

Panel on Information Technology and Broadcasting

Extract from minutes of the meeting held on 14 January 2008

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- IV. Public consultation on the proposed Unified Carrier Licences**
(LC Paper No. CB(1)544/07-08(03) -- Paper provided by the Administration
- LC Paper No. CB(1)573/07-08(01) -- Submission from Hong Kong Cable Television Limited
(English version only)
- LC Paper No. CB(1)583/07-08(01) -- Submission from PCCW-HKT Telephone Limited
(English version only)
- LC Paper No. CB(1)583/07-08(02) -- Submission from Wharf T&T Limited
(English version only)
- LC Paper No. CB(1)601/07-08(01) -- Administration's paper on public consultation on the proposed Unified Carrier Licences (power-point presentation materials)
(tabled at the meeting and subsequently issued via e-mail on 15 January 2008)

Declaration of interest

6. Dr David Li declared that he was the Independent Non-Executive Director of the PCCW-HKT Telephone Limited (PCCW).

Presentation by the Administration

7. With the aid of power-point presentation, Assistant Director of Telecommunications (Regulatory) (AD of T(R)), briefed members on the two consultation exercises which were conducted in parallel by the Secretary for Commerce and Economic Development (SCED) and the Telecommunications Authority (TA) concerning the proposals for the creation of a unified carrier licence (UCL). The consultation exercises covered the general conditions (GCs), licence period, fee structure, and the proposed licensing framework of the UCL including the special conditions (SCs), the approaches for granting UCL under different scenarios, and the arrangements for migrating the existing licences to UCLs. Referring to the Administration's paper (LC Paper No. (1)544/07-08(03)) which provided details of the consultation, AD of T(R) highlighted the following points:

- (a) The proposed UCL would be the single licensing vehicle regulating all kinds of fixed, mobile, and converged telecommunications services. It would replace the four existing types of carrier licences - fixed carrier licence (FCL), fixed carrier (restricted) licence (FCRL), mobile carrier licence (MCL), and mobile carrier (restricted) licence (MCRL) - upon the expiry of these licences and be issued to new applicants. Basically, the same set of GCs for the existing fixed and mobile carrier licences would continue to apply to UCLs. As such, the UCL would allow incumbent operators and new market entrants to provide fixed, mobile, and converged services under a streamlined and flexible licensing framework with common rights and obligations, paving the way for fixed-mobile convergence (FMC) in the telecommunications sector.
- (b) The validity period of the proposed UCL issued for a new application or for a replacement of an existing carrier licence upon its expiry was proposed to be 15 years, which was the same as the existing carrier licence.
- (c) On the fee structure, the UCL licence fees would basically follow a similar structure as that of the existing carrier licences. An UCL licensee would be required to pay a fixed annual fee of \$1 million for the provision of fixed local services or mobile services or both; while a fee of \$100,000 would apply for providing fixed external services and/or mobile services other than land mobile services only. A subscriber-based fee of \$8 per customer connection was payable per annum. The calculation of spectrum management fee and base station/land station fee under the UCL would remain the same as that under the existing carrier licences. To encourage a more efficient use of telecommunications numbers by operators, an annual fee of \$3 per number would be imposed irrespective of whether the allocated numbers were used by end customers or not.

8. On the way forward, AD of T(R) said that the consultation exercises would end on 20 February 2008. After considering the submissions received, SCED would finalize the proposal and proceed to make the necessary subsidiary regulation(s) under section 7(2) of the Telecommunications Ordinance (TO) (Cap.106). To tie in with the auction of the broadband wireless access (BWA) spectrum scheduled for the fourth quarter of 2008, the Administration planned to table the amendment regulation(s) for negative vetting by the LegCo within the 2007-2008 legislative session for the UCL to be in place in the second half of 2008.

Discussion

Proposed fee for Unified Carrier Licence

9. Mr SIN Chung-kai sought explanation on the basis for the proposed licence fee for UCL as set out in the Administration's paper (LC Paper No. CB(1)544/07-08(03)).

