licensing regimes for fixed and mobile services are inadequate and can no longer meet the technological and market developments of converged services, including new broadband wireless access (“BWA”) services which exhibit both fixed and mobile attributes. As FMC is an imminent reality, a unified licensing framework is urgently required to enable the operation of the full range of fixed, mobile and converged services under a single harmonised licensing regime. In view of the support of the majority of the respondents, the Administration concludes that we should proceed with the legislation for the creation of the UCL.

Migration to UCL

6. One FNO objected to the proposal of using the UCL to replace the existing carrier licences[1] upon their expiry, while other respondents either agreed or expressed no objection to the proposal.

7. In view of the general support and the fact that the UCL is a more flexible and streamlined licensing vehicle that can cover all fixed, mobile or converged services with harmonised rights and obligations, the Administration will press ahead to implement the migration arrangements as proposed in the SCED Consultation Paper as follows -

(a) UCL will be issued for all new applications seeking to provide any type of fixed, mobile or converged telecommunications services upon enactment of the unified carrier licensing regime;

(b) Subject to approval of extension of operation of existing licences, the UCL will replace the respective fixed and mobile carrier licences upon their expiry;

(c) All existing fixed and mobile carrier licensees may apply to convert their unexpired licences to the UCL on a voluntary basis.

Period of Validity of the UCL

8. While the respondents unanimously agreed to the proposed validity period of 15 years under the UCL, a FNO suggested that the UCL should be automatically renewed upon expiry save under exceptional circumstances for non-renewal.

9. With rapid technological and market changes in the telecommunications field, the form and licence conditions now envisaged for the proposed UCL may not be able to keep pace and found to be still appropriate at the end of 15 years. Automatic licence renewal is thus not suitable. Moreover, while the existing Telecommunications (Carrier Licence) Regulation (Cap. 106V) prescribes the validity period of the

[1] The four existing types of fixed and mobile carrier licences proposed to be replaced by the UCL are fixed carrier licence (“FCL”), fixed carrier (restricted) licence (“FCRL”), mobile carrier licence (“MCL”) and mobile carrier (restricted) licence (“MCRL”).

fixed carrier licence in the case of renewal, renewal is subject to the TA's discretion and, as such, licensees should not have any expectation for automatic renewal of the licence. There is also no renewal arrangement for an existing mobile carrier licence, which upon expiry should be replaced by a new licence. The criteria for granting a renewed licence should in principle be similar to those for applying for a new licence at the time. As the TA would review and decide the updated rights and obligations for the licensee in accordance with the latest market situation using the same set of criteria for both cases, there should be no material difference between the renewal arrangement and the arrangement for new application. Accordingly, we will adopt the proposal of providing a 15 year validity period for the UCL and that there would be no automatic renewal upon expiry. For conversion of existing carrier licences to the UCL, the following arrangements as proposed in the SCED Consultation Paper will apply -

(a) For conversion of an existing carrier licence without any change in scope of service, the UCL to be issued would have a validity period the same as the unexpired term of the original carrier licence.

(b) For all other cases, they would be processed as if a new UCL is applied for to replace the existing carrier licence(s) and the UCL which may be granted will have a full validity period of 15 years.

General Conditions (GCs)

10. In general, the respondents expressed no objection to adopting the same set of GCs applicable to existing fixed and mobile carrier licences under the UCL, except two FNOs and one MNO which considered that some GCs should be removed[2].

11. The proposed GCs under the UCL are the same as those under the existing fixed and mobile carrier licences and all existing carrier licensees have been able to comply with them without difficulty. There is no compelling reason or justification to change or remove any of these

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[2] The two FNOs and one MNO submitted that GC 7 (Confidentiality of customer information) may be removed, and one of them considered that GC 4 (Compliance generally), GC 5 (Provision of service) and GC 11 (Compliance) may also be removed.

GCs for the UCL. With the support of the majority of the respondents, the Administration believes that the proposal of stipulating the same GCs now provided in fixed and mobile carrier licences in the UCL to be issued is appropriate and should be adopted.

