**Licence Fees Reduction for Unified Carrier Licences,
Public Radiocommunications Service Licences and
Services-Based Operator Licences
Issued under the Telecommunications Ordinance**

**Joint Statement of
the Secretary for Commerce and Economic Development and
the Communications Authority**

27 November 2012

INTRODUCTION

On 29 June 2012, the Secretary for Commerce and Economic Development ("SCED") and the Communications Authority ("CA") jointly issued a public consultation paper[1] to invite members of the public to make representations on the proposed licence fees reduction for unified carrier licences ("UCLs"), public radiocommunications service ("PRS") licences and services-based operator ("SBO") licences issued under the Telecommunications Ordinance (Cap. 106) ("TO").

2. At the close of the consultation period on 30 July 2012, the SCED and the CA received six submissions[2] from the following parties (listed in alphabetical order) –

(a) China Mobile Hong Kong Company Limited ("CMHK")
(b) CSL Limited ("CSL")
(c) Hong Kong Telecommunications (HKT) Limited ("HKT")
(d) New World Telecommunications Limited ("NWT")
(e) SmarTone Mobile Communications Limited ("SmarTone")
(f) Wharf T&T Limited ("WTT")

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[1] The consultation paper is available at -
http://www.coms-auth.hk/filemanager/en/content_711/cp20120629_2e.pdf

[2] The submissions are available at –
http://www.cedb.gov.hk/ctb/eng/paper/lfr_submission.htm

3. Having considered the submissions and other relevant factors, the SCED and the CA set out in this Joint Statement their responses to the submissions and promulgate their decision on the licence fees reduction proposal. For the purpose of this Joint Statement, any reference to "the Administration" shall mean both the SCED and the CA. For the avoidance of doubt, the SCED and the CA are fully aware of their specific powers under section 7 of the TO to determine licence fees for UCLs, PRS licences and SBO licences.

THE SUBMISSIONS AND THE ADMINISTRATION'S RESPONSES AND DECISION

4. All the respondents are holders of UCLs. Some also hold SBO licences. While they generally supported the Administration's initiative to reduce licence fees for UCLs, PRS and SBO licences, they expressed further views and comments on the proposal to reduce the customer connection fee level of UCL from $800 to $700 for each 100 customer connections, and to reduce the mobile station fee level of PRS (Paging) and SBO licences (Class 3) from $800 to $700 for each 100 mobile stations ("the Proposal"). A summary of the views and comments of the respondents as well as the responses and decision of the Administration are set out below.

A Further Downward Adjustment of Licence Fees

Respondents' Views and Comments

5. All the respondents opined that there should be room for further downward adjustment of the licence fees. Specifically, CMHK submitted that the percentage of downward adjustment for customer connection fee should not be less than 16.6%[3]. HKT submitted that in the light of the Trading Fund Ordinance ("TFO"), Communications Authority Ordinance ("CAO") and in the public interest, a greater fee reduction would be warranted. HKT further commented that any licence fees reduction should be applicable

[3] That is, 12.5% X (8.77% / 6.6%) where 12.5% is the proposed reduction percentage and 6.6% is the growth rate of number of customer connections for UCL in 2011-12 quoted in the consultation paper; and 8.77% was the 5-years compound annual growth rate of total number of subscribers since March 2007.

across the board to all licences and licence fee components. NWT submitted that the proposed reduction level should be so computed as to ensure the meeting of the target rate of return on fixed assets of 8.5% only so that no excessive profit would be generated.

6. WTT submitted that the current licence fees had not reflected (a) the reduced role and workload of the Office of the Communications Authority ("OFCA") in regulating fixed network operators; and (b) the expected efficiency gain from the merger of the former Office of the Telecommunications Authority ("OFTA") and the broadcasting division of the former Television and Entertainment Licensing Authority. As such, WTT demanded for a greater reduction of the customer connection fee and the lowering of the fixed annual fee of UCLs. WTT also opined that the implementation of number fee had failed to prolong the 8-digit numbering plan as an additional 6.3 million subscriber numbers[4] had been allocated and used mostly by mobile network operators. Maintaining the existing level of number fee was considered unjustified and there should also be a reduction in number fee.

