



The submissions of Hong Kong CSL Limited and New World PCS Limited in response to the Commerce and Economic Development Bureau's 'Consultation Paper on the Creation of A Unified Carrier Licence under the Telecommunications Ordinance' dated 21 December 2007

4 March 2008

Contents

1.	Introduction	3
2.	Question 1	4
3.	Question 2	4
4.	Question 3	5
5.	Question 4	5
6.	Question 5	6
7.	Conclusion	8
8.	Confidentiality	9

1 Introduction

- 1.1 Hong Kong CSL Limited and New World PCS Limited (the “**CSLNWM Group**”), are pleased to provide submissions in response to the Secretary for Commerce and Economic Development’s proposals contained in the ‘Consultation Paper on the Creation of a Unified Carrier Licence under the Telecommunications Ordinance’ (**CEDB Consultation Paper**).
- 1.2 The issues set out in this submission in response to the CEDB Consultation Paper are generally discussed at a level of principle and are limited to those of primary importance to the CSLNWM Group. The CSLNWM Group has sought to keep its comments to material policy and legal issues. The CSLNWM Group is happy to expand on any of the issues raised or comment on other issues if requested.
- 1.3 In respect of some issues, the CSLNWM Group has elected not to comment at this time. This should not be interpreted as indicating that the CSLNWM Group will not wish to comment on such issues in future, simply that it has elected to focus on more immediate issues for the purposes of this submission.
- 1.4 The CSLNWM Group would also be pleased to meet with staff of the CEDB or the Secretary personally to discuss this submission in more detail if such meeting would assist.

2 Question 1 – The creation of the Unified Carrier Licence

- 2.1 As set out in previous submissions¹, the CSLNWM Group supports the concept of a unified carrier licence (UCL), however, only to the extent that any UCL regime treats mobile network operators (MNOs) and fixed network operators (FNOs) in a technology neutral and equal manner. Failure to implement a truly neutral and equitable UCL regime will simply perpetuate existing regulatory asymmetries suffered by MNOs and stifle the evolution of FMC in Hong Kong, to the detriment of industry operators and consumers.
- 2.2 Currently, the CSLNWM Group has serious concerns that the detailed proposals for the licensing framework to be adopted for the granting of a UCL by the TA, as set out in the consultation paper issued by the TA on 21 December 2007 (UCL Consultation Paper), do not ensure equity and neutrality as between all operators².
- 2.3 The CSLNWM Group considers that the Secretary and the TA together must act to ensure historic regulatory distortions are not simply transplanted into the new UCL regime and the opportunity for a harmonized and enduring regulatory regime which truly allows service providers to “*compete with each other under a level playing field*”³ thereby squandered to the lasting detriment of Hong Kong.

3 Question 2 – Migration to the UCL

- 3.1 Subject to the comments set out in section 2 above and the detailed submissions made to the TA in response to the UCL Consultation Paper, the CSLNWM Group considers the proposed migration arrangement detailed at paragraphs 9 – 15 of the CEDB Consultation Paper to be appropriate.
- 3.2 As mentioned in the detailed submissions made to the TA in response to the UCL Consultation Paper, the CSLNWM Group does not consider that the transplanting

¹ In particular, see the Submissions of Hong Kong CSL Limited and New World PCS Limited in response to the second consultation paper released on 14 July 2006 by the Telecommunications Authority on “Deregulation for Fixed-Mobile Convergence”, dated 27 October 2006 ([copy attached](#)).

² See Submissions of Hong Kong CSL Limited and New World PCS Limited in response to the Telecommunications Authority’s Consultation Paper entitled ‘Licensing Framework for Unified Carrier Licence dated 21 December 2007, provided on 4 March 2008 ([copy attached](#)).

³ CEDB Consultation Paper, paragraph 9.

of existing rights and obligations to UCLs is appropriate in all cases and, for the reasons outlined to the TA, does not result in a “*level playing field*” on which all operators can compete.

