

REVIEW OF LICENCE CONDITIONS IN CARRIER LICENCES ISSUED UNDER THE TELECOMMUNICATIONS ORDINANCE (CAP. 106)

INTRODUCTION

1. In this paper, Hong Kong Telecommunications (HKT) Limited (“HKT”) provides its views and comments on the issues and questions raised in the consultation paper jointly issued by the Commerce and Economic Development Bureau and the Office of the Communications Authority (“OFCA”) (collectively, the “Administration”) on 5 September 2014 concerning the captioned (“Consultation Paper”).
2. According to the Administration, this review is necessary because while the carrier licensing regime has been evolving, cross-sectoral legislation on specific matters covered in the Carrier Licences¹ have come on stream or have been enhanced such that these have served to supersede or render the sector-specific controls imposed under the telecommunications licensing regime increasingly inappropriate, inconsistent and unnecessary.² However, besides the development of cross-sectoral legislation, there have been other developments in the telecommunications market over the years which have rendered certain requirements contained in the Carrier Licences equally “inappropriate, inconsistent and unnecessary”, e.g. technological changes and the increasingly competitive state of the telecommunications market.
3. On this basis, rather than conducting this review in piecemeal fashion, it would be more appropriate for the Administration to use this consultation exercise to look at **all possible licence conditions** which can be justified for removal from the Carrier Licences, not just those specific requirements which are covered by cross-sectoral legislation. Indeed, a “fresh look” approach which asked whether each and every licence condition was still necessary would be the best way forward.³

¹ Per the Consultation Paper, these refer to the Unified Carrier Licence, Fixed Carrier Licence, Fixed Carrier (Restricted) Licence, Fixed Telecommunications Network Services Licence, Mobile Carrier Licence, Mobile Carrier (Restricted) Licence and Space Station Carrier Licence.

² See paragraph 7 of the Consultation Paper.

³ Of course, ideally, it would be best to start with a blank slate and create a new licence based on only what is needed. In competitive markets, there is no sectoral regulation other than competition law (which Hong Kong has) and consumer protection (which Hong Kong also has). Plus, Hong Kong has data privacy and other requirements. So, effectively, the

4. The criteria used by the Administration to identify the licence conditions which should be considered for removal are as follows:
- (a) ***The premise for the licence condition is beyond the purview of the Administration.*** The policy or operational premise for imposing the licence condition extends beyond or falls outside the purview of the Secretary for Commerce and Economic Development (“**SCED**”) and the Communications Authority (“**CA**”); or
 - (b) ***Parallel legislation exists.*** Cross-sectoral legislation or regulation is in place to regulate the same/similar activity/breach, the enforcement authority of which as enshrined in the relevant statute is a competent authority other than the CA⁴; or
 - (c) ***There is no justification for additional controls on top of the legislation.*** There is no justification from the telecommunications policy or operational perspective to subject the carrier licensees to additional controls in the telecommunications licensing regime pertaining to such activity or matter, on top of the cross-sectoral legislation or regulation which applies across the board to all sectors including the telecommunications sector; or
 - (d) ***The regulator has no statutory authority or expertise.*** The CA and OFCA do not have the statutory authority or the necessary expertise to determine compliance or otherwise with the requirements imposed in such licence conditions. Enforcement by the CA of those licence conditions would essentially rely upon other competent authorities with the statutory jurisdiction in determining whether there is a breach or not of the requirements in the relevant licence condition.

telecommunications sector should not need any licences but just simple registration or class licences. HKT could suggest that this would be the 21st century approach: clean slate, re-think, keep the minimum, etc. There may be a set of conditions unique to telecommunications that need to be retained, but nothing to do with competition, consumers, economics, interconnection, etc.

⁴ As part of this criterion, HKT would also include instances where existing telecommunications legislation, i.e. the Telecommunications Ordinance (“**TO**”) or codes of practice/ guidelines already cover the same requirement stipulated under the licence condition. In these cases, the enforcement authority is clearly the CA.

5. In order to undertake a more comprehensive review of the licence conditions, HKT considers it useful to add the following criteria to the above list as a basis for determining whether an existing licence condition should be removed:
 - (e) ***The licence condition is redundant.*** The licence condition is no longer necessary due to the evolution of technology or the current competitive state of the telecommunications market. Licence conditions which fall under this category are normally those which were imposed in the licence when the particular telecommunications market (fixed or mobile) was first opened up and little competition existed, but which are now outdated. This category also covers superfluous licence conditions which, due to the general nature of the requirement, add nothing to the licence and could easily be removed without making any difference to the licence.
 - (f) ***The licence condition conflicts with existing legislation.*** In some cases, the actions required by the licence condition may induce behaviour which is contrary to existing legislation, e.g. the tariffing requirement under the licence may conflict with the competition provisions under the TO or, in future, the new Competition Ordinance (“CO”). Such licence conditions should be removed in order to avoid any ambiguity.
6. Based on criteria (a) to (d) above, in the Consultation Paper, the Administration has identified a very limited list of licence conditions which it is proposing to remove from the Carrier Licences. These licence conditions purely relate to: (i) road opening works in public streets and unleased Government land for network rollout; and (ii) restrictions on attachment to public buildings and trees.
7. However, there are other licence conditions which fulfil the criteria used by the Administration, i.e. (a) to (d) and/or the additional criteria put forward by HKT, i.e. (e) and (f). In the interests of ensuring that the licensing regime is at all times up to date, relevant and does not impose any unnecessary burden on the licensee, these additional licence conditions should also be deleted from the Carrier Licences.
8. On this basis, in order to conduct a more thorough review in this consultation exercise, HKT has reviewed each individual licence condition contained in the Unified Carrier Licence (including those

identified by the Administration in the Consultation Paper) and, where appropriate, HKT has provided its justification for the licence condition to be removed.

9. In the following section, HKT will use its own Unified Carrier Licence (“**UCL**”) No. 025 as the basis for this review of the General Conditions (“**GCS**”) and Special Conditions (“**SCs**”). Equivalent licence conditions are contained in the other Carrier Licences.

GENERAL CONDITIONS

10. GCs within the UCL are prescribed by the SCED. HKT has the following comments on the GCs.

GC 1 (Definitions and Interpretation)

11. HKT has no comment on this particular licence condition.

GC 2 (Transfer)

12. GC 2 requires prior written consent of the CA to be obtained before the licensee can transfer its licence to another party. The CA will take into account, amongst other things, the impact on the market structure before giving its consent, i.e. the effect on competition.
13. HKT considers this condition to be unnecessary given that the competition provisions under the TO (Section 7K on Anti-competitive practices and Section 7L on Abuse of position) already provide sufficient assurance that licence transfers will not result in anti-competitive practices or abuse of dominant position. In addition, Section 7P (Authority may regulate changes in relation to carrier licensees) of the TO adequately deals with changes in relation to carrier licences. Going forward, these provisions will be replaced by similar provisions under the new CO.
14. Accordingly, HKT suggests that this condition be removed.

GC 3 (International Conventions)

15. HKT has no comment on this particular licence condition.

GC 4 (Compliance Generally)

16. GC 4 requires the licensee to comply with the TO, regulations made under the TO, licence conditions and any other instruments which may be issued by the CA under the TO.
17. This condition is superfluous since by the enactment of the TO and issuance of the UCL to the licensee, the licensee will already be under a broad compliance obligation. Thus, this GC adds nothing to the licence. Licensees also need to comply with other requirements such as the Trade Descriptions Ordinance (“**TDO**”) and, in due course, the CO.

18. Accordingly, HKT suggests that this condition be removed.

GC 5 (Provision of Service)

19. GC 5 requires the licensee to, at all times, “operate, maintain and provide a good efficient and continuous service in a manner satisfactory to the Authority”.
20. This requirement is considered too broad and vague and allows the CA to charge the licensee for breach of its licence if the service it is providing does not (in some indefinable way) meet with the CA’s satisfaction. This condition creates a situation where little real guidance is provided to licensees (or their employees) and grants the CA powers which are unjustifiably subjective.
21. In any case, other provisions of the TO and the licence already cover more specific matters. The *Guidelines for Local Fixed, Mobile, and Services-Based Operators for Reporting Network and Service Outage*⁵ also provide sufficient assurance that service disruptions will be handled promptly and efficiently so that customers suffer minimal inconvenience, and the performance pledges made by each of the service providers assure customers that high standards of service will be maintained. Such a condition is unnecessary in competitive markets since operators will, of their own accord, endeavour to provide satisfactory services in order to acquire and retain customers.
22. Accordingly, HKT suggests that this condition be removed.

GC 6 (Customer Charter)

23. GC 6 requires the licensee to prepare a customer charter which sets out minimum standards of service and gives guidance to employees in their relations and dealings with customers.
24. This condition is outdated and unnecessary. Competitive markets coupled with contract terms and other protections such as the TDO and codes of practice (e.g. Contract Code of Practice) already seek to ensure that minimum standards of service are maintained. In addition, the CA issues customer alerts from time to time, the Consumer Council is active in the telecommunications sector, and editorials/bloggers/chat rooms all cover the industry, etc. Finally, the customer charter is not in practice

⁵ Issued by OFCA and updated on 1 October 2014

used by employees to guide their “relations and dealings with customers”. If considered necessary, licensees may choose to continue publishing their performance pledges on a voluntary basis.

25. Accordingly, HKT suggests that this condition be removed.

GC 7 (Confidentiality of Customer Information)

26. GC 7 bars a licensee from disclosing customer information or using such information other than to promote the relevant service.
27. This condition is no longer necessary as the Personal Data Privacy Ordinance (“**PDPO**”) (and the Privacy Commissioner) now have full authority over this issue. The CA has no unique interest in this matter, and there is no justification from a policy or operational perspective for the CA to supplant the PDPO or the Privacy Commissioner.
28. Accordingly, HKT suggests that this condition be removed.

GC 8 (Records and Plans of Network)

29. GC 8 requires network records and plans to be kept by the licensee (GC 8.1) and to be made available to the CA for inspection (GC 8.2).
30. In the normal course of business, telecommunications service providers would, of their own accord, keep accurate records and plans of their network in order to facilitate provision of service to customers and for network planning purposes. Such records and plans may also be necessitated by the more general requirement under Section 71 (Information) of the TO to provide “information relating to its business” to the CA.
31. In addition, Section 35A (Inspection of records, documents and accounts) of the TO allows the CA to enter the premises of the licensee to inspect documents pertaining to the licensee’s network. This would naturally impose a requirement on the licensee to maintain such records. Section 35A also negates the need to impose GC 8.2 in the licence since it covers the same requirement regarding inspection of records.
32. Accordingly, HKT suggests that this condition be removed.

GC 9 (Control of Interference and Obstruction)

33. GC 9 requires the licence to ensure that its service does not cause any harmful interference to another telecommunications service.
34. HKT notes that this requirement is already covered by Section 32J (Interference) of the TO.
35. Accordingly, HKT suggests that this condition be removed.

GC 10 (Restriction on Attachment to Public Buildings and Trees)

36. GC 10 forbids licensees from attaching any part of their network to a Government building or tree on Government land.
37. The Administration proposes removing GC 10 from the UCL on the basis that the authority to grant approval for attachment of a network to public buildings and trees rests with the Government Property Administrator, the Director of Agriculture, Fisheries and Conservation, and the Director of Leisure and Cultural Services, i.e. not the CA.
38. HKT supports the removal of this condition.

GC 11 (Compliance)

39. GC 11 extends the requirement found under GC 4 to comply with the conditions in the UCL to any person employed by the licensee.
40. This condition is unnecessary as: (i) by virtue of accepting the licence the licensee is required to abide by the requirements contained within the licence; and (ii) this condition merely extends the obligation to employees of the licensee and repeats the law as to agents and principals.
41. Accordingly, HKT suggests that this condition be removed.