The Administration's Responses

7. The Administration noted the requests of the respondents for a further reduction of licence fees. However, the proposal to reduce customer connection fee from $8 to $7 represents already a rate of reduction of 12.5% of the customer connection fee, which is nearly twofold of the growth in customer connections / mobile stations of 6.3% for the three types of licences concerned in 2011-12. The Administration worked out the Proposal with due consideration of the financial results of the former Office of the Telecommunications Authority Trading Fund ("OFTATF") for the past few years and the financial forecast of the current Office of the Communications Authority Trading Fund ("OFCATF") for the coming five years. As elaborated in the consultation paper, the Proposal is premised on the assumption that there will be a continuous growth in the number of customer connections / mobile stations. However, this is by no means guaranteed as

[4] WTT claimed that since number fee was implemented as part of the UCL licence fee structure in 2008-09, 0.5 million subscriber numbers were returned from the fixed and paging operators to OFTA/OFCA. During the same period, about 6.8 million subscriber numbers were allocated by OFTA/OFCA to the licensees. That is, an additional allocation of 6.3 million subscriber numbers was made during the period.

the penetration rate of mobile services has already exceeded 220% of the population in Hong Kong. Moreover, the recent passage of the Competition Bill and the Trade Descriptions (Unfair Trade Practices)(Amendment) Bill 2012 has introduced much more comprehensive and sophisticated regulatory frameworks to tackle anti-competitive conduct as well as unfair trade practices of licensees providing communications services. Substantial additional resources will be needed by OFCA for the CA to carry out its duties effectively under these new regimes. Furthermore, OFCA also needs to allocate resources for various new initiatives, including the Customer Complaint Settlement Scheme which started operation on 1 November 2012. As a result of the above, there will be a substantial increase in the administrative costs of OFCA in the coming years and the Administration considers that on the basis of the current forecast, there is no room for further downward adjustment of the licence fee for customer connection / mobile station.

8. Regarding HKT's comments that any licence fees reduction should be applied to all licences and licence fee components, the Administration should point out that the former OFTATF has not increased any licence fees since its establishment in 1995. Rather, over the last two decades the former OFTATF had reduced the licence fees on a number of occasions, covering not only PRS and carrier licences as mentioned in paragraph 17 below but also other licences such as Mobile Radio System Mobile Station licence and Satellite Master Antenna Television licence. Having reviewed the latest profit and loss situation for the OFCATF, the Administration considers it inappropriate in the light of the cost recovery principle to reduce licence fees for other licences or other licences fee components.

9. In view of fixed mobile convergence, it was a conscious decision of the Administration to create the unified licensing regime in 2008 for provision of facility-based fixed and/or mobile services. In response to WTT's comments in paragraph 6, the Administration should stress that in formulating the Proposal, it has already taken into consideration the possible efficiency gain arising from the merger of the two offices in preparation of the projected financial figures of OFCATF for the coming five years. It is also noteworthy that as the major players in the local telecommunications market, UCL holders have continued to require substantial regulatory oversight of CA.

As far as fixed network operators are concerned, CA has to continue to perform various regulatory functions such as the deregulation of the local access charge and the fixed-fixed interconnection charge; coordinating the use of telecommunications infrastructure and facilitating building access; and investigating complaints under Sections 7K – 7N of the TO. As regards number fee, quite contrary to the figures and assessment provided by WTT, the measure has successfully encouraged operators to return unused numbers to OFCA and effectively prolonged the life-span of the 8-digit numbering plan. As a matter of fact, operators have thus far returned more than 6.9 million idle numbers (instead of the 0.5 million which WTT has quoted) to OFCA and they exceed the quantity of newly allocated numbers since the implementation of the number fee measure. With the return of a large number of unused numbers, the total allocated numbers in May 2012 has decreased by 1.7 million from August 2008 when the number fee was introduced. The overall number utilisation rate has increased from 55% to 68% over the same period.

Refund of the Licence Fees Paid and/or Creation of a Fee/Tax Holiday

Respondents' Views and Comments

10. Noting that the former OFTATF achieved high rates of return over the past three years, HKT submitted that it was not consistent with the TFO and the CAO to set licence fees that generated consistently high and excessive profits. Based on the TFO and the CAO, HKT considered that it would be appropriate for the Administration to refund past licence fees and/or create a fee/tax holiday. CSL also submitted that there was room for refund of telecommunications licence fees, which accounted for more than 90% of OFTA's income.

The Administration's Responses

11. OFCATF and the former OFTATF operates in a commercial or quasi-commercial manner. It has to meet expenses incurred in the provision of the government services and finance liabilities out of its income, taking one year with another. For performance benchmarking, OFCATF needs to achieve a reasonable return as determined by the Financial Secretary on the fixed assets employed. To ensure that OFCATF can finance its own operations, it has to act

prudently and ensure that it is financially viable and sustainable to operate in the long run.

