

Information Note on Licensing Arrangement for External Cable Operators

April 2012

Introduction

1. Unified Carrier Licence (“UCL”) was introduced on 1 August 2008 for licensing facility-based operators for provision of any fixed, mobile and/or converged services by a single licence in the fixed-mobile convergence environment. Interested parties who wish to provide facility-based external fixed telecommunications service in Hong Kong should apply for a UCL with provision of the concerned service authorized under the scope of service. This information note provides practical guidance on applying for a UCL for provision of external fixed telecommunications service only (“UCL(External)”), in particular for such service provided by a cable-based external facility operator.
2. For more detailed information on the application for UCL including services other than external fixed service, interested parties should refer to the *Guidelines for the Submission of Proposals for Applying Unified Carrier Licence* (the “UCL Guidelines”) issued by the Office of the Communications Authority (“OFCA”) available at the website of Communications Authority (“CA”)¹
(<http://www.coms-auth.hk/filemanager/statement/en/upload/49/gn232012e.pdf>)

Licensing Arrangements

Scope of Service

3. A UCL(External) covers all external telecommunications service:
 - (a) between one or more points in the Hong Kong Special Administrative Region (“HKSAR”) and one or more points outside the HKSAR; and
 - (b) between two or more points outside the HKSAR but routed in transit via the HKSAR;

capable of being provided by utilizing the external network operated by the licensee. Provision of the external telecommunications service may be by means of cable-based or non-cable based (e.g. satellite) facilities.

¹ Pursuant to the Communications Authority (Cap.616), with effect from 1 April 2012, all duties and powers of the Telecommunications Authority (TA) are conferred on the Communications Authority (CA), and all duties and powers of the Office of the Telecommunications Authority (OFTA) are conferred on the Office of the Communications Authority (OFCA), the executive arm of the CA.

4. A UCL(External) does not authorize the licensee to provide any internal telecommunications service or circuit, which means a service or circuit for communications between points within the HKSAR. However, the licensee may provide its customers with access to the internal telecommunications services or circuits lawfully operated in HKSAR. Operator who intends to provide internal telecommunications service or internal / external mobile telecommunications service should specify the proposed scope of service, apart from external fixed telecommunications service, in their application for UCL. An existing licence holder of UCL (External) may also apply to the CA for expansion of scope of service to cover internal telecommunications service or internal / external mobile telecommunications service. Please refer to the *UCL Guidelines* for details.
5. Operator who intends to provide, in HKSAR, external service without establishment, operation and maintenance of external transmission facility (such as submarine cable) does not need a UCL. The operator may consider applying for a Services-Based Operator (“SBO”) Licence² for Class 3 services (external telecommunications service (“ETS”)). An SBO licensee may provide ETS by leasing external transmission facility from UCL or FCL holders.

Right of Road Opening and provision of Backhaul Facility

6. Holder of UCL(External) may interconnect its external facilities with the local fixed/mobile networks at a point of interface such as an external gateway or Point of Presence (“PoP”). The supply of any fixed telecommunications facilities or services connecting customers of local fixed/mobile networks in HKSAR to the POP, and the supply of backhaul facilities for connection between the landing points of the external facilities and the POP fall within the scope of services of unified carrier, fixed carrier or FTNS licensees with authorization to provide local fixed service. However, a holder of UCL(External) may apply to the CA for self-provisioning of its own backhaul facilities provided that the backhaul is not used by a third party. Holder of UCL(External) who is authorized to operate its own backhaul facilities may further apply to the CA for the right of road opening which may be granted on a case-by-case basis.

² Guidelines for the Application for Services-Based Operator (SBO) Licence
<http://www.coms-auth.hk/filemanager/statement/en/upload/103/gn262012e.pdf>

Cable-based External Fixed Service

7. Apart from the licensing requirement, an external facility operator may also wish to acquire relevant land or building space in HKSAR for landing of the external facilities such as submarine cable. Acquisition of a cable landing site is separate from the granting of a UCL(External). The operator could choose to build its own cable landing stations by submitting its application to the Director of Lands. Alternatively, it may request sharing of existing cable landing stations operated by existing licensed carriers, including holders of Fixed Telecommunications Network Services (“FTNS”) Licence, Fixed Carrier Licence (“FCL”) and UCL (with external fixed services authorized). For details, please refer to *Information Note for External Fixed Carriers to Apply for Statutory Approvals for Laying of Submarine Cable and Landing at Cable Landing Station*³.