GC 12 (Requirements of Radiocommunications Installation)

42. HKT has no comment on this particular licence condition.

GC 13 (Use of Frequencies)

43. GC 13 requires the licensee to only operate its radiocommunications installation on the frequencies assigned by the CA.

44. This requirement is effectively already covered by Section 32A (Use of unauthorized frequencies) of the TO which forbids operators from using frequency bands which have not been authorized for use in their licence.
45. Accordingly, HKT suggests that this condition be removed.

GC 14 (Safety)

46. GC 14 requires the licensee to take proper safety measures to safeguard lives and its property.
47. Safety of lives and property are important matters as to both the public and employees. Service providers do, of their own accord, take steps to ensure such safety. In addition, in the past, OFCA has provided guidance to the industry on specific matters of safety, e.g. *Implementation Guidelines on Mitigating the Risk of Gas Explosion in Telecommunications Manholes*⁶. Adequate provisions are also found under the Occupational Safety and Health Ordinance to provide employees with a safe and healthy working environment. There is therefore no need to incorporate such a general requirement into the licence.
48. Accordingly, HKT suggests that this condition be removed.

GC 15 (Prohibition of Claims against Government)

49. GC 15 states that the licensee shall have no claim against the Government in respect of any disturbance to the network resulting from works carried out by the Government.
50. This is clearly unfair, particularly when the arrangement is not reciprocal (see GC 16 below). There is no reason to protect the Government or its agents from tort or contract claims when they damage important network facilities or breach contracts.
51. Accordingly, HKT suggests that this condition be removed.

GC 16 (Indemnity)

52. GC 16 requires the licensee to indemnify the Government against any losses which the Government incurs as a result of activities of the licensee in relation to its provision of service.

⁶ Issued by OFCA on 28 May 2013.

53. The licensee is directly liable for its actions. The same should apply to the Government. The Government should take responsibility if it acts negligently or otherwise causes damages.
54. Accordingly, either this condition should be removed or the Government should also be required to indemnify the licensee if, in the course of the Government's activities, the licensee incurs a loss.

GC 17 (Contravention beyond Licensee's Control)

55. HKT has no comment on this particular licence condition.

GC 18 (Publication of Licence)

56. HKT has no comment on this particular licence condition.

SPECIAL CONDITIONS

57. SCs within the UCL are prescribed by the CA. HKT has the following comments on the SCs.

SC 1 (Compliance with Codes of Practice)

58. SC 1 requires the licensee to comply with guidelines and codes of practice issued by the CA.
59. HKT would note, however, that guidelines and codes of practice should only serve to provide guidance to the licensee as to how the licence and any legislation is to be interpreted. For instance, refer to the future issuance of the Guidelines under the Competition Ordinance as an example of how guidelines should be used.
60. Guidelines should not be used to expand the scope of the licence or the piece of legislation concerned. As such, licensees should not be obliged to comply with guidelines or codes of practice since such documents should simply be explanations of the licence or the law. In any case, Section 6D (Guidelines) in the TO already prescribes how guidelines (or codes of practice issued pursuant to Section 6D) should be treated.
61. Accordingly, HKT suggests that this condition be removed.

SC 2 (Purchase of Assets)

62. SC 2 allows the Government to take over the licensee's business under certain exceptional circumstances if the licensee is dominant or subject to a universal service obligation. This condition has obviously been created to allow the Government to step in to ensure telecommunications services continue to function in the event that the major supplier of such services is unable to continue operating.
63. This condition is outdated because no operator is dominant in the market today, and the telecommunications market is highly competitive and well served by several facilities-based operators. In any case, should there be an emergency situation, Section 13 (Possession of telecommunications stations taken by Government in emergencies) of the TO should provide sufficient basis for the Government to take action and ensure that telecommunications services in Hong Kong are not interrupted.

64. Accordingly, HKT suggests that this condition be removed.

SC 3 (Requirements for Interconnection)

65. SC 3 requires the licensee to interconnect its network with other carriers to ensure any-to-any connectivity.
66. This condition is redundant as it essentially repeats what is found in Section 36A (Authority may determine terms of interconnection) of the TO. In competitive markets, there is no need to go beyond the requirements of Section 36A since operators will have an incentive to ensure that their customers are able to call or receive calls from other networks. Section 36AA (Sharing of use of facilities) of the TO may also be employed to ensure interconnection and access to essential facilities. In fact, the competition provisions in the TO are already enough, there has been no interconnection dispute in years and, indeed, the last interconnection dispute (i.e. HKT's fixed-mobile interconnection charge rate increase) was addressed under the competition law provisions.
67. Accordingly, HKT suggests that this condition be removed.

SC 4 (Numbering Plan and Number Portability)

68. SC 4 requires the licensee to comply with the numbering plan made by the CA (SC 4.1) and facilitate number portability (SC 4.4).
69. HKT notes that the obligation to abide by the numbering plan is already contained in Section 32F (Power of Authority in relation to numbering plan) of the TO so it is not necessary to repeat the requirement under SC 4.
70. On this basis, HKT would suggest removing the provisions under SC 4 pertaining to the numbering plan and, if necessary, retain those provisions relating to the need to facilitate number porting.

SC 5 (Accounting Practices)

71. SC 5 requires the licensee to implement accounting practices that are consistent with generally accepted accounting principles in accordance with the CA's directions.
72. This condition is unnecessary as it is redundant to other statutory and non-statutory requirements relating to accounting practices, companies and the stock exchange (and which are administered by other agencies).

In any case, Section 7H (Accounting practices) under the TO already provides the CA with powers to direct the licensee to adopt specific accounting practices.

73. Accordingly, HKT suggests that this condition be removed.

SC 6 (Requirement to Furnish Information to the Authority)

74. SC 6 requires the licensee to furnish to the CA information relating to its business upon request.

75. This condition is unnecessary as it is redundant to Section 7I (Information) and Section 35A (Inspection of records, documents and accounts) of the TO, and thus can be deleted.

76. Accordingly, HKT suggests that this condition be removed.

SC 7 (Tariffs)

77. SC 7 requires the licensee to publish the tariffs in respect of its services in accordance with its licence or as directed by the CA.

78. This condition is no longer relevant. Markets are competitive, terms and conditions are available on licensees' websites, substantial advertisements disclose terms and conditions in a convenient manner, and waivers have been broadly given. It is also arguable that publication of tariffs assist in indirect price fixing amongst competing operators and hence are contrary to the competition provisions in the TO and the future CO. Any issues arising re tariffs can be addressed via competition law or consumer protection provisions under the TDO. It is interesting to note that, in Europe, retail voice services have recently been totally deregulated.

79. HKT also notes that tariffing requirements are covered under Section 7F (Tariffs) in the TO. Under this section, the CA already has sufficient discretion regarding tariff publication requirements.

80. Accordingly, HKT suggests that this condition be removed.

SC 8 (Notification of Discounts)

81. SC 8 requires the licensee to notify the CA of any discounts being offered to its published tariffs⁷, except for discounts in relation to services specified under Schedule 6 of the UCL.⁸
82. For the same reasons outlined for SC 7, this condition is no longer necessary. The market is competitive, the notification process adds costs and delays price reductions, and users obtain information from advertisements, websites and word of mouth. Licensees must also comply with the TDO. Pro-competition requirements and the CA's ability to investigate competition law breaches provide adequate safeguards.
83. Accordingly, HKT suggests that this condition be removed along with SC 7 and any associated schedules.

SC 9 (Billing and Metering Accuracy)

84. HKT has no comment on this particular licence condition.

SC 10 (Provision of Service)

85. SC 10 requires the licensee to provide service in accordance with its tariff (per SC 7) and at the discount notified to the CA (per SC 8).
86. The removal of the tariffing and discount notification requirements would mean that this SC is redundant. In any case, in competitive markets, licensees have an incentive to supply services, and if they don't, alternatives exist (both for fixed and mobile services). The contracts signed with the customer provide the terms, conditions and charges on which service is provided (not the tariff), and the TDO provides safeguards to ensure that the customer receives the service that he has agreed to.
87. Accordingly, HKT suggests that this condition be removed along with SC7 and SC 8.

⁷ Details of the discount as specified in Schedule 5 of the UCL.

⁸ HKT notes that, in the UCL of the other fixed line operators, all of their services are included under Schedule 6.

SC 11 (Directory Information and Directory Information Service)

88. HKT has no comment on this particular licence condition.

SC 12 (Emergency Call Service)

89. HKT has no comment on this particular licence condition.

SC 13 (Records and Plans of the Network)

90. SC 13.1 allows the CA to disclose network information relating to the licensee per Section 7I(3) of the TO. SC 13.2 also obliges the licensee to furnish its network information to another operator to facilitate network planning for the purposes of effecting interconnection under SC 3 and facilities sharing under Section 36AA of the TO.
91. Given that SC 13.1 is made with reference to Section 7I(3) of the TO, removing SC 13.1 should make no difference to the CA's powers.
92. In addition, HKT does not consider it necessary to impose a specific licence condition requiring an operator to provide its network information to facilitate interconnection or facilities sharing when the process to effect interconnection or share facilities necessitates such information to be communicated between the two parties involved. If no network information is shared it would be difficult for the interconnection/facilities sharing to be effected. Thus, the existence of obligations to interconnect/share facilities which are implied under Section 36A and Section 36AA of the TO already mean that the licensee has to furnish its network information to the other operator even without the existence of SC 13.
93. Accordingly, HKT suggests that this condition be removed.

SC 14 (Network Location)

94. The Administration proposes removing sub-conditions SC 14.1, SC 14.3 and SC 14.4 from SC 14 of the UCL on the basis that they are already covered by provisions under the Land (Miscellaneous Provisions) Ordinance ("**LMPO**") and the Excavation Permit issued by the Highways Department ("**XP(HyD)**"). These deal with:

SC 14.1: Obtaining consent from the Director of Lands before commencing installation works.

- SC 14.3: Recording network location information on route plans.
- SC 14.4: Provision of network location information free of charge to the authorities or anyone intending to undertake works in the vicinity of the licensee's network.
95. This means the following sub-conditions will be retained within the UCL:
- SC 14.2: Requirement to keep records of the location of the network.
- SC 14.5: Requirement to identify every telecommunications installation so as to distinguish it from any other installation installed.
- SC 14.6: Requirement to provide distinguishable surface markers of the underground position of the network.
96. HKT agrees that SC 14.1, SC 14.3 and SC 14.4 can be removed from the UCL on the basis that there is concurrent legislation already covering these requirements. HKT also considers that SC 14.2 (relating to the requirement to keep records of the location of the network) may also justifiably be removed as it is covered by the following conditions stated in the XP(HyD):
- Condition 13: The Permittee shall notify the Senior Superintendent of Police/Traffic, Hong Kong Police Force, in writing, by facsimile or via HyD's XPMS not less than 2 working days in advance of the intended commencement date of his Work. All such notifications shall include a plan to a suitable scale showing the location and extent of the Work, unless such a plan has been submitted previously. [Emphasis added]
- Condition 20(B)(I) Before commencing any excavation for the Work, the Permittee undertaking the Work shall ensure that a layout plan with the relevant details are forwarded to the parties concerned shown in Tables 1 and 2 of Appendix A (and others as may be added from time to time by the Authority) to request for indication of

their existing installations in the vicinity. The Permittee shall make all reasonable effort to obtain relevant utility records plans from utility undertakings prior to commencement of excavation. [Emphasis added]

97. On this basis, HKT proposes that SC 14.2 also be removed from the UCL in addition to those sub-conditions under SC 14 put forward for deletion in the Consultation Paper.