4 Question 3 – Period of validity

- 4.1 The CSLNWM Group understands that any UCL will have differing periods of validity depending upon the circumstances in which it is issued.
- 4.2 In particular, the CSLNWM Group understands that any UCL issued to:
- 4.2.1 a new licensee will have a period of 15 years validity;
 - 4.2.2 an existing licensee voluntarily converting to UCL and not proposing to alter its scope of services will have a validity period equal to the remaining term of their existing FCL/MCL (as the case may be);
 - 4.2.3 an existing licensee voluntarily converting to UCL, proposing to offer both existing and new services and submitting proposal for provision of new services only will have a validity period equal to the remaining term of their FCL/MCL (as the case may be); and
 - 4.2.4 an existing licensee voluntarily converting to UCL, proposing to offer both existing and new services and submitting proposal for both existing services and new services under the UCL will have a validity period of 15 years.
- 4.3 The CSLNWM Group has no objection to the periods of validity proposed in the CEDB Consultation Paper.

5 Question 4 – General Conditions of the UCL

- 5.1 The CSLNWM Group welcomes the Secretary’s concern that “*in order to ensure a level playing field, the Secretary considers that Licensees under the current licensing regime and those under the unified licensing regime who operate similar kind of network/service should basically have the same rights and obligations*”⁴.
- 5.2 In this regard, the Secretary proposes that the general conditions (GCs) of any UCL should be the same as those of the existing, service specific licenses.

⁴ CEDB Consultation Paper, paragraph 27.

- 5.3 As a matter of general principle, the CSLNWM Group has no objection to the Secretary's proposal. That said, the CSLNWM Group does consider it important that, prior to importing the GCs into any UCL, the Secretary be satisfied that all GCs remain relevant and appropriate. Any GCs which are, or become, obsolete or outdated should be removed.
- 5.4 In particular, the CSLNWM Group considers that it is of crucial importance that all licensees, irrespective of providing fixed or mobile services, are treated equally in respect of land and building access rights. However, the TA's continued position on denial of equal land and building access rights to MNOs creates a non-level playing field between FNOs and MNOs. The negative impact of the TA's position will be further exacerbated in an FMC environment. In this regard, the CSLNWM Group urges the Secretary and the TA together to have an urgent reform of land and building access rights to ensure all carriers, including those licensed under the UCL regime, have the same rights⁵. Owing to the vital importance of this issue, the CSLNWM Group wishes the Secretary to introduce a GC whereby all licensees in the UCL will have equal land and building access rights.

6 Question 5 – Fee Schedule of the UCL

- 6.1 At this time, the CSLNWM Group wishes to confine its submissions to three issues, namely:
- 6.1.1 the basis of the licence fees proposed;
 - 6.1.2 the current mobile station fee; and
 - 6.1.3 the appropriateness of the non subscriber-based fee component – number fee.

Basis of licence fees

- 6.2 The CSLNWM Group notes that licence fees are set on a cost recovery basis to cover the administrative costs of OFTA.
- 6.3 As indicated in the OFTA Trading Fund Report, the total expenditure of OFTA has decreased for the past few years. The CSLNWM Group considers that the

⁵ Please refer to the Submissions of Hong Kong CSL Limited and New World PCS Limited in response to the Telecommunications Authority's Consultation Paper entitled 'Licensing Framework for Unified Carrier Licence dated 21 December 2007, provided on 4 March 2008, paragraph 18.

reduction of OFTA's expenditure should be reflected in the reduction in the licence fee.

Current Mobile station fee

- 6.4 The CSLNWM Group notes the Secretary's proposal to implement a subscriber-based fee component of \$8 per subscriber in the UCL fee schedule.
- 6.5 While the CSLNWM Group has no objection to the quantum of the subscriber-based fee proposed for UCL, it notes that the current mobile station fee applicable under MCL remains \$18 per mobile station. The quantum of the mobile station fee has not, despite the growth in the number of mobile subscribers and commensurate decrease in average administration costs per mobile station, been reviewed or reduced since 2005. This fact is expressly acknowledged by the Secretary in the CEDB Consultation Paper⁶.
- 6.6 Given the proposal for conversion to UCL contemplates voluntary conversion for, relevantly, current MCL licensees, the CSLNWM Group wishes to take this opportunity to repeat its call for review and reduction of the mobile station fee entirely independently of the subscriber-based fee component of the UCL regime. In particular, the CSLNWM Group proposes to reduce the mobile station fee for MCL from \$18 to \$8 per mobile station in order to align current MCL licences with the proposed fee structure for UCL's.