Application Procedures

Step 1: Preparation and Submission of Proposal

8. Applicants are advised to go through the following documents to understand the regulatory regime, and rights and obligations of a UCL:
 - (a) *Statement on Licensing Framework for Unified Carrier Licence*⁴;
 - (b) Section IV (General Information Relating to External Fixed Service) of *UCL Guidelines*; and
 - (c) Various documents to be observed by Unified Carrier Licensees⁵.
9. Applicant who does not hold an existing UCL, FCL, FTNS Licence or a Mobile Carrier Licence (“MCL”) (collectively referred to as “facility-based licence”) is considered a new applicant. New applicant should provide **three sets** of its application proposal containing information set out in paragraphs 7.7 to 7.18 of *UCL Guidelines (Annex A)* by filling in the application form for UCL⁶. Applicant may be required to provide additional information to clarify or supplement its proposal. No application fee is required.
10. For an existing holder of facility-based licence, it may refer to paragraphs 7.3 to 7.6 of the *UCL Guidelines* for requirements on application procedures.
11. The application proposal is evaluated based on its merits in accordance with the criteria set out in Section VIII of the *UCL Guidelines (Annex B)*.

³ Full Document: <http://www.ofca.gov.hk/filemanager/ofca/common/Industry/telecom/fbs/infrast/i834e.pdf>

⁴ Full Document: http://tel_archives.ofca.gov.hk/en/tas/others/ta20080509.pdf;

Executive Summary: http://tel_archives.ofca.gov.hk/en/tas/others/ta20080509ex.pdf

⁵ <http://www.coms-auth.hk/en/licensing/telecommunications/apply/ucl/index.html>

⁶ Application form for UCL: <http://www.coms-auth.hk/filemanager/common/licensing/A833.pdf>

Step 2: Acceptance of Licence Condition and Payment of Licence Fee

12. If the CA is satisfied with the application proposal, an approval in principle will be granted to the applicant, together with the proposed licence conditions for its acceptance **and demand for payment** of the licence fee by the applicant.
13. The sample licence of the UCL is available at CA's website⁷ while a sample description of service under the UCL(External) is given in **Annex C**.
14. The licence fee for UCL(External) is \$100,000 payable on the issue of the licence and, in each subsequent year while the licence remains in force, on the anniversary of the issue of the licence. There will be additional licence fee if there are subscriber numbers or radio spectrum used by the licensee. For details, please refer to the Annex B of the *UCL Guidelines*.

Step 3: Issuance of the UCL

15. Subject to acceptance of the proposed licence conditions and payment of licence fee by the applicant in step 2, the licence will be formally issued to the applicant.

Submission of Application and Enquiries

16. Interested parties may submit application for UCL(External) to the following address,

Office of the Communications Authority
29/F, Wu Chung House
213, Queen's Road East,
Wanchai, Hong Kong
(Attn.: Head, Regulatory 3)

17. Enquiries concerning the application may be made at:

Tel: (852) 2961 6526
Fax: (852) 2961 0316
Email: fcwong@ofca.gov.hk
(Attn: Regulatory Affairs Manager, (R32)2)

⁷ Sample Licence of UCL:
http://www.coms-auth.hk/filemanager/common/licensing/sample_ucl_licence.pdf

Office of the Communications Authority
April 2012

Information to be submitted for UCL application
(Extracts of Section VII “Information to be Provided in Proposals” of the
***UCL Guidelines*)**

7.7 Company Structure

7.7.1 A company which wishes to operate any form of services authorized under UCL must be registered in the HKSAR under the Companies Ordinance. The application proposal should contain details of the company, including:

- (a) photocopies of the Certificate of Incorporation and the Business Registration Certificate of the company;
- (b) detailed information on corporate and shareholding structure including relationships with holding or related companies;
- (c) certified copies of the company Memorandum and Articles of Association;
- (d) details on the composition of the company Board of Directors and key officers; and
- (e) the organizational/management structure and staffing levels of the company and any principal contractors to be employed in constructing and maintaining the network.

7.7.2 Successful applicants should be committed to the provision of the proposed service in the HKSAR as detailed in their proposals, submissions and representations, including the part on company structure and shareholding.

7.8 Financial Capability

7.8.1 If the applicant is an established company, the proposal should include copies of audited profit and loss accounts and balance sheets and auditor reports for the last three full years, together with the most recently published interim results.

7.8.2 If the applicant is a newly-formed company, the proposal should include:

- (a) the directors’ certificate of the amount of issued and paid-up share capital;

- (b) bankers' confirmation of the amount of its deposits and/or available credit facilities; and
- (c) copies of audited profit and loss accounts and balance sheets and auditor reports for the last three full years, together with the most recently published interim results, of the company's shareholding companies.