SC 15 (Changes to the Network)

98. HKT has no comment on this particular licence condition.

SC 16 (Requirements for Road Opening)

99. HKT has no comment on this particular licence condition.

SC 17 (Requirements of Installation of Lines or Cables)

100. The Administration proposes removing SC 17 from the UCL on the basis that it is already covered by provisions under the XP(HyD), LMPO and the Crimes Ordinance (“CrO”). SC 17 deals with:

SC 17.1: Requirement for network to be installed at such depth, course, route and position as determined by the Director of Lands or the Director of Highways.

SC 17.2: Requirement for the licensee to exercise all reasonable care in the course of installing its network, and to make good any physical damage caused, including payment of compensation for any damages caused to any person affected.

101. HKT notes that SC 17.1 is adequately covered by Conditions 10 and 18(A) of the XP(HyD) and hence supports the removal of this sub-condition. However, HKT is concerned that by removing SC 17.2, the licensee will not be able to seek sufficient compensation in the event that its network is damaged by another party if the licensee can only rely on the other pieces of legislation identified by the Administration. The legislation specified in the Consultation Paper does not provide the same degree of recompense to the network owner as SC 17.2. This is because SC 17.2 allows the harmed party to seek damages from the party committing the

offence (i.e. including financial compensation for loss of business), not simply a reimbursement of the expenses incurred in rectifying the physical damage done to the network.

102. The legislation identified by the Administration carries with it the following damages if breached:

Section 10T(I) of LMPO: Contravention of this section results in a fine of \$200,000 on conviction. In any case, this section relates to the requirement to adopt safety precautions to protect the public from danger or injury and hence is not relevant to the case where telecommunications services are affected by damage caused to the network.

Section 10Q(I) of LMPO: This section relates to the requirement to reinstate and make good any land displaced as a result of any excavation. It does not refer to damage caused by the excavation work. In any case, this section refers to the “Authority’s” ability to recover costs, not the owner of the network.

Section 60(I) of the CrO: This section states that a person who destroys or damages property will be guilty of an offence if convicted. Per the Consultation Paper, this results in imprisonment for 10 years. There is no automatic recourse for the harmed party to seek damages.

Conditions 11(B), 20(G), 33(A) and 39 to 45 of XP(HyD):

- Condition 11(B) requires the permit holder to make good or pay for any works as a result of or in consequence of the work of the permit holder.
- Condition 20(G) requires the permit holder to carry out any necessary repair in the event of any damage caused by its work.
- Condition 33(A) states that the work of the permit holder should not inconvenience the public or access to roads and paths.
- Conditions 39 to 45 deal with backfilling and reinstatement of the land following excavation works.

While contravention of these conditions carry a fine

at level 5, none of them deal with damages caused to a telecommunications network and the resulting loss of service.

103. HKT notes that under Section 18 of the TO, there are specific provisions dealing with damages to telecommunications lines or installations. However, the compensation that can be claimed by the victim is only limited to a recovery of the expenses incurred in making good any damage done, and hence this is not a satisfactory replacement for SC 17.2. Accordingly, should the Administration still decide to withdraw SC 17.2 then, in order to ensure that the TO provides adequate compensation to the operator whose network has been damaged, the provisions under Section 18 of the TO would first need to be strengthened to make the penalty for offences more severe.⁹
104. In comparison, it is worth pointing out that in other jurisdictions, damaging telecommunications networks is treated as a much more serious offence, such that there are specific provisions written into the telecommunications legislation that deal with the imposition of fines and imprisonment of parties who damage telecommunications networks. For instance, per Singapore's Telecommunications Act:

Damage to telecommunication system licensee's installation or plant

49.- (1) *Any person who wilfully removes, destroys or damages any installation or plant used for telecommunications shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years or to both.*

(2) Notwithstanding subsection (1), any person who, in the course of carrying out any earthworks, damages or suffers to be damaged any cable of a telecommunication system belonging to or under the management or control of a telecommunication system licensee shall be guilty of an offence and shall be liable on conviction to fine not exceeding \$1 million or to imprisonment for a term not exceeding 5 years or to both.

⁹ HKT would also note Section 27 (Damaging telecommunications installation with intent) of the TO, but as the title clearly indicates, this purely deals with persons who damage the network intentionally, not cases where the damage has been caused due to recklessness.

105. Also, the legislation found in respect of other utilities in Hong Kong such as electricity and gas carries much more severe penalties for damaging facilities compared to those found under the TO for telecommunications facilities:

Electricity Supply Lines (Protection) Regulation (Cap 406H)

Section 17(4) A person who causes an electrical accident or an interruption to the supply of electricity while carrying out works commits an offence and may be liable to a fine of \$200,000 and to imprisonment for 12 months.

Gas Safety (Gas Supply) Regulations (Cap 51B)

Regulation 49 Any person who damages a gas pipe in the course of carrying out works may be liable to a fine of \$200,000 and to imprisonment for 12 months.

106. Given the critical nature of telecommunications services to the business community and citizens at large, it is important to ensure that there is continuity of service at all times. HKT is concerned that by removing SC 17.2 from the UCL, operators whose networks are damaged by reckless parties undertaking excavation works will not be able to seek the required financial compensation resulting from loss of telecommunications service to its customers.
107. Accordingly, HKT would suggest that SC 17.2 be retained in the UCL unless the corresponding legislation, including the TO, can be firstly strengthened to impose harsher financial penalties on offenders and allow operators whose networks have been damaged to claim financial damages which fully reflect the loss of business resulting from a breakdown in telecommunications services. Only if such steps are taken will the legislation provide sufficient a deterrent to offenders and encourage greater care to be taken by contractors when performing excavations in areas where telecommunications networks are present.¹⁰

SC 18 (Works in Public Streets)

108. The Administration proposes the removal of this licence condition concerning works conducted in public streets and reinstatement of the

¹⁰ If SC 17.2 is retained, it would be even better if Section 8 of the TO were also amended and strengthened as described above.

street after completion of the works. As the requirements under this condition concern the Director of Highways and the Director of Lands (and not the CA), HKT concurs that provisions found in the XP(HyD) and the LMPO are already sufficient to deal with the requirements under SC 18.

109. On this basis, HKT supports the removal of this condition.

SC 19 (Interference with Works of Others)

110. The Administration proposes the removal of this licence condition relating to existing networks and other utilities being interfered with in the course of the licensee carrying out excavation works. As the requirements under this condition concern the Director of Highways (not the CA) and legislation pertaining to other utilities (gas, electricity, water, drainage), HKT concurs that the provisions found in these other pieces of legislation are already sufficient to deal with the requirements under SC 19. Interference with existing telecommunications lines has been discussed and dealt with under SC 17 above.
111. On this basis, HKT supports the removal of this condition.

SC 20 (Licensee to Alter Network on Notice)

112. The Administration proposes the removal of this licence condition relating to the requirement for an operator to alter its network as directed by the Director of Highways or Director of Lands. As the requirements under this condition concern the Director of Highways and the Director of Lands (not the CA), HKT concurs that the provisions found in the XP(HyD) and the LMPO are already sufficient to deal with the requirements under SC 20.
113. On this basis, HKT supports the removal of this condition.

SC 21 (Withdrawal and Return of Frequencies)

114. HKT has no comment on this particular licence condition.

SC 22 (Universal Service Obligation and Contribution)

115. SC 22 imposes on HKT the obligation to provide universal service and, in return for this responsibility, the right to receive its share of the universal service contribution.

116. The power to impose the universal service obligation on a carrier licensee and to establish a system for licensees to contribute towards the cost of providing universal service is already contained in Section 35B (Universal service obligation) of the TO. It is therefore not necessary for the provisions regarding universal service to be imposed in the UCL.
117. Accordingly, HKT suggests that this condition be removed.

SC 23 (Circumstances outside Licensee's Control)

118. HKT has no comment on this particular licence condition.

SC 24 (Insurance)

119. SC 24 imposes an obligation on the licensee to take out a valid insurance policy to cover mishaps that may occur in the course of providing service.
120. HKT considers that any sensible business would, of its own accord, take out adequate insurance to ensure its business against risks. This is a commercial decision and has nothing to do with telecommunications regulation. On this basis, SC 24 is unnecessary and hints of the Administration trying to micro-manage the operations of the licensee.
121. Accordingly, HKT suggests that this condition be removed.

SC 25 (Use of Public Facilities for Provision of Services)

122. SC 25 requires the licensee to comply with guidelines and codes of practice pertaining to the use of Government facilities as well as facilities on Government property and unleased Government land for the provision of services.
123. As discussed earlier, HKT considers that “guidelines” and “codes of practice” only aim to interpret legislation and hence, as such, there is no obligation to adhere to such instruments. Thus, while HKT has no concerns regarding the issuance of guidelines or codes of practice by the CA to assist licensees in this area, it is not appropriate to mandate adherence to these instruments via an explicit licence requirement.
124. Accordingly, HKT suggests that this condition be removed.

SC 26 (Location Services)

125. SC 26 supplements GC 7 by including the location of customers as customer information. As such, licensees will be forbidden from disclosing location information pertaining to the customer or using such information other than for the purposes of providing its service.
126. As per GC 7, given that the PDPO already has full authority over this issue, there is no need to maintain such a requirement in the licence.
127. Accordingly, HKT suggests that this condition be removed.

SC 27 (Provision of Service to Suspected Stolen Radiocommunications Apparatus)

128. HKT has no comment on this particular licence condition.

SC 28 (Backup Power Supply)

129. HKT has no comment on this particular licence condition.

SC 29 (Payment of Spectrum Utilization Fee)

130. SC 29 requires the licensee to pay a Spectrum Utilization Fee (“SUF”) for spectrum which it has been assigned for use. It also gives the SCED the power to determine the level of the SUF.
131. HKT would note that these provisions are already contained in Section 32I (Spectrum utilization fee) of the TO so it is not necessary to have them repeated as a requirement in the licence.
132. Accordingly, HKT suggests that this condition be removed.

SC 30 (Provision of Information to Customers)

133. This condition requires the licensee to provide the following information to the customer when services are offered:
 - (a) Name of the licensee;
 - (b) Licence number of the licensee;
 - (c) Customer service hotline number(s);
 - (d) Where applicable, the access code(s) or number(s) (including any access password) used for obtaining the services;
 - (e) Instructions on how to access the services;

- (f) The tariffs under which the services are offered; and
- (g) The duration or validity period of the services offered.

134. HKT considers that some of the information specified in SC 30 is outdated and not particularly relevant for customers today, e.g. the tariff under which the service is being offered. Further, given the extremely competitive state of the market, it is not necessary to mandate the provision of such information to users as service providers who fail to provide a satisfactory service to their customers will lose them to another operator.
135. Instead, HKT would suggest that the Code of Practice for Telecommunications Service Contracts¹¹ (“**Contract CoP**”), albeit voluntary, already provides a better substitute for SC 30. The Contract CoP outlines a minimum set of practices which licensees have pledged to adopt when signing service contracts with customers. Amongst other things, the Contract CoP prescribes a list of information that needs to be provided to customers in service contracts, such as the name of the contracting company, detailed information on contract charges and details on the duration and validity period of the services offered. The Contract CoP also benefits from being regularly updated (so that changing circumstances and any new issues can be quickly addressed) and has the support of all the major operators in the industry.
136. Importantly, HKT considers that the provisions concerning “misleading omissions” found under the TDO already require the most relevant and critical information needed to be provided to customers to enable them to make a purchase decision. The Legislative Council has already acted on this matter and SC 30 can be deleted.
137. On this basis, HKT considers that the TDO, coupled with the Contract CoP provide sufficient safeguards for customers such that SC 30 is not required and hence can be removed from the UCL.

SC 31 (Rollout of Network)

138. HKT has no comment on this particular licence condition.

¹¹ Issued by the Communications Association of Hong Kong on 21 December 2010.

