



Hutchison Telecom
Hong Kong

Hutchison Telecommunications (Hong Kong) Limited
和記電訊(香港)有限公司
Hutchison Telecom Tower, 99 Cheung Fai Road, Tsing Yi, Hong Kong
www.three.com.hk
Oswald Kwok
Legal & Regulatory Department
Tel: 2128 3002
Fax: 2123 1365

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Communications and Technology Branch
Commerce and Economic Development Bureau
2nd Floor, Murray Building
Garden Road
Hong Kong

By Fax (2511 1458 &
2827 0119)
& By Hand

Attn.: Assistant Secretary (B)1

Office of the Telecommunications Authority
29th Floor, Wu Chung House
213 Queen's Road East
Wan Chai
Hong Kong

By Email,
By Fax (2803 5112)
& By Hand

Attn.: Senior Telecommunications Engineer (R13)

Dear Sirs,

Consultations on Unified Carrier Licence ("UCL")

We welcome the Bureau's consultation on the creation of UCL and OFTA's consultation on the licencing framework for UCL. Our main concerns over the matters raised in the consultation papers are as follows.

1. Licence Fee Structure

Immediate Reduction of Subscribed-Based Component

We welcome the Government proposal to reduce the subscribed-based component of the licence fee in respect of mobile subscriber from the existing rate of \$18 per subscriber to \$8 per subscriber.

The last revision exercise in respect of this component was conducted in January 2005 whereby the annual licence fee per mobile subscriber was reduced from \$20 to \$18. Before 2005, the annual fee per mobile subscriber had been reduced from \$30 to \$24 in 2002 and from \$24 to \$20 in 2004.

The lowering of this subscriber-based component throughout the years was a reflection of the lowered cost (per subscriber) of administering the licences as a result of increase in the number of mobile subscribers. We support the Government following such charging principle. The reduction should not only apply to mobile



licensees taking up UCL but also those mobile licensees continuing to hold the existing mobile carrier licences to provide mobile service.

Fixed Fee Component of the Licence Fee

We have no objection in principle to the proposed fixed fee component and the Annual Fee of HK\$1,000,000, being part of the revenue to cover the administrative cost of OFTA. However, we are of the view that the level of such fixed annual fee (as in the case of the subscriber-based component) should be adjusted periodically in order to take into account the actual administrative cost of OFTA.

Transparent review mechanism

We therefore propose an annual review mechanism to be adopted by the Government whereby the level of annual fee payable, be it the fixed fee component or subscriber-based component, can be reviewed periodically based on the actual administrative costs of OFTA. From the public revenue point of view, such adjustment would be important to ensure recovery of the actual administrative cost of OFTA. From consumers' point of view, such adjustment would ensure that operators would not be charged excessive licence fee which would ultimately be borne by them.

Objection to the Introduction of Number Fee

We have serious reservation regarding the proposal on the introduction of a non-subscriber-based fee component in the form of Number Fee and we urge the Government to re-consider such proposal.

(a) Queries regarding the policy objective of Number Fee

As stated in the consultation paper, the policy objective underlying the introduction of the Number Fee is to conserve the use of numbering resources under the current 8-digit numbering plan in order to achieve postponement of switching to 9-digit numbering plan.

However, once this number fee proposal is implemented, we estimate that the total amount of Number Fee that OFTA would collect from the operators would become a significant portion of OFTA's licence fee income. It is questionable why the Government would have to fundamentally change its licence fee income structure, based on the single policy objective to deter the so called wastage of numbering resources, while the effectiveness of this policy instrument is not certain.

(b) Query regarding the effectiveness of the Number Fee on the preservation of the 8-digit numbering plan

It is doubtful whether the imposition of the Number Fee is more effective in its effect on the life of the 8-digit number plan than that of other administrative methods.



To start with, with respect to the number already assigned to consumers as of to-date, how does the imposition of Number Fee on such numbers achieve any conservation purpose?

Secondly, if the operators were to pass on at least part (if not all) of the cost burden of the Number Fee to the consumers, the levy of Number Fees would not effectively curb the operators from aggressively applying for numbering blocks or otherwise inefficiently using the allocated numbering resources. In other words, the incentive on the operators to do anything to prolong the life of the 8-digit number plan would be limited.

The Government has pointed out that the proposed annual Number Fee of HK\$3 would translate into a monthly fee of \$0.25 only. Assuming the overall utilization rate of allocated numbers is 50%, the costs would be about \$0.5 only. It is conceivable for operators to pass on part (if not all) of the Number Fee burden (be it on account of assigned or unassigned numbers) to the consumers.

