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12 November 2010

Circular letter to all

- **Unified Carrier Licensees**
- **Mobile Carrier Licensees**
- **Fixed Carrier Licensees**
- **Fixed Telecommunication Network Services Licensees**
- **Services-Based Operator (SBO) Licensees of Class 3 Service – External Telecommunications Services (ETS) Operators**
- **Public Non-Exclusive Telecom Services (PNETS) – External Telecommunications Services (ETS) Operators**

Dear Sir/Madam,

**Requirements for Providing
Sufficient Disclosure of the Charges for Calling Card Service**

1. On 26 February 2010, the Office of the Telecommunications Authority (OFTA) issued a circular letter to operators providing external telecommunications services (ETS), reminding them of the requirements set out in two earlier circular letters, that they should provide sufficient charging information for calling card service¹.
2. Since the issue of the circular letter in February 2010, OFTA has conducted a market monitoring exercise to check whether operators are working in compliance with the requirements. The outcome of the exercise reveals that the status of compliance has not been entirely satisfactory.
3. The Telecommunications Authority (TA) hence considers it necessary

¹ The circular letter of 26 February 2010 and the two earlier circular letters dated 6 June 2003 and 29 July 2003 respectively can be downloaded from OFTA's website:
http://www.ofta.gov.hk/en/howto/circular_20100226.pdf
<http://www.ofta.gov.hk/en/Howto/ets-11-1.pdf>
<http://www.ofta.gov.hk/en/Howto/ets-11-2.pdf>

to issue this circular letter to operators to reinforce the importance for them to provide sufficient charging information for calling card service, failing which operators may run the risk of breaching section 7M of the Telecommunications Ordinance (the Ordinance) and be subject to a financial penalty for the breach. Section 7M provides that:

A licensee shall not engage in conduct which, in the opinion of the Authority, is misleading or deceptive in providing or acquiring telecommunications network, systems, installations, customer equipment or services including (but not limited to) promoting, marketing or advertising the network system, installation, customer equipment or service.

4. This circular letter has consolidated under a single document the salient points made in the previous three circular letters. The circular letter has also included further issues which the TA considers should be addressed, taking into account the latest observations from the marketplace. With immediate effect, the three circular letters issued on the subject dated 6 June 2003, 29 July 2003 and 26 February 2010 respectively are superseded by this circular letter.

Nature of Calling Card Service

5. Consumers are not required to subscribe to the services of, or even have any contact with the operators for using calling card service. All they need to do is to purchase calling cards from retail sales outlets (e.g. mobile handset shops, money exchange shops or grocery stores), open the service packaging, follow the dialling instructions given in the calling cards, and make the phone calls. Information about the service of the calling cards (e.g. calling destinations and charges) are usually given in the printed promotional materials (e.g. posters) displayed in the retail outlets. Consumers will make purchasing decisions relying on the information provided in these printed materials. It is therefore essential that all the necessary charging information is provided in these promotional materials.

Disclosure of Charges

6. The TA Guidelines *Misleading or Deceptive Conduct in Hong Kong*

*Telecommunications Markets (the Guidelines)*² issued on 21 May 2003 provides that when promoting, marketing or advertising telecommunications products or services, “licensees should always ensure the full cost of the product or service is clearly stated or easily ascertainable at the time of purchase and, if relevant, at the time the product or service is marketed or promoted”³. The following paragraphs (paragraphs 7 – 17) set out the requirements for disclosure of different types of charges in the context of calling card service.

Usable minutes

7. Some operators would highlight the “usable minutes”, instead of the per-minute usage charges, for calls to certain destinations in the promotional materials. The “usable minutes” claimed by operators usually are only achievable under certain circumstances or are subject to certain terms and conditions (e.g. call duration, single / multiple consumption, call to / from landline / mobile, etc). In these circumstances, operators should qualify the “usable minutes” (e.g. by an asterisk or other means) in the promotional materials and insert a footnote to indicate under what situation or terms and conditions the “usable minutes” can be achieved. In so doing, customers would not harbour any misunderstanding that the “usable minutes” are achievable in all circumstances.

Associated charges

8. It is very common for operators to highlight the usage charges of their service in the promotional materials. In addition to charging usage charges, some operators would also impose associated charges (e.g., connection fee, call handling charge, service fee, maintenance fee, etc). In such case, the usage charges (or the usable minutes) highlighted in the promotional materials should be qualified (e.g. by an asterisk or other means) to alert the consumers about the associated charges. A footnote should be inserted to state clearly the details, including the charging mechanism, exact amount and charging conditions of EACH of the associated charges imposed. It is NOT acceptable for operators to just state in the promotional materials that:

*[xxx] charge is applied. For details, please contact our
Customer Service Hotline.*

² http://www.ofta.gov.hk/en/report-paper-guide/guidance-notes/gn_20030521.pdf

³ Paragraph 3.3 of the Guidelines.