10. In response, AD of T(R) explained that OFTA Trading Fund operated in accordance with the Trading Funds Ordinance (TFO) (Cap. 430) and the proposed level of UCL fees was set on a cost recovering principle with a view to recovering the costs of administering the licences, and aligning the fees for fixed and mobile services under the UCL in the light of FMC. Director-General of Telecommunications (DG of T) supplemented that the TFO required that the OFTA Trading Fund be financially self-sustaining in meeting the operating costs and achieving a reasonable return on the fixed assets employed. The return on average net fixed assets (ANFA) set for 2006-2007 was 8.5%.

11. In this regard, Mr SIN Chung-kai shared with the meeting that according to the annual report of the OFTA Trading Fund, the revenue for 2004-2005, 2005-2006 and 2006-2007 stood at a high of \$318.6 million, \$310 million and \$320.9 million respectively, while the pre-tax profit for the past three years was also high, at \$75.8 million, \$74.3 million and \$92.6 million respectively. The amount of dividends paid to the Government for the three years was \$31.5 million, \$30.7 million, and \$24.3 million respectively. As regards the principle of cost-recovery, he pointed out that the return on ANFA for 2004-2005, 2005-2006 and 2006-2007 was 29.7%, 30.7% and 24.3% respectively, showing that the OFTA Trading Fund had not only recovered its cost but had in fact profited beyond the target return on ANFA. Noting the strong financial position of the OFTA Trading Fund, Mr SIN sought the Administration's view on whether there was room for a fee reduction.

12. In this connection, Ms Emily LAU referred to the Hong Kong Cable Television Limited's (Cable TV) concern about the proposed rise of \$1 to \$8 in customer connection fee and the Wharf T&T Limited's (WT&T) strong objection to the proposed increase. Noting paragraph 3.2 of Cable TV's submission which stated that the OFTA Trading Fund's operating costs had decreased from \$235.7 million in the year ended 31 March 2006 to \$228.3 million in the year ended 31 March 2007, and that the pre-tax profit had gone up by 24.6% to \$92.6 million for the year ended 31 March 2007, she queried whether a fee increase was justifiable in view of the substantial profit achieved.

13. While appreciating that the distinction between fixed and mobile networks and services was becoming increasingly blurred due to market and technology developments, Mr Howard YOUNG was concerned whether it was fair, on a cost recovery basis, to align the fee for mobile and fixed services considering the different licensing framework and regulatory regime for mobile and fixed services.

14. In response, DG of T said that the reduction in the total expenditure of the OFTA Trading Fund during the period referred to was mainly attributable to savings in staff costs and stringent cost control. The surplus achieved now might not necessarily guarantee profits in the years ahead. She pointed out that the UCL would not come into operation until 2009-2010 at the earliest. As such, in addition to looking at the present financial position, OFTA as a responsible institution would have to take account of the projected future growth in the fixed and mobile telecommunications industry when setting the proposed UCL fee level. She said that as a UCL licensee could operate both fixed and mobile services, the proposed fee structure with the alignment of customer connection fee at \$8 per connection, i.e. an increase to \$8 from the existing fee of \$7 per customer connection for FCL and a reduction to \$8 from the existing \$18 per mobile station for MCL, should be viewed in totality in the light of FMC. DG of T further pointed out that although Cable TV and WT&T, both of which provided local fixed services, might perceive the \$1 rise as additional expenses, the substantial reduction of \$10 in the per mobile station fee on the other hand would serve to neutralize the increase for those network operators providing converged services. The proposed level of UCL was therefore considered appropriate, prudent and balanced. She reiterated that in the control and management of the Trading Fund, the Administration had to be prudent in maintaining a fiscal balance and ensuring a reasonable return on fixed assets, as determined by the Financial Secretary. Referring to a series of fee reduction in the past which brought the mobile station fee down to \$18 from \$75 in mid-1999, and the substantial reduction in the level of FCL for the provision of extend service only since mid-2003, DG of T stressed that the Administration had in the past made several rounds of fee reduction whenever there was room for adjustment. She assured members that the Administration was mindful that the proposed fee level would not be a burden to the industry and would be conducive to the healthy development of the telecommunications industry in Hong Kong.