SC 32 (Disposal of Assets)

139. SC 32 requires the licensee to seek prior consent from the CA for disposing more than 15% of its assets if the licensee is: (i) dominant; or (ii) subject to a universal service obligation; or (iii) is required to pay SUF. This is intended to ensure that such disposals do not have any adverse competition effects on the market.
140. HKT considers that this condition is not relevant in today's competitive market where there are multiple service providers. In such an environment, a 15% asset disposal is unlikely to result in any serious consequences in the market place. If anything, this percentage figure needs to be raised in order to be more relevant.
141. Importantly, Sections 7K, 7L and 7P of the TO already allow the CA to investigate anti-competitive conduct, abuse of dominance and mergers and acquisitions amongst telecommunications licensees to determine if there are any adverse effects on competition, and hence SC 32 is not necessary. Furthermore, the new CO can also address any competition concerns.
142. Accordingly, HKT suggests that this condition be removed.

SC 33 (Access to Buildings)

143. SC 33.1 forbids a licensee from entering into any agreement which has the effect of preventing or restricting fair and non-discriminatory access to buildings to install telecommunications systems.
144. SC 33.2 requires licensees to comply with the CA's requirements regarding access to buildings to install telecommunications systems.
145. SC 33.3 forbids a licensee from interfering with other telecommunications lines or utilities when installing its telecommunications system.
146. HKT notes that SC 33.2 is dealt with under Section 14 (Power to place and maintain telecommunications lines, etc. on land, etc.) and Section 19 (Power to enter on land, etc. to inspect, repair, etc. telecommunications lines, etc.) of the TO. SC 33.3 is covered by Section 18 (Work affecting telecommunications lines, etc.). On this basis, there is no need for these requirements to be separately imposed in the licence.

147. However, SC 33.1 is quite specific and still very relevant to the telecommunications sector. It may not be so clearly covered by the existing competition provisions or the new CO.
148. Accordingly, HKT suggests that SC 33.2 and SC 33.3 be removed while SC 33.1 be retained.

SC 34 (Channels within In-building Coaxial Cable Distribution Systems)

149. SC 34 deals with use of the channels within the In-Building Coaxial Cable Distribution System (“IBCCDS”). This condition gives the CA the power to specify which channels may be used by the licensee to operate its service.
150. Per SC 34.2, the CA recognizes that regulation of the IBCCDS is necessary because the number of channels contained within the IBCCDS is limited and there are competing demands for use of the channels. It is therefore essential that operators are not obstructed by the owner of the IBCCDS when seeking access to provide their service to end users. HKT, however, considers that the current provisions under SC 34 are not sufficiently explicit to mandate such access to service providers wishing to make use of another licensee’s IBCCDS.
151. Accordingly, HKT would suggest that SC 34 be strengthened so that the owner of the IBCCDS is obliged to offer all service providers non-discriminate access to its IBCCDS.

SC 35 (Interpretation)

152. HKT has no comment on this particular licence condition.

SC 36 (Service Contracts and Dispute Resolution)

153. SC 36 requires the licensee to comply with codes of practice issued by the CA concerning the service contracts signed between the service provider and its customer.
154. As discussed earlier, HKT considers that “codes of practice” only aim to interpret legislation and hence, as such, there is no obligation to adhere to such instruments. Thus, while HKT notes that the industry has already voluntarily pledged to abide by the Contract CoP, which largely covers the provisions of SC 36, it is not appropriate to mandate adherence to this instrument via an explicit licence requirement.

155. Accordingly, HKT suggests that this condition be removed.

SC 37 (Use of Payphone Kiosks for Provision of Services described in Clause 4 of Schedule 3)

156. HKT has no comment on this particular licence condition.

SC 38 (Joint and Several Rights and Obligations)

157. HKT has no comment on this particular licence condition.

SC 39 (Group Companies Requirement)

158. HKT has no comment on this particular licence condition.

CONCLUSION

159. In general, HKT supports any initiatives by the Administration to lessen the amount of regulation, so HKT welcomes this exercise to seek to remove licence conditions which are no longer warranted. This review is an important opportunity to consider the issue of licence conditions more broadly and in an across the board bottom up review. The CA should look at all licence conditions which can be removed given the current state of the market, not just those which are covered by cross-sectoral legislation.
160. Such a bottom up review might remove various licence conditions covered by other legislation and agencies as well as those which are not needed in competitive markets. HKT particularly notes the TDO, the TO competition provisions (and the new CO) and the PDPO. Accordingly, in HKT's submission, it has put forward certain additional licence conditions for removal which have not been considered in the Consultation Paper.
161. HKT is, nevertheless, concerned that, in some cases, removing certain unique and more technical licence conditions from the UCL will or could likely have a disruptive effect on the industry. This is particularly so when there is no parallel legislation or agency which can adequately replace the licence condition which has been removed. These specific licence conditions which need to be retained have been identified in HKT's submission.
162. Should the Administration adopt HKT's suggestions regarding the list of conditions to be removed/retained the resulting UCL will only contain a minimal set of requirements which are needed to address technical issues and to safeguard consumer interests. For the Administration's reference, the amended licence (using HKT's UCL 025 as the basis) is shown in the **Appendix**.
163. HKT hopes that the Administration will give due consideration to the licence conditions which HKT proposes for removal and retention. Given the broad scope and scale of this exercise but the limited amount of time which has been allowed, clearly this review would benefit from a further round (or rounds) of consultation to enable the Administration and the industry to consider in greater depth the broader list of licence conditions which can be effectively removed.

164. Ultimately, it should be the Administration's aim to produce a Carrier Licence for Hong Kong that is both relevant and reflects the state of the market today.

Respectfully submitted by
Hong Kong Telecommunications (HKT) Limited
20 October 2014

Appendix

**TELECOMMUNICATIONS ORDINANCE
(Chapter 106)**

UNIFIED CARRIER LICENCE

DATE OF ISSUE: 29 June 2010 (amended on 29 November 2011)

PCCW-HKT Telephone Limited and
Hong Kong Telecommunications (HKT) Limited

.....

of 39th Floor, PCCW Tower, Taikoo Place, 979 King's Road, Quarry Bay, Hong
Kong

.....

(the "licensee") is licensed, subject to the following conditions set out in this
licence-

- (a) to provide a public telecommunications network service (the "service"), the scope of which is described in Schedule 1;
- (b) to establish and maintain a telecommunications network (the "network") described in Schedule 2 to provide the service;
- (c) to possess and use the radiocommunications installations described in Schedule 3 to provide the service; and
- (d) to deal in, import and demonstrate, with a view to sale in the course of trade or business, such apparatus or material for radiocommunications as may be necessary to supply customers of the service.

GENERAL CONDITIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this licence, except as hereinafter provided or unless the context otherwise requires, words or expressions shall have the meanings assigned to them in the Telecommunications Ordinance (Cap. 106) (the "Ordinance") and, as the case may be, the Interpretation and General Clauses Ordinance (Cap. 1). For the purposes of interpreting this licence, headings and titles shall be disregarded.
- 1.2 This licence shall not be construed as granting an exclusive right to the licensee to provide the service.
- 1.3 This licence replaces any licence or any exemption from licensing, however described, which the Authority may have granted to the licensee for providing the service.
- 1.4 The grant of this licence does not authorize the licensee to do anything which infringes any exclusive licence granted under the Ordinance or any exclusive right to operate and provide telecommunications networks, systems, installations or services granted under any other Ordinance.

~~2. TRANSFER~~

- ~~2.1 The licensee may, only with the prior written consent of the Authority and subject to such reasonable conditions as the Authority thinks fit, transfer this licence or any permission, right or benefit under this licence. In giving his consent the Authority will have regard to such matters as he thinks fit including but not limited to the effect which the transfer will have on market structure and the financial and technical competence and viability of the transferee.~~

3. INTERNATIONAL CONVENTIONS

- 3.1 The licensee shall at all times perform and observe the requirements of the Constitution and Convention of the International Telecommunication Union

and the regulations and recommendations annexed to it, as are stated to be applicable to Hong Kong, and any other international convention, agreement, protocol, understanding or the like to the extent that the instruments described in this General Condition 3.1 impose obligations on Hong Kong of which the Authority gives notice to the licensee, except to the extent that the Authority may in writing exempt the licensee from such compliance.

- 3.2 Where the Government has been consulted about or is involved in the preparation or negotiation of an international convention, agreement, protocol or understanding or the like or amendments thereto which are on the subject-matter of telecommunications or which relate to another subject-matter but which the Government anticipates could have a material impact on the provision of the service under this licence, the Government will, where practicable, provide the licensee with a reasonable opportunity to make a submission stating its views on the matter.

~~4. COMPLIANCE GENERALLY~~

- ~~4.1 The licensee shall comply with the Ordinance, regulations made under the Ordinance, licence conditions or any other instruments which may be issued by the Authority under the Ordinance.~~

~~5. PROVISION OF SERVICE~~

- ~~5.1 The licensee shall, subject to Schedule 1 to this licence and any special conditions of this licence relating to the provision of the service, at all times during the validity period of this licence operate, maintain and provide a good, efficient and continuous service in a manner satisfactory to the Authority. The Authority may, on application in writing by the licensee, exempt a part or parts of the service from the requirement of continuous provision.~~

~~6. CUSTOMER CHARTER~~

- ~~6.1 Unless a waiver in writing is granted by the Authority, the licensee shall~~

~~prepare a customer charter which sets out the minimum standards of service to the licensee's customers and gives guidance to the employees of the licensee in their relations and dealings with customers.~~

~~7. CONFIDENTIALITY OF CUSTOMER INFORMATION~~

~~7.1 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.~~

~~7.2 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.~~

~~8. RECORDS AND PLANS OF NETWORK~~

~~8.1 The licensee shall keep records and plans (including overall network plans and cable route maps) of the telecommunications installation (including radiocommunications installation) and telecommunications nodes and exchanges, if any, provided under this licence and any other details concerning the network as may be reasonably required by the Authority, including but not limited to information from operational support systems, traffic flow information, and database information relating to the manner in which the network treats any communication ("network information").~~

~~8.2 As required by the Authority, the licensee shall make the network information available, within reasonable time, to the Authority or to a person authorized in writing by the Authority for inspection for the Authority's own purposes.~~

~~9. CONTROL OF INTERFERENCE AND OBSTRUCTION~~

~~9.1 The licensee shall take reasonable measures to install, maintain and operate the service and the network in such a manner as not to cause any harmful~~

~~interference or physical obstruction to any lawful telecommunications service, or cause any physical obstruction to the installation, maintenance, operation, adjustment, repair, alteration, removal or replacement of the facilities of any lawful telecommunications or utility service provider.~~

9.2 The licensee shall take reasonable measures to ensure that the customers of the service do not cause harmful interference to lawful telecommunications services or utility services through use of the service.

9.3 The Authority may give such reasonable directions as he thinks fit to avoid harmful interference or physical obstruction referred to in General Condition 9.1. The licensee shall comply with the directions.

~~10. RESTRICTIONS ON ATTACHMENT TO PUBLIC BUILDINGS AND TREES~~

10.1 No part of the network shall be attached to any Government building except with the prior written consent of the Government Property Administrator, or to any tree on any Government land except with the prior written consent of the Director of Agriculture, Fisheries and Conservation, or the Director of Leisure and Cultural Services.

~~11. COMPLIANCE~~

11.1 If the licensee employs any person under contract for the purpose of the service, or for the installation, maintenance or operation of the network (a "contractor"), the licensee shall continue to be responsible for compliance with the conditions of this licence, and the performance thereof, by any contractor.