12. Pursuant to section 5(3) of the TFO, the general manager of a trading fund is allowed to keep the surplus with a reserve account. The reserve of the OFCATF accumulated over the past years has the function of acting as a cushion against any need for licence fee increases. It is crucial to ensure a predictable and consistently low licence fee environment for telecommunications operators to operate their businesses in Hong Kong. Taking into account the current proposal of licence fees reduction, the possible economic downturns in the future and the need to incur higher administrative costs as elaborated in paragraph 7, the Administration considers it undesirable to undermine the reserve of the OFCATF by way of a refund of the past licence fees and/or creation of a fee/tax holiday.

13. In addition, it is legitimate that OFCA, being the regulator of the telecommunications industry, derives most of its income from licence fees. The appropriate level of the licence fees should hinge on the cost recovery principle, rather than the percentage of licence fees in the total income of OFCA.

Immediate Reduction in Licence Fees or Back-dating the Reduction to 1 April 2012

Respondents' Views and Comments

14. CMHK, CSL and HKT submitted that the licence fees reduction should be implemented as soon as possible. HKT supplemented that the reduction should be back-dated to an earliest possible date, for example, 1 April 2012 when CA was established.

The Administration's Responses

15. The Administration considers an immediate reduction in licence fees not practicable. In determining the date of the implementation of the Proposal, the Administration needs to take into account the legislative process necessary for effecting the licence fee reduction for UCLs. Taking into

account the commencement of the new term of the Legislative Council ("LegCo") in October, the earliest possible time for briefing the Panel on Information Technology and Broadcasting of the LegCo on the decision is December 2012. Hence, it will only be feasible to table the proposed amendment of Telecommunications (Carrier Licences) Regulation (Cap. 106V) at the LegCo Meeting in December 2012 / January 2013. Subject to the negative vetting procedures[5] of the LegCo, the earliest possible time for implementation of the Proposal will be March 2013. The Administration therefore considers it appropriate to effect the licence fees reduction in March 2013, subject to the enactment of the proposed amendment regulation. As the Proposal does not stem from the establishment of the CA, the Administration does not see the relevance of aligning the implementation date of licence fees reduction with 1 April 2012, when the CA was established.

Licence Fee Review on an Annual Basis

Respondents' Views and Comments

16. CSL submitted that the Government should set up a mechanism to review the licence fee structure and the level of licence fees on an annual basis. SmarTone requested the Administration to conduct the review of licence fees whenever there was a surplus in OFCATF in the future.

The Administration's Responses

17. In line with the cost recovery principle, the Administration has been regularly monitoring the financial performance of the former OFTATF and now the OFCATF and is minded to adjust the relevant licence fees should there be room to do so. This is evident by the fact that the licence fee per mobile station for public mobile telecommunications services has been progressively brought down, on five occasions, from $75 on 1 May 1999 to $18 on 1 May 2005 in view of the continuous growth in the number of mobile

[5] Under the "negative vetting" procedures, the LegCo may amend a piece of subsidiary legislation by a resolution passed at a Council meeting held not later than 28 days after the meeting at which it was so laid. This period for scrutinizing and amending subsidiary legislation is called the vetting period. Subject to the passing of a resolution at a Council meeting before its expiry day, the vetting period may be extended to the first Council meeting held after the 21st day from the original expiry day. The negative vetting period can therefore cover a period of around 49 days.

phone subscribers. This represents a cumulative reduction of 76% over a span of six years. In addition, the implementation of the UCL regime in 2008 already has the effect of reducing licence fees significantly for mobile operators as UCL licensees are required to pay a licence fee of $8 per customer connection (plus a number fee of $3 per subscriber number), instead of having to pay a licence fee of $18 per mobile station under Mobile Carrier Licence. The Administration should also emphasise that it has been an established practice for the former OFTA and now OFCA to review the licence fees on an annual basis to ensure recovery of operating costs of the former OFTA and now OFCA based on the cost recovery principle. The Administration considers that this established mechanism of licence fee review has been working effectively. Should the need for adjusting the licence fees, either upwards or downwards, be identified, the Administration will as is the established practice formulate a proposal timely and invite the public and the industry to make representations prior to implementation.

The Administration's Decision

18. Having duly considered the views and comments received in context of the consultation exercise, the Administration has come to the decision that the Proposal should be proceeded with as planned.

WAY FORWARD

19. SCED will proceed with the legislative process to amend the Telecommunications (Carrier Licences) Regulation (Cap. 106V) under Section 7(2) of the TO to effect the licence fee reduction for UCLs. Subject to the implementation of the proposed licence fee reduction for UCLs, the CA will proceed to reduce the mobile station fee for PRS licences (Paging) and SBO licence (Class 3) to the same level, and at the same time.

Commerce and Economic Development Bureau
and the Communications Authority
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