9. In case a particular charge is too complicated or with details too lengthy for publishing in the promotional materials, operators may state them in a separate tariff sheet provided that (a) there must be a clear statement in the promotional materials saying that the details of that particular charge are shown in a separate tariff sheet; and (b) the tariff sheet must be distributed to consumers when a card is sold and be available to consumers upon request.

10. The TA considers that it is NOT sufficient for operators to just arrange to inform their customers of the details of a relevant charge by verbal communication only (verbal advice can only be offered as a supplementary measure). “Reasonable disclosure” in the context of calling card service requires that all relevant charges should be available in printed form (e.g. in the promotional materials or in a separate tariff sheet) for consumers’ perusal and record.

11. In all circumstances, there should be no hidden charge. Non-disclosure of a charge in the promotional materials may amount to misleading or deceptive conduct by omission in breach of section 7M of the Ordinance and lead to the imposition of a financial penalty.

Charging unit and rounding arrangement

12. Where a usage charge is imposed, operators should state in the promotional materials the charging unit of each call (e.g. per minute / per 3 minutes), as well as the rounding arrangement (e.g. round up to next 10 cents / dollar).

Minimum charge per call

13. If a “minimum charge per call” is imposed, operators should state in the promotional materials the charging amount or unit for such charge.

Footnotes and fine print

14. It is observed that in some promotional materials, the main text and the footnotes are not in the same language⁴. Operators should ensure that the footnotes are in a language which the target consumers are able to understand,

⁴ For example, the main text is in Bahasa Indonesia but the footnotes are in English or Chinese.

otherwise they run the risk of failing to provide sufficient charging information to the target customers.

15. Although the TA does not intend to mandate the colour and font size used in the footnotes or fine print, it is incumbent upon the operators to ensure that the footnotes or fine print are noticeable and readable by consumers. It is not acceptable for an operator to effectively “hide” the footnotes or fine print in a font size that is hardly readable, or in a colour that is close to the background colour, thus making the words hardly noticeable or readable.

Charges subject to revision

16. It is noticed that many promotional materials carry a footnote stating that the charges are subject to revision. Whilst such a term is not prohibited in the context of section 7M of the Ordinance, operators cannot rely on it as an excuse or a defence for not providing the most updated charging information to consumers. Upon revision of the charges, operators should at the same time remove the outdated promotional materials on display or available at the sales outlets and replace them with the updated versions, so that potential new customers will not be misled by the information provided in the outdated promotional materials.

Version number of promotional materials

17. Operators are encouraged to indicate conspicuously in the promotional materials the version number and revision date of the materials. Such a practice would help the sales outlets to locate the latest versions of the materials for display.

Display of Promotional Materials

18. It is stated in the Guidelines that “*Licensees should ensure that they have sufficiently robust systems and controls in place regarding information made available to employees or other relevant persons to prevent any possibility of misleading or deceptive conduct on their part*”⁵. Therefore, it is not only important for the operators to include all the necessary charging information in the promotional materials, and to revise the materials whenever there are changes to the charges, the operators should also ensure that the correct versions

⁵ Paragraph 2.7 of the Guidelines.

of the promotional materials are provided to and displayed in the sales outlets.

19. Some operators have expressed difficulties in ensuring that the old versions of their promotional materials are removed and replaced by the new ones on time, or at all, because they do not have control over the sales outlets.

20. In this connection, the TA refers to the Guidelines in which it is stated that *“where a licensee’s agent engages in misleading or deceptive conduct, the licensee, as principal, will usually be liable for those actions, unless the agent has acted outside the scope of the actual or apparent authority”*⁶. Operators, as the principals, are responsible for ensuring that correct charging information is provided to consumers. Operators should therefore actively seek the cooperation from their sales agents and sub-agents in displaying the most updated information of their calling card services.

Closing Remarks

21. Please note that the requirements listed above are only the more obvious requirements that operators should take note of and should comply with in offering calling card services to consumers. The list is NOT exhaustive. It is the overriding obligation of the operators to comply with section 7M of the Ordinance. If a particular matter arises and gives rise to a concern under section 7M, the TA will look into the matter whether or not the matter is covered by this circular letter.

22. Operators should review all their promotional materials of calling card service. The TA will closely monitor the calling card market and will take enforcement action as and when necessary against operators who fail to meet the required standards.

23. If you have any questions, please call the undersigned at 2961 6743.

Yours sincerely,



(Jeannie Cheng)
for Telecommunications Authority

⁶ Paragraph 2.8 of the Guidelines.