~~12. REQUIREMENTS OF RADIOCOMMUNICATIONS INSTALLATION~~

12.1 Each radiocommunications installation operated by or on behalf of the licensee shall be used only at the location and with emissions and at the frequencies and of the classes and characteristics specified in Schedule 3 to

this licence and with such power and aerial characteristics as are specified in that Schedule in relation to the class and characteristics of the emission in use.

12.2 The apparatus comprised in each radiocommunications installation shall at all times comply with such technical standards as may be issued by the Authority.

12.3 The apparatus comprised in a radiocommunications installation shall be of a type approved by the Authority and shall be so designed, constructed, maintained and operated that its use shall not cause any interference to any radiocommunications.

12.4 A radiocommunications installation shall be operated only by the licensee or a person authorized by the licensee. The licensee shall not allow an unauthorized person to have access to the apparatus comprised in a radiocommunications installation. The licensee shall ensure that persons operating each radiocommunications installation shall at all times observe the conditions of this licence.

12.5 The licensee shall not make a change –

- (a) to any radiocommunications installation; or
- (b) of the location of any radiocommunications installation,

without the prior written approval of the Authority.

12.6 If any telecommunications installation (including radiocommunications installation) crosses above or may fall or be blown onto any overhead power wire (including electric lighting and tramway wires) or power apparatus it shall be guarded to the reasonable satisfaction of the owner of the power wire or power apparatus concerned.

~~13. USE OF FREQUENCIES~~

~~13.1 The radiocommunications installation operated by or on behalf of the licensee shall only be operated on such frequencies as the Authority may assign.~~

~~14. SAFETY~~

~~14.1 The licensee shall take proper and adequate safety measures for the safeguarding of life and property in connection with all installations, equipment and apparatus operated or used, including safeguarding against exposure to any electrical or radiation hazard emanating from the installations, equipment or apparatus operated or used under this licence.~~

~~14.2 The licensee shall comply with the safety standards and specifications as may from time to time be prescribed by the Authority and any directions of the Authority in relation to any safety matter.~~

~~15. PROHIBITION OF CLAIMS AGAINST GOVERNMENT~~

~~15.1 The licensee shall have no claim against the Government in tort or in contract in respect of any disturbance or interruption to any part of the network due to works carried out by or on behalf of the Government which result in disturbance to the network.~~

~~16. INDEMNITY~~

~~16.1 The licensee shall indemnify the Government against any losses, claims, charges, expenses, actions, damages or demands which the Government incurs or which may be made against the Government as a result of or in relation to the activities of the licensee or any employee, agent or contractor of the licensee in relation to the provision of the service or the installation, maintenance and operation of the network.~~

~~17. CONTRAVENTION BEYOND LICENSEE'S CONTROL~~

~~17.1 The licensee shall not be liable for any breach of this licence where it is able to demonstrate, to the reasonable satisfaction of the Authority, that the breach was caused by circumstances beyond its control and that it has taken all reasonable steps open to it to rectify that breach.~~

- 17.2 Where the circumstances referred to in General Condition 17.1 are such that there is an outage or interruption in the service affecting a significant number of the licensee's customers for a period of more than 7 days, the licensee shall provide the Authority with a full report in writing detailing the reasons for the breach and indicating when, or if, it will be able to continue to provide the service.
- 17.3 If the Authority is, after considering a report provided under General Condition 17.2, of the reasonable belief that the licensee would be able to provide the service within a reasonable period of time despite the circumstances outlined in that report, the Authority may direct that the licensee recommence the service within such reasonable period as the Authority may in writing direct. The licensee shall comply with such direction.

18. PUBLICATION OF LICENCE

- 18.1 The licensee, or the Authority, may at their discretion make the terms and conditions of this licence, including any specific conditions, publicly available in any manner they think fit.

SPECIAL CONDITIONS

~~1. COMPLIANCE WITH CODES OF PRACTICE~~

~~1.1. The licensee shall comply with such guidelines or codes of practices which may be issued by the Authority as in his opinion are suitable for the purpose of providing practical guidance on any particular aspect of any conditions of this licence.~~

~~1.2 Without limiting or affecting in any way the licensee's obligations under any other Condition, the licensee shall comply with any code of practice or guideline which may be issued by the Authority from time to time for the purpose of providing practical guidance to the licensee in respect of:~~

- ~~(a) the provision of satisfactory service;~~
- ~~(b) the protection of customer information;~~
- ~~(c) the protection and promotion of the interests of consumers of telecommunications goods and services; and~~
- ~~(d) calling line identification and other calling line identification related services.~~

~~1.3 Before issuing any code of practice or guideline referred to in Special Condition 1.2, the Authority shall carry out such consultation as is reasonable in all the circumstances of the case.~~

~~1.4 Without limiting the generality of Special Condition 1.2(d), the code of practice or guideline issued under that Special Condition may require the licensee to validate the calling line identification against the authenticated customer in order to prevent fraud and spam.~~

~~2. PURCHASE OF ASSETS~~

~~2.1 If a licensee is (1) in a dominant position in the relevant telecommunications market within the meaning described in section 7L of the Ordinance; or (2) subject to a universal service obligation specified~~

~~under the Ordinance, the Government may elect to take over the licensee's undertaking and purchase all or part of its assets if any of the following circumstances occur –~~

- ~~(i) this licence expires;~~
- ~~(ii) this licence is revoked;~~
- ~~(iii) the licensee goes into liquidation; or~~
- ~~(iv) the licensee ceases to carry on business,~~

~~provided that if the Government elects to do so, it shall give notice in writing not later than 90 days in advance of the expiry of this licence, or immediately upon revocation of this licence or within a reasonable time of the happening of the events at Special Condition 2.1(iii) or 2.1(iv).~~

~~2.2 The selling price shall be agreed between the Government and the licensee on the basis of the fair market value of those assets at the time of acquisition determined on the basis that this licence remains in force and that the network is continuing to be used for the provision of the service. If no agreement can be reached between the Government and the licensee, the matter shall be settled by arbitration in accordance with the provisions of the Arbitration Ordinance (Cap. 341).~~

~~2.3 For the purpose of Special Condition 2.1,~~

- ~~(1) where the licensee is in a dominant position in the relevant telecommunications market, the undertaking and assets of the licensee shall be the relevant undertaking and assets of the licensee in relation to its dominant position in that relevant telecommunications market; and~~
- ~~(2) where the licensee is subject to a universal service obligation, the undertaking and assets of the licensee shall be the relevant undertaking and assets of the licensee in relation to its operation that is subject to the universal service obligation.~~

~~3. REQUIREMENTS FOR INTERCONNECTION~~

~~3.1 The licensee shall interconnect its service and network with the services and networks of other unified carriers, mobile carriers, fixed carriers or~~

~~fixed telecommunications network services operators licensed under the Ordinance and, where directed by the Authority, interconnect its service and network with telecommunications networks and services of a type mentioned in section 36A(3D) of the Ordinance. The licensee shall interconnect its service and network with the services and networks of other interconnecting parties under this Special Condition to ensure any-to-any connectivity, i.e. any customer in any one network can have access to any other customer in any interconnecting network and, where directed by the Authority, to any service offered in any interconnecting network.~~

3.2 The licensee shall use all reasonable endeavours to ensure that interconnection is effected promptly, efficiently and on terms, conditions and at charges which are based on the licensee's reasonable relevant costs attributable to interconnection.

3.3 The licensee shall provide facilities and services reasonably necessary for the prompt and efficient interconnection of the service and the network with the telecommunications networks or services of the other entities referred to in Special Condition 3.1. Such facilities and services include –

(a) carriage services for the delivery of codes, messages or signals or other communication across and between the interconnected networks;

(b) those necessary to establish, operate and maintain points of interconnection between the licensee's network and the networks of the other entities, including, without limitation, the provision of sufficient transmission capacity to connect between the licensee's network and networks of the other entities;

(c) billing information reasonably required to enable the other entities to bill their customers;

(d) facilities specified by the Authority pursuant to section 36AA of the Ordinance; and

(e) ancillary facilities and services required to support the above types of ~~interconnection facilities and services.~~

4. ~~NUMBERING PLAN AND NUMBER PORTABILITY~~

~~4.1 The licensee shall comply with the numbering plan made or approved by the Authority and any directions given by the Authority in respect of the numbering plan.~~

4.2 The licensee shall at the request of the Authority or otherwise consult the Authority about the arrangements for the allocation and reallocation of numbers and codes within the numbering plan.

~~4.3 Where requested by the Authority, the licensee shall prepare and furnish to the Authority proposals for developing, adding to or replacing the numbering plan relating to the service.~~

4.4 The licensee shall, in such manner as the Authority may direct, facilitate the portability of numbers assigned to any customer of any unified carrier licensee, fixed carrier or fixed telecommunications network service licensee, mobile carrier licensee, services-based operator, mobile virtual network operator or any other licensee, as the case may be, so that any number so assigned may be used by that customer should it cease to be a customer of any such entity and become a customer of any other unified carrier licensee, fixed carrier or fixed telecommunications network service licensee, mobile carrier licensee, services-based operator, mobile virtual network operator or any other licensee, as the case may be.

4.5 Directions by the Authority under Special Condition 4.4 include reasonable directions concerning,

(a) compliance with Special Condition 4.4 by the licensee at the licensee's own expenses, or by equitably sharing all relevant costs associated with providing portability of numbers as between the licensee, any other unified carrier licensee, fixed carrier or fixed telecommunications network services licensee, mobile carrier licensee, services-based operator, mobile virtual network operator or any other licensee, as the case may be; and

(b) facilitation of portability of numbers through such technical arrangement (including but not restricted to a centralized database) as may be specified by the Authority, in co-operation with other parties sharing or maintaining the technical arrangement at such costs as may be directed under Special Condition 4.5(a).

- 4.6 For the purposes of this Special Condition, “portability of numbers” means the function of the network and the service which enables a customer of the service of a unified carrier licensee, fixed carrier or fixed telecommunications network services licensee, mobile carrier licensee, services-based operator or mobile virtual network operator to become a customer of another unified carrier licensee, fixed carrier or fixed telecommunications network services licensee, mobile carrier licensee, services-based operator or mobile virtual network operator or any other licensee, as the case may be, without changing the number assigned to that customer.

~~5. ACCOUNTING PRACTICES~~

- 5.1 Where directed by the Authority in writing, the licensee shall implement such accounting practices as specified by the Authority. Such accounting practices are to be consistent with generally accepted accounting practices, where applicable, and may include (but are not limited to) accounting practices which allow for the identification of the costs and charges for different services or types or kinds of services.

~~6. REQUIREMENT TO FURNISH INFORMATION TO THE AUTHORITY~~

- 6.1 The licensee shall furnish to the Authority, in such manner and at such times as the Authority may request in writing, such information relating to the business run by the licensee under this licence, including financial, technical, and statistical information, accounts and other records, as the Authority may reasonably require in order to perform his functions under the Ordinance and this licence. Information referred to in this condition includes but is not limited to such information as is listed in Schedule 4.
- 6.2 Subject to Special Condition 6.3 the Authority may use and disclose information to such persons as the Authority thinks fit.
- 6.3 Where the Authority proposes to disclose information obtained and the Authority considers that the disclosure would result in the release of information concerning the business or commercial or financial affairs of a licensee which disclosure would or could reasonably be expected to

~~adversely affect the licensee's lawful business or commercial or financial affairs, the Authority will give the licensee a reasonable opportunity to make representations on the proposed disclosure before the Authority makes a final decision whether to disclose the information.~~

~~7. TARIFFS~~

7.1 The licensee shall publish and charge no more than the tariffs for the service operated under this licence. The tariffs shall include the terms, as defined under section 7F(2) of the Ordinance, for the provision of the service.