Licence Fee

12. Respondents' views were divided regarding the proposed licence fee for the UCL, especially on the fees of $8 per customer connection and $3 per subscriber number to be charged on an annual basis. For the customer connection fee, four FNOs objected to the higher fee under the UCL as compared with the $7 per customer connection under the existing fixed carrier licence, while all other respondents expressed no objection. For the new number fee, there was objection from four FNOs and two MNOs, while one external fixed telecommunications network service ("EFTNS") operator, one MNO, the Consumer Council ("CC") and the Hong Kong Telecommunications User Group ("HKTUG") gave their support. Among them, the two customer organizations (i.e. CC and HKTUG) supported our proposal of number fee as a means to encourage better utilisation of the number resources and to prolong the life span of the current 8-digit numbering plan. Separately, the Hong Kong Institution of Engineers ("HKIE") has suggested a number of implementation issues for our consideration.

<u>Number fee</u>

13. We note that the proposed number fee has attracted considerable attention and debate in the community. Comments and feedback had also been received from Members, the industry and the general public.

14. The concern raised on the number fee is mainly focused on the following issues: (a) operators might pass the financial cost on to customers; (b) there is doubt on whether there was a real number shortage and whether action is needed to be taken now to charge a number fee; (c) there is doubt on whether imposing a number fee would be effective and practical in solving the number hoarding problem; and (d) the income of number fee would add to the already healthy financial position of the OFTA trading fund.

15. Having considered all the respondents' comments, our responses are set out below-

(a) **The impact on operators and customers is small**. Under the proposed fee structure, mobile services will be subject to less licence fee, while fixed services will be subject to a higher licence fee. The MNOs may apply to convert their licences into the UCL as soon as the new licensing regime is implemented so as to enjoy the licence fee reduction. For FNOs, as their licences were first issued with validity not expiring until end June 2010, the fees under their existing licences shall continue to apply. There should be sufficient time for them to develop their business plan to cope with the change. In any case, the number fee of **$3 per year** (or 25 cents per month) represents only a small sum relative to the revenue received for a fixed telephone line[3]. It should not have significant impact on the operators for setting the retail price level. With the highly competitive telecommunications market and in the light of the emergence of FMC, operators would no doubt assess the market conditions and the impact on their market share when considering any increase to their service charges.

As to the view advocating only unassigned numbers should be charged, we do not consider it acceptable as it might result in operators assigning numbers indiscriminately thereby defeating our objective of maximizing the utilization of numbers efficiently.

(b) **There is a real need to promote more efficient use of numbers.** Based on the existing demand and pace of number allocation to operators, if timely preventive measures to enhance efficient use of numbers are not put in place now, the remaining capacity of the current 8-digit numbering plan may be exhausted in seven years, i.e. by 2015, and there will be a need to migrate to a longer digit numbering plan. This will have significant social and cost implications. The

[3] OFTA has estimated that the number fee represents only about 0.5% of the lowest annual subscription fee for a fixed telephone line.

International Telecommunication Union has conducted a survey[4] and we note that it is not uncommon for a number fee to be charged in other jurisdictions as a means to promote efficient use of numbers.

In addition to number fee, the OFTA will explore other administrative measures in parallel. The OFTA has already taken some non-financial measures to promote better number utilisation, such as raising the threshold on utilisation rate from 50% to 60% for applying new number blocks by FNOs. The OFTA has established a working group under the Telecommunications Numbering Advisory Committee (TNAC) to help develop administrative measures to improve the efficiency of using numbers. Industry players, CC, HKTUG, HKIE and equipment suppliers etc. are represented in the working group.

(c) **The number fee is a practical and effective measure to encourage more efficient use of numbers by operators**. As our experience of past spectrum management has shown, operators would return underused spectrum to the TA in order to save spectrum management fee payable under their licences. We expect the same response will result in respect of numbers to be returned and that the number fee will encourage operators to be more cost-conscious in applying for new numbers and making more efficient use of the numbers allocated to them. Operators may choose to return unused numbers to OFTA so as to reduce the number fee when they take out the UCL. The OFTA will work closely with the operators via the working group mentioned in sub-paragraph (b) above for the practical arrangement of returning numbers, including possible measures to streamline the arrangement for operators to apply for new numbers in response to market or operational needs.

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[4] According to a survey conducted by the International Telecommunication Union (ITU) in 2004, number fee is not uncommon, particularly in Europe. Of the 99 countries which are covered by the survey, 41 countries have applied a number fee and these include Denmark, Germany, Spain and Australia, etc.