15. Responding to Ms Emily LAU's enquiry as to whether it was necessary to pre-determine at this moment in time the UCL fee for 2009-2010, DG of T said that to tie in with the auction of the BWA spectrum scheduled for the fourth quarter of 2008, it was expedient to set the UCL fee now in order to provide a clear and predictable business environment to the telecommunications market players. She stressed that the matter was currently under consultation and the Administration would take account of the prevailing market conditions and consumer demands and would also fully consider the views of LegCo members, the public and the industry players when finalizing the fee level.

Telecommunications numbering plan

16. Referring to Dr LUI Ming-wah's enquiry about the available number of numbers under the existing numbering system for allocation to telecommunications operators and/or for use by the public, AD of T(R) said that theoretically, there were about 100 million possible 8-digit numbers, and all numbers were for allocation. Numbers beginning with "1" were reserved for enquiry directories and hotlines, while numbers starting with "7" were reserved for paging service. At present, all

fixed and mobile network operators might apply to the TA for telecommunications numbers at no charge. Numbers and codes were allocated by the TA to operators on a block-by-block basis, and the operators were entrusted by the TA to assign individual numbers and codes to end customers. Operators could apply to TA for additional numbers when 60% of the numbers allocated to them were used and/or assigned to end customers. Depending on the rate of allocation and utilization as well as the number of unused numbers returned by operators, numbers with prefixes "6" and "9" reserved for mobile phones were close to running out. At the existing consumption rate, the 8-digit numbering plan might be exhausted in seven years and a review had to be conducted in four years' time to decide on whether to migrate to a 9- or 10-digit numbering plan. However, any proposal for extending the existing 8-digit plan to a longer digit plan would have wide social implications in terms of cost and convenience to existing consumer and the business sector. To meet the increasing demand and to extend the lifetime of the existing 8-digit number plan, the TA, with the endorsement of the Numbering Advisory Committee, would allocate mobile numbers beginning with digit "5" shortly and would also consider the option of freeing up pager numbers with prefix "7". As some operators and large companies were holding blocks of unused numbers, a \$3 number fee per subscriber number, irrespective of whether the numbers were used or not, was proposed under the UCL fee structure to encourage the return of these unused numbers for re-allocation. Operators would not need to pay the \$3 number fee for unused numbers returned to OFTA.

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17. In this connection, the Chairman and Ms Emily LAU enquired about the extent of the problem of operators holding onto blocks of unused numbers. In response, AD of T(R) said that about 70% to 80% of the 8-digit telecommunications numbers for fixed and mobile services were allocated to operators and on the whole less than 60% of the allocated numbers were used by end customers. He undertook to provide after the meeting information on the numbers of 8-digit telecommunications numbers that were:

- (a) available for allocation to telecommunications network operators/service providers,
- (b) actually distributed to operators/service providers, and
- (c) assigned by operators to end users/customers.

18. Referring to the practice in the US where phone cards would be cancelled three months after no value was added, Mr Howard YOUNG pointed out the potential waste of number resources in Hong Kong whereby numbers designated for phone cards were not reused long after expiry. Noting that telecommunications numbers were valuable public resources, he considered that the Administration should give further thoughts to the better utilization of the phone card numbers.

The proposed number fee

19. In response to Ms Emily LAU's enquiry about the policy objective of the proposed \$3 number fee per subscriber number, DG of T said that there was no provision under the existing licensing regime requiring the operators to return unused numbers for reallocation. As telecommunications numbers were scarce public resources and in view of the relatively low utilization rate of less than 60% of the numbers allocated to operators, a number fee was proposed under the UCL fee structure to encourage the return of unused numbers. Under the proposal, the more number resources held by a licensee, the higher amount of total number fee it would have to pay. Alternatively, the licensee might return unused numbers to the TA to reduce the number fee payable. She believed that the proposed number fee should therefore provide the necessary financial incentive for licensees to make more efficient use of their numbers, thereby helping to prolong the lifetime of the existing 8-digit numbering plan.

