

Guidelines for the Implementation of Fair Usage Policy for Provision of Mobile and Fixed Broadband Services



The Guidelines

- Promulgated by OFTA

To Regulate

- How mobile and fixed broadband service providers implement their Fair Usage Policy (FUP) on their customers



Objectives of OFTA promulgating the Guidelines: To Protect Consumers' Interest

- **To provide certain guiding principles for implementation of FUP, and mandate service providers to follow in order to ensure a uniform application of FUP**
- **To increase the service transparency and enhance customers' understanding on FUP, enabling them to compare the different offers in the market and to make informed subscription decisions**



Recent Development of Broadband Services

- Fixed / mobile broadband services have become very popular
- Fixed residential broadband users reached 2 million, at household penetration rate of 85%
- Mobile data services growing rapidly
 - Proliferated use of smart phones
 - Mobile Data Services Users
Grow from 2.9 million in end 2007 to 7.7 million in October 2011
↑ 4.8 million users
 - Mobile Data Usage
Grow from 32 TB (Terabyte) in end 2007 to 3,568 TB in October 2011
↑ more than 100 times



Fair Usage Policy

- Service providers offer a variety of service plans, including “unlimited” usage plans, to meet the needs of consumers
- These service plans, including “unlimited” usage plans, are often subject to limitation, in the name of FUP
- Objectives of service providers in applying FUP
 - Ensure their customers as a whole may have a fair opportunity to enjoy and access to their services
 - Prevent possible abuses by a small number of customers



Problems with Current FUP Implementation by Service Providers

- **Since December 2009, OFTA has received from time to time complaints about the application of FUP**
- **In early 2010, OFTA commissioned a consultant to conduct a focus group study on customer's attitude towards the implementation of FUP for mobile data services**
- **In November 2010, OFTA conducted a survey of FUP implemented by local service providers**



Problems with Current FUP Implementation by Service Providers

- **Service providers have given different interpretations to their FUP**
 - Some restrict the access speed of customers whose data usage has exceeded a specified threshold
 - Some restrict the access speed of some or all customers served by a radio base station when the number of customers served by that particular base station exceeds a certain number
 - Some prohibit customers from using the services for such illicit purposes as sending or uploading illegal message or content, or from endangering or interfering with the normal operation of their networks




Problems with Current FUP Implementation by Service Providers

- **Broad Terms and Conditions**
 - Example: Objective criteria of triggering FUP and the form of service restriction are not specified
- **Lack of Understanding of FUP by Customers**
 - Customers in general are not aware of FUP and the relevant terms and conditions
 - Customers feel injustice and aggrieved when “unlimited” usage plans are subject to limitation under FUP



Promulgation of the FUP Guidelines

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- After 3 rounds of consultation and considering the views of the industry and user groups (including the Consumer Council), the Telecommunications Authority promulgated on 09-11-2011 the Guidelines governing how mobile and fixed broadband service providers should implement their FUP



Guiding Principles

- If service providers offer service plans with name simply described or promoted as “unlimited” without any qualifications, service providers shall not impose on or apply any forms of FUP to customers who have subscribed to such plans after the Guidelines have come into effect



Guiding Principles

- For “unlimited” service plans with qualifications, the qualifications must be presented and be perceived in a clear and non-misleading manner; by using the same font with the same size and presented in equal prominence and close proximity with the word “unlimited”

- Examples:

**Unlimited email
service plan**

**Unlimited plan for
data usage up to 5 GB**



Guiding Principles

- Service providers shall set out in their websites, customer service agreements and related advertising, marketing and sales materials whether their plans are subject to FUP, and the forms of FUP applicable
- Service providers shall clearly advise customers before contract is concluded whether their service plans are subject to FUP, and if so, the triggering mechanism and the forms of restrictions applicable

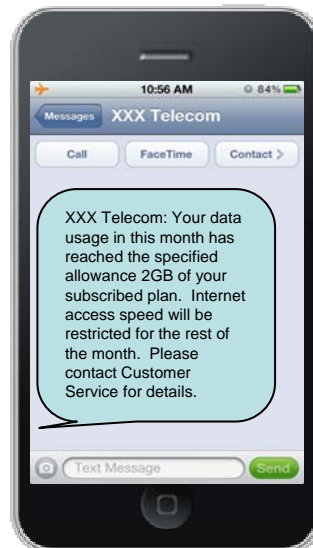


Guiding Principles

- Service providers may only restrict service level in such a manner that commensurate with what an average customer would normally perceive as a broadband service. The service shall not be suspended nor the download speed be capped below 128 kbps i.e. typical speed of 2.5G service
- Service providers shall give customers sufficient notice before varying unilaterally the salient terms in the FUP

Guiding Principles

- FUP shall not be intermixed with provisions unrelated to FUP
- Service providers shall, for customers who have signed the contracts after the Guidelines have come into effect, provide those with excessive usage advance notice before triggering FUP, and provide detailed record of data usage upon request





Service Providers have to comply with the mandatory Guidelines

- **Guidelines are issued under Special Conditions of relevant licences**
 - Failure to comply with the Guidelines means a failure to comply with the licence conditions
- **Under S.36C of the Telecommunications Ordinance (“TO”), the TA may impose financial penalty on licensees who fail to comply with the licence conditions**
 - first occasion: up to HK\$200,000
 - Second occasion: up to HK\$500,000
 - Subsequent occasions: up to HK\$1,000,000
- **Any complaints of misleading or deceptive sales practice involving implementation of FUP may be investigated by OFTA under S. 7M of the TO**



Implementation of the Guidelines

- To allow sufficient time for service providers to make necessary preparation, the Guidelines will take effect about 3 months from promulgation i.e. 13 February 2012
- Service providers shall comply with the Guidelines on a mandatory basis for all new and renewed service contracts signed on or after 13 February 2012
- OFTA encourages service providers to apply retrospectively the principles of the Guidelines to contracts signed before the effective date of the Guidelines
- The Telecommunications Authority will closely monitor service providers' compliance with the Guidelines



Thank you



Full Text of the Guidelines

- **English version**

http://www.ofta.gov.hk/en/report-paper-guide/guidance-notes/gn_201124.pdf

- **Chinese version**

http://www.ofta.gov.hk/zh/report-paper-guide/guidance-notes/gn_201124.pdf