(d) **The number fee is "revenue neutral" to the OFTA.** The introduction of number fee is a result of re-structuring the existing carrier licence fee components such that part of the customer connection fee is taken out to become a fee component chargeable based on the quantity of numbers held by a UCL licensee. Hence, there is no extra income to the OFTA. The return of numbers to the OFTA would be reflected in the reduction of licence fees which in turn may result in a reduction of income for the OFTA.

Considerations

16. Overall speaking, the licence fee structure has been set with the long term objectives of (a) harmonising the fee payable by a licensee irrespective of the type of services it provides; (b) providing an incentive for operators to make efficient use of scarce resource (including numbers) and (c) recovering the cost of the OFTA in administering the licences. The new number fee is an effective economic measure to promote more efficient use of the numbering resources and a preventive measure to defer the need for adoption of a longer-digit numbering plan. The CC and HKTUG representing the consumers and business users are supportive and of the view that the number fee proposal is beneficial to the community.

17. In view of the above considerations, the Administration will adopt the fee proposal as set out in the SCED Consultation Paper for the introduction of the UCL. We will review the level of licence fee for the UCL when the new licensing regime has been put into operation and we will identify any room for fee reduction in light of operational experience.

Comments and Conclusions on the Key Proposals in the TA Consultation Paper

Rights under the UCL

18. Under the UCL, operators would have harmonised rights including those in relation to number allocation, spectrum assignment, road opening and building access which would be granted on par with the

existing arrangements for the provision of fixed and mobile services. Some FNOs have requested to retain the blanket authorisation on road opening and building access given to them[5], and raised concerns about the administrative burden that may be entailed if such authorisation were replaced by a case-by-case approval procedure. To address their concerns on road opening and with a view to reducing unnecessary administrative work to both the industry and the OFTA, the TA will consult with all the concerned FNOs to streamline the approval procedure of road opening, and the streamlined procedure will apply to all unified carriers as well as the existing FNOs which may continue to operate under their fixed carrier licences until expiry. On building access, the TA will be prepared to grant general authorisation on building access to a unified carrier providing fixed services and having a genuine need to lay cables in common parts of buildings pursuant to section 14(1) of the Telecommunications Ordinance. The same arrangement on building access will be extended to existing FNOs which meet the same set of criteria.

Special Conditions ("SC"s)

19. We have proposed that under the UCL, a common set of SCs which harmonise the obligations for fixed and mobile services should be imposed. Among the proposed SCs, the new licence condition on "Service Contracts and Dispute Resolution" (SC 36)[6] attracts the bulk of the comments. The CC and the HKTUG representing the consumers and business users have given their support. FNOs and MNOs have either opposed to or expressed reservation over the proposed new licence condition. Most of them considered that it was not necessary to create SC 36 as such kind of contractual disputes could be resolved through other channels (e.g. through the CC) or legal remedies. Some operators commented that the imposition of such SC would turn a voluntary dispute resolution scheme, as originally promoted by the OFTA, into a mandatory one and doubted if the proposed scheme is the right forum to resolve contractual disputes. The proposed SC serves to provide a means for the

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[5] At present, the four FNOs licensed in 1995 and the Hong Kong Cable Television Limited have been granted with rights of road opening and building access in general. Other new FNOs are required to obtain such rights on a case-by-case basis.

[6] Under the proposed SC 36, the TA has power to issue codes of practice in respect of the requirements to apply in the contracting of telecommunications services to customers, and such requirements include the format and terms and conditions of the service contracts, and the submission of consumer disputes for handling under an independent dispute resolution scheme which may be approved by the TA.

better resolution of customer complaints in relation to contractual issues and represents a significant step forward in enhancing customer protection in the telecommunications sector. With the pervasive nature of telecommunications services in daily life and the substantial number of consumer complaints[7] received, there is a need to provide a more formal and established framework to improve the handling of service contracts and contractual disputes under the new UCL. Nevertheless, the TA would encourage all industry players to take voluntary and self-regulatory measures to meet customers needs and would continue to assist the industry in such efforts. In the light of such considerations, the TA has concluded that the proposed SC 36 should be incorporated under the UCL.