7.2 Publication of a tariff shall be effected by –

- (a) publication in the website of the licensee on or before the date on which the tariff becomes effective;
- (b) the Authority receiving a copy of the tariff on or before the date as specified by the Authority;
- (c) placing a copy of the tariff in a publicly accessible part of the principal place of business and other business premises of the licensee as specified by the Authority; and
- (d) supplying a copy of the relevant details to any person who may request it, at a charge no greater than is necessary to recover reasonable costs of making and supplying the copy.

7.3 The Authority may by direction in writing, for such period and on such conditions as the Authority may determine, direct that either one or any combination of Special Conditions 7.2(a), (b), (c), and (d), either completely or as to particular obligations imposed under them, shall not apply to the licensee.

8. NOTIFICATION OF DISCOUNTS

- 8.1 The licensee shall notify the Authority of any discount to its published tariffs offered for any of the services operated under this licence, other than those services listed in Schedule 6.
- 8.2 Notification of a discount shall be effected upon the Authority's receipt of a copy of the discount to a tariff, including such information prescribed in Schedule 5, at least one day before the discount becomes effective.
- 8.3 The Authority may publish any discount that the licensee notifies under Special Condition 8.1 after the discount becomes effective, if the Authority considers that it is in the public interest to do so.
- 8.4 For the purposes of this Special Condition, "discount" means the amount of any payment, credit, rebate, waiver, allowance, gift, or other benefit, directed to a customer, other than:
- (a) an amount in repayment of an amount overpaid to the licensee by that customer;
 - (b) an amount in settlement of a disputed amount billed to that customer by the licensee;
 - (c) an amount payable pursuant to a service level or service quality obligation of the licensee to the customer; or
 - (d) the amount payable by a customer upon termination of service to that customer.

9. BILLING AND METERING ACCURACY

- 9.1 The licensee shall take all reasonable steps to ensure that any metering equipment and billing system used in connection with the service is accurate and reliable.
- 9.2 At the written request of the Authority or at regular intervals to be specified by the Authority, the licensee shall conduct tests on its metering equipment and billing system to assess its accuracy, reliability and conformity to the

technical standards, if any, specified by the Authority. The licensee shall submit the test result to the Authority within 14 days after the date of the relevant test or such other longer period as the Authority may determine.

- 9.3 The licensee shall keep such records of any metering equipment and billing system in such form as may be specified by the Authority and shall supply such records to the Authority as soon as reasonably practical following a written request from the Authority.

~~10. PROVISION OF SERVICE~~

- 10.1 The licensee shall, subject to Schedule 1 and any special conditions of this licence relating to the provision of the service, provide the service on its published terms and conditions and at the tariff published in accordance with Special Condition 7 (as applicable) and at the discount notified to the Authority in accordance with Special Condition 8 (as applicable), on request of a customer whether or not the customer intends the service to be available for its own use or intends to utilize the service to provide a lawful telecommunications service to third parties.
- 10.2 Subject to Schedule 1 and any special conditions relating to the provision of the service, the licensee shall comply with a customer request for the service as tariffed by the licensee in accordance with Special Condition 7 where the service can reasonably be provided by the licensee to the customer utilizing the licensee's network in place at the time of the request.
- 10.3 The licensee shall not unreasonably delay or refuse to provide the service, or impose onerous conditions on the provision of the service, to any customer who owns or operates apparatus of a type which is approved by the Authority and conforms with the technical and performance standards specified in Schedule 3 to this licence. In particular (but without limiting the generality of the foregoing), the licensee shall not discriminate against any customer whose apparatus was acquired other than from the licensee.

11. DIRECTORY INFORMATION AND DIRECTORY INFORMATION SERVICE

11.1 For the purposes of this Special Condition –

(a) “directory information” means information obtained by the licensee in the course of the provision of services under this licence concerning or relating to all or any of the name, address, business and telephone numbers of each of its customers; and

(b) “raw directory information” means the licensee’s directory information held in a basic format for the purpose of Special Conditions 11.6, 11.7 and 11.8 relating to customers other than customers who request that directory information about them not be disclosed.

11.2 This Special Condition applies only in respect of standard printed directories and other directory databases and services which include all of the names of a licensee’s customers listed in English language in alphabetical order, or in Chinese language in order of the number of strokes, or in such other language in an appropriate order as is kept by the licensee, and does not apply to classified directories where customers are listed by business or trade category or to other business or specialised directories.

11.3 Subject to compliance with the Personal Data (Privacy) Ordinance (Cap. 486), General Condition 7 and any applicable law, the licensee shall –

(a) where and as directed by the Authority, publish or arrange at least biennially for the publication of directory information in a printed or other form approved by the Authority, relating to customers, other than customers who request not to be included in a directory to be published (“the printed directory”); and

(b) where and as directed by the Authority, establish, maintain and operate, or arrange for the establishment, maintenance or operation of a telecommunications service whereby customers may, upon request, be provided with directory information other than that of customers who request the information relating to them not to be disclosed (“the

telephonic directory service”).

- 11.4 The printed directory and the telephonic directory service provided under Special Condition 11.3 shall be made available free of charge, unless approved otherwise by the Authority, to all of the licensee’s customers and shall be provided in a manner satisfactory to the Authority.
- 11.5 The licensee is permitted to make commercial arrangements with one or more of the other licensees who have the obligation to provide directory information, to co-operate in the provision jointly by them of either or both of the printed directory and the telephonic directory service which the licensee is required to provide under Special Condition 11.3.
- 11.6 The licensee’s printed directory shall be a unified printed directory and the licensee’s telephonic directory service shall be a unified telephonic directory service and shall utilise a unified directory database, containing directory information as directed by the Authority, except for those customers who request that directory information about them not be disclosed. Subject to compliance with the Personal Data (Privacy) Ordinance (Cap. 486), General Condition 7 and any applicable law, the licensee shall, as directed by the Authority, provide, and regularly update, raw directory information, for which the licensee will be able to impose a reasonable charge, if applicable, to fairly compensate it for providing the raw directory information. The licensee shall endeavour to agree with each of the other licensees on a reasonable mode of exchange and transmission format for the raw directory information.
- 11.7 Where the licensee is unable to agree with another licensee pursuant to Special Condition 11.6 on what amounts to fair compensation for provision of, or the reasonable mode of exchange and transmission format of, raw directory information, the matter at issue may be referred by either licensee to the Authority for determination. The licensee shall pay to the Authority, as he may require, any costs or expenses incurred by the Authority, including, without limitation, staff costs and expenses, and the financing of liabilities paid out of the Telecommunications Authority Trading Fund in respect of such a determination or determination process.
- 11.8 Except with the prior written approval of the Authority, the licensee shall not make use of raw directory information provided by another licensee

other than for discharging its obligations under this Special Condition.

11.9 This Special Condition does not apply to the services described in Schedule 7 provided that -

- (a) the licensee (and where appropriate its agents, contractors and resellers) declares such service, in all promoting, marketing or advertising materials concerning such service, as a “Class 2 service” (where the materials are in English text) (or “第二類服務” where the materials are in Chinese text); or
- (b) the licensee complies with such conditions as may be specified by the Authority in a direction that may be issued by the Authority.

12. EMERGENCY CALL SERVICE

12.1 Where the licensee provides the services described in Schedule 7, the licensee shall provide a public emergency call service by means of which any member of the public may, at any time and without incurring any charge, by means of compatible apparatus connected to the network of the licensees, communicate as quickly as practicable with the Hong Kong Police Emergency Centre or other entities as directed by the Authority to report an emergency.

12.2 The licensee shall not charge for the use of the public emergency services described in Special Condition 12.1.

12.3 Unless otherwise directed by the Authority, emergency messages sent by a person using compatible apparatus connected to the network of the licensee shall be treated by the licensee on an equal basis irrespective of whether or not such apparatus has been registered as that of a customer of the licensee.

12.4 Where the licensee provides a public emergency call service pursuant to Special Condition 12.1 and the location of the customer making the call is potentially nomadic, the licensee shall in such manner as may be specified by the Authority maintain the most up-to-date location information of customers and provide free of charge to the Police Force, the Fire Service Department and other relevant Government agencies handling the emergency call service the relevant information relating to the location of a

customer calling the emergency service described in Special Condition 12.1 for the sole purpose of responding to that call and (as appropriate) identification that the location of the customer making the call is potentially nomadic. Unless otherwise directed by the Authority, the licensee shall provide a mechanism whereby the customers can update their location information and remind the customers to update their location information whenever they change the location from which the service is used.

~~13. RECORDS AND PLANS OF THE NETWORK~~

~~13.1 The Authority may disclose the network information in accordance with section 7I(3) of the Ordinance.~~

~~13.2 The licensee shall, at the reasonable request of any other licensee under the Ordinance if so authorized by the Authority, give reasonable access to its network information for the facilitation of network planning, maintenance and reconfiguration required for the purposes of Special Condition 3 and section 36AA of the Ordinance. The licensee shall be permitted to charge the requesting party so as to be fairly compensated for the reasonable relevant costs incurred in the provision of such network information.~~

~~13.3 Where the licensee and any other licensee that has requested access to the network information in accordance with Special Condition 13.2 are unable to agree what amounts to reasonable access (including confidentiality requirements and fair compensation for the reasonable relevant costs incurred) or a reasonable request, the matter at issue may be referred by either the licensee, the other licensee to the Authority for determination. The licensee shall pay to the Authority, as he may require, any costs or expenses incurred by the Authority, including, without limitation, staff costs and expenses, and the financing of liabilities paid out of the Telecommunications Authority Trading Fund in respect of such a determination or determination process.~~

~~14. NETWORK LOCATION~~

~~14.1 The licensee shall obtain the consent in writing of the Director of Lands before the commencement of any installation works for its network under, in, over or upon any unleased Government land.~~

~~14.2 The licensee shall keep accurate records of the location of the network installed under, in, over or upon any land.~~

14.3 The licensee shall record the information referred to under Special Condition 14.2 on route plans drawn on an Ordnance Survey Map background of a scale to be determined by the licensee in consultation with the Director of Highways and the Director of Lands.

14.4 The licensee shall, at the request of the Director of Highways, the Director of Lands, the Authority or any person who intends to undertake works in the vicinity of the network and who is authorized to do so by the Director of Highways, the Director of Lands or the Authority, provide free of charge information about the location of the network in diagrammatic or other form. The licensee shall make trained staff available on site to indicate the location and nature of the network to the Director of Highways, the Director of Lands, the Authority or any person authorized by the Director of Highways, the Director of Lands or the Authority.

14.5 The licensee shall mark or otherwise identify every wire laid or telecommunications installation installed by the licensee or any contractor on its behalf throughout the course of the wire, or at the location of the installation, so as to distinguish it from any other wire or telecommunications installation laid or installed in Hong Kong.

14.6 The licensee shall provide, at such intervals as the Authority may determine, distinguishable surface markers of the underground position of the network.

15. CHANGES TO THE NETWORK

15.1 For the purposes of this licence, a change in the network is a material change where the implementation of the change would result in the network no longer being in compliance with any relevant technical standard which the Authority has power to issue.

15.2 The licensee shall notify the Authority of any proposals for material changes to the network and provide him with such information as the Authority reasonably requires.

15.3 The licensee shall not, without the prior consent in writing of the Authority,

make any material changes which might reasonably be anticipated by the licensee to affect -

- (a) any telecommunications service or installation connected to the network;
- (b) a person producing or supplying telecommunications apparatus for connection to the network;
- (c) a licensee under the Ordinance;
- (d) a licensee under the Broadcasting Ordinance (Cap. 562); or
- (e) a customer or a consumer of goods and services provided by any person or entity,

if the change is in the opinion of the Authority likely to require modifications or replacements to, or cessation in the production or supply of any of the telecommunications apparatus involved, or if the proposed alteration would require substantial network reconfiguration or rerouting.