7.8.3 Proposals should include a detailed financial plan (with inflation assumptions) for the proposed services and network for the first ten years of operation including:

- (a) a breakdown of the proposed capital expenditure and of working capital requirements for the first ten years of operation;
- (b) projected profit and loss account including details of revenue, fixed and variable costs, balance sheet and budgeted cash flow statements, showing the amount of capital to be invested on an annual basis for ten years;
- (c) method of depreciation of assets;
- (d) projected volume of business and market share for the first ten years of operation;
- (e) the forecast internal rate of return and payback period of the project;
- (f) details of proposed financing structure, debt equity ratio of the project, credit facilities, repayment terms and schedule for loans and bonds, timing or injection of funding, and the level of shareholders' support to satisfy the CA that the applicant has sound financial backing to carry out the project; and
- (g) sensitivity tests on the business plan showing the worst case scenario (the worst case being one beyond which the company would not wish to invest) and a scenario in which the projected revenue level falls to 80% of the basic assumptions, details of contingency financial arrangements, balance sheet, profit and loss account, cash flow statements, capital investment plan, internal rate of return and payback period of the project.

7.9 Economic and Market Study

7.9.1 Proposals should include any economic and market study conducted

on the potential demand for the forms of service being proposed to operate, the projected market share that the applicant will be able to acquire in the next 10 years with as much information as possible.

7.10 Technical Details of the Facilities

7.10.1 Proposals should give a detailed description of the proposed facilities. This description should cover:

- (a) technical configuration including network infrastructure and components, the technology to be employed, the likely choice of equipment, system design, capacity, how the network and its ancillary equipment and facilities are planned to meet the proposed capacity, connectivity to destinations outside HKSAR, if applicable, and other technological characteristics;
- (b) the facilities upon launch of service and the facilities expansion plan for the first 10 years of operation;
- (c) the planned location of equipment to be installed;
- (d) the planned facilities and traffic management, signaling, metering and billing arrangements (where applicable) to be adopted; and
- (e) proposed interface for interconnection with other networks.

7.10.2 Proposals should give an indication of the preferred frequency bands and the associated radiation and immunity characteristics of the frequency spectrum, if any, that will be used for the provision of the proposed service. The amount of spectrum that will be made available and the exact limits of the frequency bands will be decided by the CA after review of the proposals received and taking into account the demand for frequency spectrum for other services in the HKSAR and other factors as it considers relevant in the circumstances.

7.10.3 Applicants should provide technical proposals for interconnection with the other fixed telecommunications networks (local and external) and the mobile telecommunications networks in the HKSAR.

7.11 Description of Proposed Services

7.11.1 The applicant should indicate the scope of service proposed to be operated under the UCL.

7.11.2 Proposals should include a detailed description of all services to be provided, the target customers and their intended coverage areas upon

the commissioning of the facilities and any plans for the introduction of new services. Proposal should also include a detailed description of the arrangements for offering wholesale and/or retail services to the public, and an explanation on how the applicant is not primarily relying on the interconnection and wholesale services of other operators' infrastructure to roll out their network or provision of their services.

7.12 Technical Support

7.12.1 Proposals should include details of technical support facilities and maintenance centres which the applicants have or intend to set up in the HKSAR, including a description of the technical personnel responsible for the design, construction, day-to-day operation, maintenance of the facilities and the routine maintenance schedule.

7.13 Contingency Plan

7.13.1 The applicant should provide the contingency plan for its proposed services in response to major breakdown or network/service outage. It should include:

- (a) a brief description of the contingency plan and arrangement;
- (b) the designed level of resilience in terms of percentage of affected services recovered and the time within which the recovery will be completed;
- (c) the amount of backup capacity (relative to the capacity level required for normal operation) and the spare resources such as backhaul equipment for contingency connection;
- (d) prior and post arrangements for re-allocating resources, re-routing the affected traffic and acquisition of additional bandwidth to recover the affected services;
- (e) internal procedures for monitoring and reporting critical network outage, composition of the team responsible for handling the major incidents and the responsibility of the respective major team members; and
- (f) brief description of the action and procedures to (i) assess the impact of major incident; and (ii) disseminate the information to the management, OFCA and the customers.

7.14 Previous Relevant Experience

- 7.14.1 Details on the previous experience of the applicant, its shareholders and key personnel in establishing and running the proposed telecommunications networks, as well as information on the current status of these networks and services, should be given.
- 7.14.2 Information should also be provided on the applicant and its shareholders' experience in providing other general telecommunications services in the HKSAR or elsewhere, and experience in running other businesses in the HKSAR.

7.15 Implementation Plan

- 7.15.1 Proposals should include an implementation plan, giving the timing for significant milestones of implementation for the first three years, starting from the date of grant of the licence including where applicable the network planning, placing of order for equipment, delivery of equipment, acquisition of sites, securing access to buildings, construction of equipment buildings/rooms, earth stations or cable landing stations, conclusion of cable construction and maintenance of agreements, laying of cables, negotiations on interconnection arrangements, installation of equipment and testing. The applicant will be required to adhere to this plan if a licence is subsequently granted. The CA wishes to see early availability of the proposed services.