20. Mr Albert CHAN opined that the fee of \$3 per number was too low to deter operators from holding onto auspicious numbers, such as those with the number "8" considered lucky by some people. To discourage operators from holding onto unused numbers indefinitely without a good reason, he was of the view that stricter sanctions and measures should be imposed and a time limit, such as three years, should be set for the return of the unused numbers. DG of T noted Mr CHAN's suggestion and said that the Administration would closely monitor the situation to assess the effectiveness of the proposed number fee as the first step towards encouraging the return of unused numbers.

Number portability

21. Noting that the porting of numbers across fixed and mobile services was technically viable, Mr Jasper TSANG enquired about the Administration's policy stance on fixed mobile number portability (FMNP) and whether there was a time-table for introducing FMNP.

22. In response, AD of T(R) and DG of T explained that currently, fixed carrier licensees were required to facilitate fixed number portability and mobile carrier licensees were required to facilitate mobile number portability, but the porting of numbers across fixed and mobile services, albeit technically viable, was currently not supported. Following a review of the feasibility of introducing FMNP, the TA had in its statement in April 2007 announced that a market survey would be conducted to gauge the public's views and assess the market demand for FMNP before deciding the way forward. AD of T(R) advised that the survey findings would be available in March/April 2008 and FMNP, if introduced, would help to prolong the lifetime of the existing 8-digit numbering plan. He nevertheless pointed out that if FMNP was adopted, telecommunications users might be assigned with a single number for both fixed and mobile services, and call recipients would not be able to discern whether the call originated from fixed or mobile network. Deputy Secretary for Commerce and Economic Development (Communications and Technology) (DSCED(CT)) added that all unified carriers would be required to

support number portability at their own expenses if FMNP was introduced.

Migrations to Unified Carrier Licences

23. Noting that the four fixed telecommunications network services/fixed carrier licences issued in 1995 were due to expire in June 2010, Mr SIN Chung-kai enquired about the arrangements for migration of existing fixed and mobile carrier licences to UCLs and whether the existing licensees could opt out of converting their licences to UCLs.

24. In response, DG of T and AD of T(R) pointed out that as the boundary between fixed and mobile networks and services had become increasingly blurred and in the light of FMC, the Administration's intention was to replace the four existing types of carrier licences, (i.e. FCL, FCRL, MCL and MCRL) by UCL upon expiry of their current licences. To facilitate migration to the unified licensing regime, it was proposed that UCLs would be issued for both new applications and for replacement of the existing carrier licences upon their expiry. Moreover, existing fixed and mobile carrier licensees might apply to convert to UCLs before the expiry of their current licences on a voluntary basis. As such, upon the expiry of the existing carrier licences, all kinds of fixed, mobile and converged telecommunications services would be brought under the licensing and regulatory regime of the UCL. The UCL validity period for both new applications or for the replacement of an existing carrier licence would be 15 years, same as the existing FCL and MCL. In the event an existing carrier licensee applied to convert its licence to UCL without any change in service scope, the UCL validity period would be the same as the remaining term of the original carrier licence.

Universal service obligation

25. Mr Howard YOUNG noted that PCCW was currently the only fixed carrier subject to the universal service obligation (USO) to provide universal "basic services" and that such an obligation would continue to apply to PCCW under the UCL. He was concerned whether such a requirement was the best arrangement, considering that other service providers were free from this obligation. He also enquired what compensation was payable to PCCW for the provision of universal services.