There are in fact a host of other administrative methods that the Government may adopt, which can effectively prolong the life of the 8-digit number plan. Apart from being more effective than the imposition of Number Fee, these administrative methods have much less or even no side effect to consumers. For instance, the Government may decide to release new numbers to an operator only when it has utilized more than, say, 70% of the numbers already assigned to it. We suggest that OFTA together with the industry as a whole and the relevant consumer bodies should work together to explore into the issues and to develop the feasible solutions. As operator, we are willing and prepared to comply with any such administrative requirements and measures to help alleviate the problem.

(c) Asymmetrical treatment of UCL and Non-UCL licensed operators

The other drawback of the numbering fee proposal in the Consultation is that it only applies to the carrier type of operators (such as fixed operators and the mobile operators) which take up UCL.

In fact, many other operators who are using up numbering resources are not under the ambit of UCL. For example, UCL licensees would not include operators of paging services and Class Two Services-Based Operator ("SBO") licensees. Levying Number Fee only on the UCL licensees would create asymmetric burden on holders of UCL. For example, the Government should include paging operators who are now the sole users of the 7-prefixed numbering block in assessing policy feasibility. In relation to Class Two SBO licensees who are already subject to Number Fee but not a subscriber-based fee, the Government should align the basis of the charging to ensure equal treatment.



Whether or not resources should be spent on preserving the 8-digit numbering plan is a much bigger issue that should be addressed by all stakeholders (which include all operators which utilizes the 8-digit numbers) as well as the society at large. The Government's current proposal to deal with the issue within the context of UCL would only create asymmetries in terms of regulatory incidence weighing on the carrier type of operators.

2. Proposed General Condition 7 (Customer Information)

The other issue that we would like to address is the licence condition governing the obligation in respect of the use of customer information under the existing General Condition 7. It has been an industry concern that this existing licence requirement has far exceeded the relevant requirement prescribed by the Personal Data (Privacy) Ordinance. In the context of this overall exercise of reviewing and updating the licence conditions, we thought some modifications of this general condition are being called for.

General Condition 7.1 provides that:

"The licensee shall not disclose information of a customer except with the consent of the customer, which form of consent shall be approved by the Authority, except for the prevention or detection of crime or the apprehension or prosecution of offenders or except as may be authorized by or under any law."

We are of the view that there is no need to impose more stringent requirements regarding operators' handling of personal data than that already prescribed under the Personal Data (Privacy) Ordinance. For example, the requirement for OFTA to approve the form of customer's consent unnecessarily complicates the matter. If an operator has already taken steps to comply with the requirements under the Personal Data (Privacy) Ordinance, it is not necessary for OFTA to confirm that the consent is in a form that is acceptable in OFTA's opinion.

General Condition 7.2 provides that:

The licensee shall not use information provided by its customers or obtained in the course of provision of service to its customers other than for and in relation to the provision by the licensee of the service.

In this era of fixed and mobile convergence, promotion of telecom and related services or products (particularly those that are new and innovative) would serve the general consumer interests. An operator should not be restricted from promoting to its customers those other services or products that are being offered in conjunction with other service providers or independently by such other service providers (in addition to the service that the operator is currently provisioning to the customers). The licence condition should facilitate such channels of promotion on the basis that an



operator has obtained an express agreement with its customers and does not violate the regulations against unsolicited commercial electronic messages.

3. **Proposed Special Condition 21 (Withdrawal and Return of Frequencies)**

A clear and objective guideline on the TA's power under s.32H(2) of the Telecommunications Ordinance to withdraw frequencies it has been lacking.

If such power is to be conferred to the TA by way of special condition, a clear and objective guideline must be published before hand so that the industry will know what is expected of them.

4. **Question (23) of the OFTA Consultation: general approach of granting UCLs under different scenarios as depicted in paragraphs 69 – 81**

The proposed arrangement regarding the conversion of more than one existing carrier licences is set out in paragraphs 78 to 80 of the OFTA Consultation Paper. We note that OFTA will handle the application on a case-by-case basis and the licensee will be required to submit an application proposal including full details as required for a new application.

We would like to seek clarifications regarding the proposed arrangement. For example, if Hutchison Telephone Company Limited ("HTCL") considers applying for a merger of the three Mobile Carrier Licences that it is currently holding into one single UCL, would that be a simple conversion without change in scope of service and there be no need to submit any detail proposal? Furthermore, it should not be subject to a case-by-case approval, which means the TA may reject the merger of the three licences and decide that three separate UCLs be issued to HTCL to continue to provide service. We would like to request more details from OFTA regarding the proposed migration arrangement.

We are grateful for the opportunity to convey our views on the above issues. If you require any further input from us, please let us know.

Yours faithfully,
For and on behalf of
Hutchison Telecommunications (Hong Kong) Limited

Oswald Kwok
Director of Legal & Regulatory