20. Respondents also submitted that the requirement to publish tariffs in the Government Gazette (under SC 7) should be removed and some suggested that such requirement should be removed from existing licences now. The TA agrees that gazetting of tariffs by licensees can be replaced by other alternatives[8] to inform users and the public at large. The TA has no objection to removing the tariff gazetting requirement under the UCL regime. The TA agrees that the same requirement stipulated in existing carrier licences can be removed. In addition, the TA is agreeable to removing the proposed SC 29 ("Publication of Accounting Rates and Settlement Rates")[9] since the requirement can be covered by the proposed SC 6 ("Requirement to Furnish Information to the Authority")[10]. Subject to the foregoing changes, the TA has concluded after consideration of the comments received that the SCs should be kept as proposed. The revised common set of SCs will be adopted for all UCLs to be granted.

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[7] According to the complaint statistics of the Consumer Council, among 38,521 consumer complaints received in 2007, 10,382 cases (about 27% of the total cases) are related to telecommunications services. (http://www2.consumer.org.hk/news/complaintstatistics/monthlyupdate.pdf)

[8] The alternative methods proposed by the TA include (1) provide a copy of the tariffs to the TA; (2) place a copy of the tariffs in a publicly accessible part of the principal place of business and other business premises of the licensee as specified by the TA; (3) supply a copy of the tariffs to any person who may request it at a charge no greater than that which is necessary to cover the reasonable costs of supplying the copy; and (4) publish the tariffs on the licensee's website.

[9] The proposed SC 29 stipulates that the TA may at his discretion publish any information obtained from the licensee concerning international accounting rates, settlement rates or any other relevant information concerning the charge paid by the licensee to overseas carriers or service providers for delivery of external traffic.

[10] Under the proposed SC 6, the TA may use and disclose information furnished by the licensee to such persons as he thinks fit.

Granting of UCL under Different Scenarios

21. Except for one FNO which challenged the fundamental need of the UCL and the replacement of existing carrier licences upon expiry by the UCL, other respondents have expressed no objection to the general approach proposed by the TA for the granting of the UCL and the transplantation of rights and obligations in existing licences to the UCL according to different circumstances[11]. The TA has concluded that the general approach as proposed in the TA Consultation Paper should be adopted.

Replacement of the Four Fixed Carrier Licences Issued in 1995

22. There was no strong objection to the proposed arrangement for replacing of the four fixed carrier licences issued in 1995 by the UCL when the licences expire in 2010, except that the four concerned licensees have requested to retain their existing blanket authorisation by the TA in respect of road opening and building access (i.e. not to be replaced by case-by-case approval like other new FNOs). PCCW-HKT Telephone Limited ("PCCW"), the incumbent FNO, has expressed no objection to maintaining the universal service obligation if its existing fixed carrier licence is replaced by the UCL in future, but requested that certain legacy obligations[12] should not be carried forward to the new UCL. The TA has already addressed the concern expressed by the FNOs about the granting of road opening and building access rights (as set out in paragraph 18). For PCCW's submission, the TA considers that some of its existing obligations should be maintained under the replacement UCL, if the replacement licence is to be granted, since the relevant obligations have been imposed on PCCW since January 2005 after a public consultation and they remain relevant and appropriate today for PCCW. Having considered the comments received, the TA has concluded that there should be no material change to the proposed arrangement for replacement of the four fixed licences issued in 1995 by the UCL.

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[11] The different scenarios for granting UCL include (1) New application for a UCL; (2) Replacing an existing carrier licence upon its expiry by a UCL; (3) Conversion of an existing carrier licence to a UCL without change in scope of service; (4) Conversion of existing carrier licence(s) to a UCL for other cases.

[12] PCCW considered that some special licence conditions added to the FCL granted to PCCW in January 2005 for implementation of the *ex post* regulation of tariffs should not be mechanically inherited by PCCW in its future UCL. It also considered that a special licence condition in relation to granting access in respect of its payphone kiosks to other licencees for provision of service in its existing FCL is not reasonable.

Conversion of Mobile Carrier Licences

23. All MNOs welcomed the arrangement for voluntary conversion of their mobile carrier licences to the UCL but they suggested that some legacy obligations (e.g. Open Network Access) should not be transplanted to the UCL. The TA disagrees with the view as there is a need to keep the existing obligations of the MNOs that are associated with spectrum rights (such as Open Network Access) in order to ensure effective and efficient use of the spectrum which is a scarce public resource and that the prior commitments of the MNOs should be honoured notwithstanding that their licences are converted to the UCL. Having considered the submissions, the TA has concluded that no material change to the proposed conversion arrangement is warranted.