Non-subscriber based fee component – number fee

- 6.7 The CSLNWM Group understands the non-subscriber-based fee component - number fee is intended to provide operators with an incentive to efficiently use numbers already assigned to them and, thereby, prolong the current 8 digit numbering plan. The amount of the number fee is, apparently, also calculated in order to '*recoup the administrative expense of the [TA] in a proportionate manner*'⁷.

⁶ CEDB Consultation Paper, paragraph 29.

⁷ CEDB Consultation Paper, paragraph 37.

- 6.8 Further, the CSLNWM Group repeats its previous submissions⁸ regarding the inequitable basis of levying such a number fee in circumstances where the relevant UCL licensee may not control the fact that the number remains unassigned. In particular, the CSLNWM Group considers that the number fee should not apply to:
- 6.8.1 telephone numbers which cannot be assigned to customers (for example, because the number is considered unlucky or undesirable by customers);
 - 6.8.2 telephone numbers already assigned to post paid customers and activated pre-paid customers;
 - 6.8.3 telephone numbers assigned to pre-paid SIMS but awaiting purchase from either the UCL licensee or the licensee's agents;
 - 6.8.4 telephone numbers returned to the UCL licensee or the licensee's agents (for example, due to a customer's contract terminating) but which cannot be reassigned to other customers within 3-6 months ;
 - 6.8.5 telephone numbers that cannot be assigned to customers due to internal testing by the UCL licensee; and
 - 6.8.6 telephone numbers that have been ported out from a UCL licensee.
- 6.9 The CSLNWM Group considers the application of the number fee in the above circumstances inequitable and unwarranted.
- 6.10 Further, the CSLNWM Group understands that the current problem with using numbers efficiently is not the concern of carriers but service provider licensees who obtain blocks of large sizes despite their relatively small size. The CSLNWM Group again submits that the TA should allocate blocks of small sizes to eligible non-carriers in order to assist number conservation and efficient number use.

7 Conclusion

- 7.1 The CSLNWM Group welcomes the creation of a UCL subject to the extent that any UCL regime must treat MNOs and FNOs in a technology neutral and equal manner. However, the TA's proposed UCL licensing frameworks set out in the UCL Consultation Paper do not ensure neutrality and equity, for example, the

⁸ In particular, see the Submissions of Hong Kong CSL Limited and New World PCS Limited in response to the second consultation paper released on 14 July 2006 by the Telecommunications Authority on "Deregulation for Fixed-Mobile Convergence", dated 27 October 2006, paragraph 26.7.

inequality treatment on MNOs in respect of land and building access rights. The CSLNWM Group urges that the Secretary and the TA together to remove the historical regulatory asymmetries currently suffered by MNOs and establish a UCL regime which is future proof, technology neutral and conducive to FMC so that service providers are genuinely allowed to compete with each other under a level playing field.

- 7.2 As regards the current mobile station fee for MCL, the CSLNWM Group repeats its call for review and reduction of the mobile station fee entirely independently of the subscriber-based fee component of the UCL regime. As regards the proposed non-subscriber based fee component – number fee for UCL, the CSLNWM Group disagrees to the inequitable and unwarranted basis of levying such a number fee in circumstances where the relevant UCL licensee may not control the fact that the number remains unassigned for a number of reasons.

8 Confidentiality

- 8.1 The CSLNWM Group does not regard any part of this submission as confidential and has no objection to it being published or disclosed to third parties, however, this submission in its entirety is made on the basis that it is **without prejudice** to the rights of the CSLNWM Group and its associated corporate entities.

-END-