- 15.4 The licensee shall prepare and publish, after consultation with the Authority, its procedures for consulting with and giving notice to persons likely to be affected materially by changes to its network which are required to be notified in accordance with Special Condition 15.2 and any other changes required to be notified pursuant to any technical standard which the Authority has power to issue. Subject to approval of the Authority, the notification procedures to each of the classes of persons likely to be affected under Special Condition 15.3 may differ having regard to the practicality and costs of notifying them.

16. REQUIREMENTS FOR ROAD OPENING

- 16.1 The licensee shall co-ordinate and co-operate with any other unified carrier licensee, fixed carrier or fixed telecommunications network services licensee under the Ordinance and any other authorized person in respect of road openings and shall, after being consulted by the Authority, comply

with any guidelines issued by the Authority.

17. REQUIREMENTS OF INSTALLATION OF LINES OR CABLES

~~17.1 The network, or any part of it, if installed under, in, over or upon any public street or other unleased Government land, shall be at such depth, course, route and position as may be determined by the Director of Lands or the Director of Highways.~~

17.2 Without prejudice and in addition to the provisions of any law or Ordinance, in the course of providing, establishing, operating, adjusting, altering, replacing, removing or maintaining the network for the purposes of this licence, or any part of it, the licensee shall –

- (a) exercise all reasonable care, and cause as little inconvenience as possible to the public and as little damage to property as possible; and
- (b) make good any physical damage caused to any person having a lawful interest in the land or being lawfully thereon and reinstate the land within a reasonable time in good and workmanlike manner. When it is not practicable to make good any damage or to reinstate the land to the condition in which it existed prior to the damage, the licensee shall pay, promptly and fully, compensation for any damage caused to any person having an interest or right in the land affected.

~~18. WORKS IN PUBLIC STREETS~~

~~18.1 Where in the course of installing or maintaining the network the licensee needs to open or break up any public street the licensee shall –~~

- ~~(a) apply to the Director of Highways or the Director of Lands for permission to open or break up the public streets;~~
- ~~(b) complete the works for which the licensee has opened or broken up the public street with all due speed and diligence, fill in the ground and remove all construction related refuse caused by its works;~~

~~(c) maintain the site of the works in a safe manner including the fencing of the site and the installation of adequate warning lighting at night; and~~

(d) reinstate the street immediately after the completion of the works to the satisfaction of the Director of Highways or the Director of Lands.

18.2 If the licensee fails, within any period specified by the Director of Highways or the Director of Lands, to observe any of the requirements of Special Condition 18.1, the Director of Highways or the Director of Lands may take action to remedy the failure. The licensee shall reimburse the Government any such sum as may be certified by the Director of Highways or the Director of Lands to be reasonable cost for executing any works under the terms of this Special Condition 18.2.

~~19. INTERFERENCE WITH WORKS OF OTHERS~~

19.1 Where in the course of installing or maintaining the network, the licensee after obtaining the approval of the Director of Highways breaks up or opens any public street it shall not remove, displace or interfere with any telecommunications line, any gas pipe or water pipe or main or any drain or sewer or any tube, casing, duct, wire or cable for the carriage of electrical current and ancillary installations installed by any other person without that other person's consent.

19.2 In the case where the other person holds a licence under the Land (Miscellaneous Provisions) Ordinance (Cap. 28), any consent referred to in Special Condition 19.1 is refused, or cannot be obtained for any reason, the licensee may request the consent to proceed from the relevant authority in accordance with the terms of any licence issued to such other person under the Land (Miscellaneous Provisions) Ordinance, if any.

~~20. LICENSEE TO ALTER NETWORK ON NOTICE~~

20.1 The licensee shall, within such reasonable time and in such manner as may be directed by notice in writing by the Director of Highways or the Director of Lands, and at its own expense, alter the course, depth, position or mode

~~of attachment of any apparatus forming part of the network.~~

- 20.2 Where the Director of Highways or the Director of Lands gives a direction under Special Condition 20.1, Special Condition 18 shall apply as if such alteration were part of the installation or maintenance of the network.

21. WITHDRAWAL AND RETURN OF FREQUENCIES

21.1 Without prejudice to the generality of section 32H of the Ordinance, the Authority may by notice in writing withdraw any frequency previously assigned to the licensee if in the opinion of the Authority the licensee is not making efficient use of that frequency or in exceptional circumstances including where the public interest or international obligations of the Government so require, there is a serious breach of spectrum assignment conditions or serious interference between legitimate spectrum users has to be resolved or minimised.

21.2 The licensee may, subject to prior consent of and conditions specified by the Authority, return any frequency previously assigned to it.

22. UNIVERSAL SERVICE OBLIGATION AND CONTRIBUTION

22.1 As required by the Authority pursuant to Section 35B of the Ordinance, the licensee shall provide, maintain and operate the network to the satisfaction of the Authority in such manner as to ensure that, subject to Special Conditions 22.2 and 22.3, a good, efficient and continuous basic service is reasonably available, subject to the Ordinance, to all persons in Hong Kong.

22.2 The Authority may, subject to such conditions as he thinks fit, including but not limited to conditions as to duration, exempt the licensee from all, or part of, the universal service obligation with respect to a specified area, or areas if he is reasonably satisfied that the basic service in that area, or areas, is, or is capable of, being met by any other fixed carrier or unified carrier licensee and/or that in the circumstances it would be unreasonable or unnecessary for the licensee to be required to also provide the basic service.

~~22.3 The licensee shall supply the basic service to any person, on its usual terms~~

~~and conditions, within a reasonable period of a request for basic service at the tariff as published in accordance with Special Condition 7.~~

22.4 For the purpose of this Special Condition 22, the following definitions shall apply –

(a) Universal service contribution is that sum calculated in accordance with a formula adopted periodically by the Authority, to ensure that any licensee with a universal service obligation (referred to as “universal service provider” in this Special Condition), receives a fair contribution from other licensees as specified by the Authority for serving customers with basic service whom would otherwise not be served because it is not economically viable to do so but who are required to be served under the universal service obligation.

(b) Universal service obligation is the obligation by a licensee to provide, maintain and operate the relevant network in such manner as to ensure that a good, efficient and continuous basic service is reasonably available, subject to the Ordinance and the conditions of its licence, and to provide that basic service in such manner.

22.5 The licensee is entitled to receive its relevant share of a universal service contribution to assist it in meeting its universal service obligation and the licensee shall pay its relevant share of a universal service contribution to any universal service provider as the Authority may direct. Any such universal service contribution shall be subject to periodic review by the Authority as to description and quantum. On the completion of a periodic review, the Authority may supply the licensee with such information as the Authority is reasonably able to supply, and subject to any duty of confidentiality, as to the basis on which the universal service contribution is calculated.

22.6 Subject to the formula adopted by the Authority, if the external telecommunications services of the licensee, where it has a universal service obligation, are provided to other parties by the licensee on wholesale level and the external telecommunications services are then ~~provided to customers by such other parties on retail level:~~

- ~~(a) the relevant wholesale revenues of the licensee in relation to the provision of its external telecommunications services to non-associated or non-affiliated companies shall be considered as relevant revenues in the calculation of universal service contribution;~~
- ~~(b) the relevant retail revenues of the associated or affiliated companies of the licensee in relation to the provision of the licensee's external telecommunications services to customers directly connected to the licensee shall be considered as relevant revenues in the calculation of universal service contribution;~~
- ~~(c) the relevant wholesale costs of the licensee in relation to the provision of its external telecommunications services to both (i) associated or affiliated companies; and (ii) non-associated or non-affiliated companies, shall be considered as relevant costs in the calculation of universal service contribution; and~~
- ~~(d) the relevant retail costs (excluding the wholesale price received by the licensee) of the associated or affiliated companies of the licensee in relation to the provision of the licensee's external telecommunications services to customers directly connected to the licensee shall be considered as relevant costs in the calculation of universal service contribution.~~

22.7 For the purpose of Special Condition 22.6, the licensee shall provide information in relation to the provision of the licensee's external telecommunications services (including but not limited to the relevant traffic statistics, the relevant cost and revenue information as mentioned in Special Condition 22.6).

22.8 The licensee shall be jointly and severally liable for the acts and conducts of the affiliated or associated companies (as mentioned in Special Condition 22.6), in relation to the provision of the licensee's external telecommunications services to customers, under this licence and the Ordinance.

23. CIRCUMSTANCES OUTSIDE LICENSEE'S CONTROL

23.1 For the avoidance of doubt, General Condition 17.1 of the licence shall apply to these special conditions and the Authority may at his discretion, and on such conditions as he thinks fit, extend any time period within which the obligations of the licensee under these special conditions may be met.

23.2 In exercising his discretion under Special Condition 23.1 with respect to any of the special conditions of the licence, the Authority shall take into account including, without limitation, whether circumstances are such that it would be unreasonable to require compliance by the licensee with the relevant special condition.

~~24. INSURANCE~~

~~24.1 Throughout the currency of this licence, the licensee shall have and maintain a valid insurance policy with a reputable insurance company to cover its third party liabilities in respect of personal injury, death and damage to property, arising out of or in connection with the installation, maintenance and operation of the network or provision of the service. The amount of insurance shall be at least HK\$10,000,000 per occurrence or such sum as the Authority may notify in writing in future.~~

~~25. USE OF PUBLIC FACILITIES FOR PROVISION OF SERVICES~~

~~25.1 Without limiting or affecting in any way the licensee's obligations under any other condition of this licence, the licensee shall comply with any guidelines or codes of practice which may be issued by the Authority from time to time for the purpose of providing practical guidance to the licensee in respect of the use of Government facilities as well as facilities on Government property and unleased Government land for the provision of services under this licence.~~

~~26. LOCATION SERVICES~~

~~26.1 Without affecting the generality of General Condition 7, "information of a~~

~~customer” referred to in General Condition 7.1 and “information provided by its customers or obtained in the course of provision of service to its customers” referred to in General Condition 7.2 shall include any information concerning the locations of customers obtained in the course of provision of the service.~~

26.2 Where the licensee provides services to customers using the information concerning the locations of the customers obtained in the course of provision of the service, the licensee shall ensure that –

(a) no such services are provided without the prior consent of the relevant customers; and

(b) the customers are capable of suspending the use of the information from time to time.

27. PROVISION OF SERVICE TO SUSPECTED STOLEN RADIOCOMMUNICATIONS APPARATUS

27.1 The licensee shall, where directed by the Authority, refuse to provide the service to any person who possesses or uses a radiocommunications apparatus which is stolen or suspected stolen goods.

28. BACKUP POWER SUPPLY

28.1 The licensee shall conform to any guideline or code of practice issued by the Authority in respect of the provision of backup power supply to the service.

28.2 Unless there is backup power supply available in such manner as may be specified by the Authority to maintain continuity of the service without any deterioration in quality of the service during interruption of mains power supply on the customer’s premises, to the network, or to any system or equipment delivering the service to the customer, the licensee shall not provide the service to users whose “lifeline devices” are connected to the service.

28.3 Where no backup power supply is available in such manner as described in Special Condition 28.2, the licensee is deemed to have complied with Special Condition 28.2 if –

(a) the customers have, before or upon subscription of service, confirmed that the Service will not be used by lifeline users or connected with lifeline devices; and

(b) the licensee has affixed a label to the wall socket panel or any equipment installed on the customers' premises or taken other reasonable steps to remind the customers that the service is not suitable for connection to lifeline devices.

28.4 In this Special Condition, a “lifeline device” means a medical alarm or any other device for an elderly, infirm or invalid to summon assistance in the event of an emergency without having to dial manually the telephone number of the emergency service.