24. The TA will issue a Statement setting out his considerations and conclusions on the items raised in the UCL consultation.

Legislative Proposal

25. To enable the introduction of the UCL, amendments to two pieces of subsidiary legislation under the Telecommunications Ordinance ("amendment regulations") are required. First, an amendment to the Telecommunications (Carrier Licence) Regulation (Cap. 106V) will be made to define the UCL as a new type of carrier licence as well as the period of validity, general conditions and fees that will apply to the UCL. Provisions will also be made to specify the migration arrangement for existing carrier licences to the UCL as proposed in the SCED Consultation Paper. Second, consequential amendments will be required for the Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) Regulation (Cap 106AA) to ensure that there would be no change to the arrangement for payment of spectrum utilization fee by a mobile carrier licensee under Cap 106AA should its mobile carrier licence be converted to the UCL in future. A brief summary of the legislative proposal is set out in **Annex C**.

Way Forward

26. The steps to be taken for the implementation of the UCL are set out below -

(a) The SCED will gazette the amendment regulations on 16 May 2008 and table them in the Legislative Council on 21 May 2008 with a view to completing the negative vetting process within this legislative session.

(b) Subject to (a), the TA will implement the new licensing regime in the third quarter of 2008. The TA will use the UCL as the licensing vehicle for BWA service to tie in with the auction of BWA spectrum in the fourth quarter of 2008.

Commerce and Economic Development Bureau
Office of the Telecommunications Authority
May 2008

<u>**Annex A**</u>

List of Respondents to the SCED Consultation Paper on “Creation of a Unified Carrier Licence under the Telecommunications Ordinance”

1. AT&T Global Network Services Hong Kong Ltd
2. Hong Kong Telecommunications Users Group
3. New World Telecommunications Limited
4. Wharf T&T Limited
5. PCCW-HKT Telephone Limited
6. Hong Kong Cable Television Limited
7. China Mobile Peoples Telephone Company Limited
8. Hong Kong Institution of Engineers, Electronics Division and Information Technology Division
9. Hong Kong CSL Limited and New World PCS Limited
10. SmarTone Mobile Communications Limited
11. Hutchison Telecommunications (Hong Kong) Limited

Annex B

List of Respondents to the TA Consultation Paper on "Licensing Framework for Unified Carrier Licence"

1. Chu Kwong Yiu
2. Cheng Ngan Wa
3. AT&T Global Network Services Hong Kong Ltd
4. Hong Kong Telecommunications Users Group
5. PACNET
6. New World Telecommunications Limited
7. Wharf T&T Limited
8. Hong Kong Institution of Engineers, Electronics Division and Information Technology Division
9. Hong Kong Broadband Network Limited
10. PCCW-HKT Telephone Limited
11. Hong Kong Cable Television Limited
12. China Mobile Peoples Telephone Company Limited
13. Hong Kong CSL Limited and New World PCS Limited
14. SmarTone Mobile Communications Limited
15. Consumer Council
16. Hutchison Telecommunications (Hong Kong) Limited

<u>Annex C</u>

Legislative Proposal in relation to the Creation of the UCL

To enable the creation of the UCL, we propose to:

(i) amend the Telecommunications (Carrier Licences) regulations (Cap 106V) (the "Regulation") to prescribe the general conditions, period of validity and fee payable for a new UCL; and

(ii) make necessary consequential amendment to the Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) Regulation (Cap 106AA).

2. The major proposals of the above legislative amendments are set out below.

Definition of UCL

3. The UCL will be defined as a new type of carrier licence under the Regulation and its scope will permit the provision of all types of fixed, mobile and converged telecommunications services (or any combination thereof) which are currently authorized under the Fixed Carrier Licence ("FCL"), Fixed Carrier (Restricted) Licence ("FCRL"), Mobile Carrier Licence ("MCL") and Mobile Carrier (Restricted) Licence ("MCRL"), except for the Space Station Carrier Licence ("SSCL")

General Conditions

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

Period of Validity

5. 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.

Fees

6. The licence fees for the UCL will basically adopt the following components:

(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; while a lesser 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.

Consequential amendments

7. A new provision will be added in Cap 106AA to the effect that where a MCL has been converted to a UCL utilising 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.