26. In reply, DG of T said that presently PCCW's network covered practically most parts of Hong Kong. The Administration considered it most appropriate and effective for PCCW to continue to provide such services and did not see the need to change the arrangement at the present stage. She advised that PCCW would continue to be compensated for the net cost of providing basic telephone services in areas or buildings with no alternative fixed network coverage and for operating payphones in areas with no competitive and alternative service in the vicinity. AD of T(R) supplemented that in the past, USO cost sharing was based on the external telecommunications service (ETS) traffic volume, i.e. international direct dialing (IDD) minutes carried by ETS service providers and carriers. With effect from May 2009, the basis for USO cost sharing would be changed from IDD traffic

volume to the number of all telephone numbers allocated. He recapped that the Panel had been briefed on the Universal Service Contribution Scheme and the new cost sharing mechanism at its meeting in July 2007.

27. Mr Jasper TSANG noted that in the light of FMC and with the emergence of the new broadband wireless access (BWA) technology, wire-line based services could be made available through wireless transmission. As such, he questioned whether USO was still necessary for areas supported by wireless access facilities and considered that it might become unnecessary in the future to require PCCW to continue to have a USO under the UCL, particularly in view of the wide coverage of the wireless access services. Echoing his view, the Chairman said that if PCCW was freed from USO in areas supported with wireless access facilities, the amount of compensation to PCCW could be reduced, resulting in a saving in the public coffers.

28. In response, AD of T(R) said that wireless access services might be less stable and effective compared with fixed-lines services via cable transmission. Moreover, some remote areas might not be covered by the wireless network. He said that whether the development of BWA technology was considered advanced enough to replace fixed-line transmission would be a matter for the industry to decide. As regards the provision of basic fixed-line telephone services and payphone services at affordable prices to all persons across Hong Kong under USO, AD of T(R) advised that the TO currently required that these fixed-line services be provided by fixed carrier licensee(s) through wire-line transmission. Except with the requisite legislative amendment, it was not legally permissible under the existing regulation to withdraw USO from areas supported by wireless access facilities. In this connection, the Chairman asked whether the Administration would consider making legislative amendment to this effect in the context of the coming TO review. AD of T(R) said this had to be considered carefully. Any change would have to be preceded by consultation with the industry and the public.

29. Mr Howard YOUNG recapped that before the liberalization of the fixed-line market, the intention of USO was to provide basic telephone services to all citizens across the territory including remote rural areas. He pointed out that although wireless technology was technically capable of providing most fixed-line services, the issue of whether to replace all cable transmissions with wireless technology should be carefully examined before a decision was taken to withdraw USO.

Regulatory framework for UCL

30. Mr Albert CHAN expressed his concern about the poor service quality as well as the misleading and deceptive conduct of telecommunications service providers which he said was due to a lack of proper and effective regulatory control under the pretext of self-regulation by the industry. He considered that the Administration should take a more active role in setting up an effective and authoritative complaint handling mechanism to enhance consumer protection and strengthen the regulation of business practices of the telecommunications industry.

He also called on the Administration to tighten up control when drawing up the conditions for the new UCL.

31. In response, DG of T pointed out that to address members' concern about consumer protection and licensees' service quality in a forward-looking manner, the TA had included two special conditions (SCs) in the current proposal as a common licence obligation for all unified carrier licensees including the future BWA licensees. The proposed SC1 on "Compliance with Codes of Practice" of the UCL required licensees to comply with any code of practice or guideline which the TA might issue for the protection and promotion of consumers' interests for telecommunications goods and services. To enhance consumer protection and improve the handling of consumer complaints in relation to contractual matters, SC36 on "Service Contracts and Dispute Resolution" of the UCL was proposed requiring the licensees to comply with the code 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 and settlement disputes, etc. She highlighted that non-compliance with the codes of practice would constitute a contravention of the licence condition. She believed that making the compliance of the code of practice and guidelines part of the licence condition would further strengthen the TA's role in consumer protection.

Summing up

32. The Chairman said that SCED, having regard to the submissions received during the consultation exercises scheduled to end on 20 February 2008, would finalize the proposal and table the amendment regulation(s) for negative vetting by the LegCo within the 2007-2008 legislative session in time for the UCL to be in place in the second half of 2008.

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