~~29. PAYMENT OF SPECTRUM UTILIZATION FEE~~

~~29.1 The licensee shall pay spectrum utilization fees (“SUF”) for spectrum assigned to the licensee as designated by the Authority by order and at such level or according to the method of determining the SUF as prescribed by the Secretary by regulation. The licensee shall pay the SUF to the Authority during the period while the licence remains in force. If the licensee fails to make the concerned payment when due, the Authority may charge interest on any overdue amount from the date on which the relevant amount is due until the date of actual payment (both days inclusive) at a rate determined by the Authority to compensate it for the payment being overdue.~~

~~30. PROVISION OF INFORMATION TO CUSTOMERS~~

~~30.1 Without prejudice to the other terms and conditions of this licence, the licensee shall provide or make available the following information to the customers when the services are offered~~

- ~~(a) Name of the licensee;~~
- ~~(b) Licence number of the licensee under this licence;~~
- ~~(c) Customer service hotline number(s);~~
- ~~(d) Where applicable, the access code(s) or number(s) (including any access password) used for obtaining the services;~~
- ~~(e) Instructions on how to access the services;~~
- ~~(f) The tariffs under which the services are offered; and~~
- ~~(g) The duration or validity period of the services offered.~~

31. ROLLOUT OF NETWORK

32. DISPOSAL OF ASSETS

32.1 If a licensee is (1) in a dominant position in the relevant telecommunications market within the meaning described in section 7L of the Ordinance; or (2) subject to a universal service obligation specified under the Ordinance; or (3) required to pay spectrum utilization fee as prescribed under the Ordinance for the provision of mobile or wireless carrier services under this licence, unless with the prior written consent of the Authority (which consent shall not be unreasonably withheld or delayed), the licensee shall not during the validity period of this licence dispose or agree to dispose of any interest (as determined in accordance with Special Condition 32.2) in the assets or undertaking of the licensee which, cumulatively with the value of any and all disposals or agreements to dispose of interests in those assets or undertaking prior to the disposal or agreement in question and after the date of issue of this licence, exceeds 15% as at the date of the disposal or agreement in question of the net asset value of the licensee (as determined in accordance with Special Condition 32.2).

32.2 The value of any interest or undertaking, and the net asset value, of the licensee shall be determined by a certified public accountant (practising)

~~(being one who has the qualifications as prescribed under the Professional Accountants Ordinance (Cap. 50)) as may be nominated, or whose appointment by the licensee is agreed in writing, by the Authority.~~

32.3 In the event of any dispute between the Authority and the licensee as to the value of the interest, undertaking or the net asset value referred to in Special Condition 32.1, the matter shall be settled by arbitration in accordance with the provisions of the Arbitration Ordinance (Cap. 341).”

32.4 For the purpose of Special Condition 32.1,

(1) where the licensee is in a dominant position in the relevant telecommunications market, the interest in the assets or undertaking of the licensee shall be the relevant interest in the assets or undertaking of the licensee in relation to its dominant position in that relevant telecommunications market;

(2) where the licensee is subject to a universal service obligation, the interest in the assets or undertaking of the licensee shall be the relevant interest in the assets or undertaking of the licensee in relation to its operation that is subject to the universal service obligation;

(3) where the licensee is required to pay spectrum utilization fee as prescribed under the Ordinance for the provision of mobile or wireless carrier services under this licence, the interest in the assets or undertaking of the licensee shall be the relevant interest in the assets or undertaking of the licensee in relation to its operation that is subject to the payment of spectrum utilization fee for the provision of mobile or wireless carrier services under this licence.

33. ACCESS TO BUILDINGS

33.1 The licensee shall not enter into any agreement, arrangement or understanding, whether legally enforceable or not, with any person, or receive any unfair advantage from a business carried on by it or any other person (whether associated or affiliated with it or not), which, in the opinion of the Authority, has or is likely to have the purpose or effect of preventing or restricting fair and non-discriminatory access to any buildings

for the installation, operation or maintenance of any cables, equipment or network for the provision of service similar to the service by other operators licensed by the Authority.

~~33.2 The licensee shall comply with any guidelines or codes of practice that may from time to time be issued by the Authority for the facilitation and coordination of fair, non-discriminatory and orderly access to buildings for the installation, operation or maintenance of any cables, equipment or network for the provision of the service and other services similar to the service by other operators licensed by the Authority~~

33.3 Without prejudice and in addition to Section 18 of the Ordinance and General Condition 9, the licensee shall not, in providing, establishing, operating, adjusting, altering, replacing, removing or maintaining any telecommunications line or telecommunications installation in, over or upon any land for the purposes of this licence, obstruct, interfere with, or cause or permit damage to, any other telecommunications line or telecommunications installation, or means of telecommunications or telecommunications service or any gas or water pipe or main or any drain or sewer or any tube, casing, duct, wire or cable for the carriage of electrical current.

34. CHANNELS WITHIN IN-BUILDING COAXIAL CABLE DISTRIBUTION SYSTEMS

34.1 Subject to Special Conditions 34.2, 34.3, 34.4, 34.5, 34.6 and 34.7, the service operated over the in-building coaxial cable distribution systems (“IBCCDS”) of the network shall use only such channels as may from time to time be assigned by the Authority and for such purposes and under such conditions as may be specified by the Authority by notice in writing to the licensee.

34.2 The licensee shall accept that regulation of the use of channels within the IBCCDS of the network by the Authority is necessary because of the limitation in the number of channels available and the existence of competing demand for the channels.

34.3 The Authority may at any time, by giving not less than 12 months’ notice in

writing to the licensee, require it upon such date as may be specified in the notice to cease using any channel previously assigned to it to carry the service, if having given the licensee sufficient opportunities to make representations, the Authority forms the opinion that the licensee is not making efficient use of that channel.

- 34.4 The Authority may at any time, by giving not less than 12 months' notice in writing to the licensee, require it upon such date as may be specified in the notice to vary the purposes for which and the conditions under which the channels are to be used.
- 34.5 The Authority may at any time, by giving not less than 12 months' notice in writing to the licensee, require it upon such date as may be specified in the notice to cease using any channel previously assigned to it by the Authority to carry the service and to use such new channel at its own expenses as the Authority may assign.
- 34.6 The licensee shall comply with any notice that may from time to time be issued by the Authority under this Special Condition 34.
- 34.7 The licensee shall comply with the guidelines and codes of practice issued by the Authority from time to time on the use of the IBCCDS channels.

35. INTERPRETATION

- 35.1 For the avoidance of doubt and for the purposes of these Special Conditions –

“mobile virtual network operator” means the holder of public non-exclusive telecommunications services licence for provision of mobile virtual network operator services;

“services-based operator” means the holder of a service-based operator licence.

- 35.2 Any reference to an ordinance or a regulation, whether the word is used by itself or as part of any title to an ordinance or a regulation, shall mean that ordinance or regulation for the time being in force as well as any modification or substitution of that ordinance or regulation, in whole or in

part, and all subsidiary legislation, regulations, directions, codes of practice and instruments made under that ordinance or regulation and for the time being in force.

35.3 The singular includes the plural and vice versa.

36. SERVICE CONTRACTS AND DISPUTE RESOLUTION

36.1 The licensee shall comply with all codes of practice issued by the Authority from time to time in respect of the requirements to apply in the contracting of telecommunications services to end users.

36.2 The contracting requirements referred to in Special Condition 36.1 may include the following –

- (a) the style, format and structure of service contract documentation;
- (b) the manner of entering into and terminating service contracts;
- (c) the information to be included in or in connection with service contracts and the performance of the services;
- (d) the submission of disputes between end users and the providers of telecommunications services to independent dispute resolution, pursuant to a scheme approved by the Authority; and
- (e) other terms and conditions or provisions for the protection of the interests of end users.

36.3 Before issuing any code of practice for the purposes of Special Condition 36.1, the Authority shall carry out such consultation as is reasonable in the circumstances.

37. USE OF PAYPHONE KIOSKS FOR PROVISION OF SERVICES DESCRIBED IN CLAUSE 4 OF SCHEDULE 3

37.1 Without limiting or affecting in any way the licensee's obligations under any other condition of this licence, the licensee shall comply with any guideline or code of practice which may be issued by the Authority from time to time for the purpose of providing practical guidance in respect of the use of payphone kiosks for provision of services described in Clause 4 of Schedule 3 of this licence.

- 37.2 The licensee shall use all reasonable endeavours to ensure that access to facilities such as space and electricity supply at the payphone kiosks is provided promptly and efficiently, and at fair compensation to the licensee, so that other licensees, which are authorized by the Authority to provide services which are of the same kind as those described in Clause 4 of Schedule 3 of this licence, can install their own apparatus or equipment at the payphone kiosks for provision of such services.
- 37.3.1 In relation to the provision of access to facilities such as space and electricity supply at payphone kiosks referred to in Special Condition 37.2, the licensee shall:
- (i) not unduly discriminate against other licensees compared to its own business for the operation of the same kind of service; and
 - (ii) negotiate in good faith in an attempt to reach agreement with other licensees and use all reasonable endeavours to enter into agreement with other licensees.
- 37.3.2 Where the licensee is unable to agree within a reasonable time with other licensee pursuant to Special Condition 37.3.1 for provision of access to any facilities at the payphone kiosks or on what amounts to fair compensation for provision of access to any such facilities, the matter at issue may be referred by either licensee to the Authority for determination.
- 37.4 For the purpose of Special Conditions 37.2 and 37.3.1 and subject to Special Condition 37.5, the licensee shall provide to the Authority, in such manner and at such times as the Authority may request, a list of payphone kiosks which are available to other licensees for installing their own apparatus or equipment as well as the technical information of such kiosks including the layout plan and structural design. The Authority may disclose the list and information in any manner he thinks fit.
- 37.5 The licensee shall not without any prior written approval by the Authority amend, revise, modify or otherwise reduce the number of payphone kiosks referred to in Special Condition 37.4.
- 37.6.1 Where the licensee is required, under the formula adopted by the Authority in calculating the universal service contribution under Special Condition 22.4(a), to pay a monthly fee for using payphone kiosks for provision of services

described in Clause 4 of Schedule 3 of this licence, the Authority may review and determine from time to time such fee.

37.6.2 For the avoidance of doubt, the payphone kiosks referred to in Special Condition 37.6.1 are not limited to the payphone kiosks specified in a list mentioned in Special Condition 37.4 but include all payphone kiosks which the licensee is allowed by the Authority to receive universal service contribution.

38. JOINT AND SEVERAL RIGHTS AND OBLIGATIONS

38.1 The licensee shall hold this licence jointly and each of the companies licensed herein shall not be construed as holding a separate licence.

38.2 Each of the companies holding this licence shall have the rights and duties to carry out activities permitted under this licence and shall be jointly and severally liable for any duties, obligations and liabilities imposed by this licence.

38.3 Each of the companies holding this licence shall be jointly and severally subject to all regulations and ordinances in force from time to time.

39. GROUP COMPANIES REQUIREMENT

~~39.1 Throughout the currency of this licence, PCCW-HKT Telephone Limited and Hong Kong Telecommunications (HKT) Limited shall remain wholly and beneficially owned within the same group of companies within the meaning of the Companies Ordinance (Cap.32). Such requirement may upon request of the licensee be waived at the discretion of the Authority.~~

39.1 Throughout the currency of this licence,

- (a) All legal and beneficial interest in PCCW-HKT Telephone Limited and not less than 51% of the legal and beneficial interest in Hong Kong Telecommunications (HKT) Limited shall directly or indirectly remain to be held by one and the same parent company;

- (b) The parent company referred to in (a) shall directly or indirectly remain in control of all voting rights in PCCW-HKT Telephone Limited and of not less than 51% of the voting rights in Hong Kong Telecommunications (HKT) Limited; and
- (c) The requirements in (a) and (b) above may upon the request or consent of the licensee be waived or amended at the discretion of the Authority.