7.16 Other Benefits to the Local Telecommunications Industry and Economy

- 7.16.1 Proposals which can demonstrate that their implementation will offer significant benefits to the HKSAR, for example, employment, manufacturing and wider trading opportunities, introduction of innovation and improvements to the local telecommunications industry and promotion of the HKSAR as an international telecommunications centre will be given special consideration.

7.17 Other Information

- 7.17.1 Applicants may submit any other information not specified above which they consider helpful to their applications.

7.18 Executive Summary

- 7.18.1 Proposals should contain an Executive Summary summarizing in a concise manner the significant and salient points of the proposals.

Assessment Criteria for UCL applications (Extracts of Section VIII “Broad Licensing Criteria” of UCL Guidelines)

8.1 The basis for assessment of proposals will be the information supplied by applicants according to the requirements set out in Section VII of this document. The CA reserves all rights not to accept application proposals which are substantially incomplete in this respect.

8.2 In considering any proposal applying for UCL, the CA will consider the benefit of the proposed network to the community, more specifically the type of services to be offered and the intended coverage areas, the reasonableness of the business plan and the applicant’s financial capability to fulfil the capital expenditure (capex) requirement. The other licensing criteria include the following:

8.2.1 Business plan

The CA will examine the reasonableness of the business plan including in particular, whether estimates of the market and market shares are reasonable and whether the proposed capital expenditure would support the networks and services proposed.

8.2.2 Financial capability

The applicant must possess sufficient financial capability to invest to the level proposed. The proposer must demonstrate that each consortium partner, as appropriate, is financially sound. The applicant must satisfy the CA that it has sufficient financial backing, either by its own capital, the capital of its shareholders or loan capital to carry out the project. The applicant must have sound and detailed business plans with contingency measures to face unexpected down-turn in the business and the worst case scenario.

8.2.3 Technical soundness and a satisfactory quality of service

The proposed network must be technically sound, compatible with the local environment and be capable of delivering the services proposed to give a satisfactory quality of service. In particular, the quality of service should be satisfactory in the expected climatic conditions in HKSAR. Any radio frequency spectrum requirements must be compatible with spectrum allocation plans in HKSAR and the proposed system must use spectrum efficiently.

8.2.4 Proven managerial and technical expertise

The applicant must possess proven managerial and technical expertise to operate a satisfactory service, market the service in HKSAR and provide satisfactory customer support. The CA will consider the knowledge of the applicant or the consortium partners, as appropriate, about the local environment and their experience in the operation of external telecommunications facilities.

8.2.5 Service quality and charges

The CA will consider more favourably proposals which offer a wider range of services and more innovative services at more competitive prices and better quality of service.

8.2.6 Implementation schedule

The CA expects the licensee to determine their rollout plan. However the applicant should demonstrate abilities to manage such plan and the necessary facilities - telecommunications sites (e.g. exchanges, satellite earth stations, cable stations depending on the type of external facilities they plan to operate). The applicant should also demonstrate capability in negotiating and managing interconnection issues.

8.2.7 Quality of proposal

Proposals which are concise, clearly presented with each aspect substantiated by well researched facts and comprehensive independent market survey would receive more favourable consideration by the CA.

8.2.8 Benefit to the local telecommunications industry to customers in the HKSAR and to the economy as a whole.

The CA will consider the benefits that the proposals will bring to the telecommunications industry and the community as a whole. These benefits will include the type of services proposed to be provided, the coverage areas, the level of investment for network infrastructure, creation of new job opportunities, bringing into HKSAR new technological know-how and contribution to the local economy as a result of the investment.

8.2.9 A clearly workable and defined corporate structure which minimizes “deadlocks” and contain sensible dispute resolution procedures.

Proposals would not be favourably considered if there is a lack of

clear controlling interest in a consortium (e.g. presence of fragmented shareholdings) or there is a lack of clearly workable and sensible dispute resolution procedure and efficient mechanisms for deadlock resolution at Board or shareholder levels or there are doubts on the reliability of the proposer or its shareholders.

- 8.3 The licensing criteria set out in these Guidelines are not intended to be a definitive list of criteria. While evaluating whether the criteria have been satisfied, the CA is entitled to determine the weight it will give to the individual matter to which it considers appropriate in the circumstances, after taking the relevant factors into account, and will decide each case on its own merits.

Sample Description of Service for UCL (External)

The following description of service will be incorporated into the Schedule 1 of the UCL (External) to set out the scope of service under the licence.

<i>Types of service</i>	<i>Service Description under UCL</i>
Satellite-based external fixed service	<p>All external telecommunications services between fixed points capable of being provided utilising the network, other than telecommunications services the subject of an exclusive licence issued under the Ordinance, a deemed licence, a public radiocommunications service licence, a mobile carrier licence, a radio paging system licence, a service subject to licensing under any other Ordinance, a fixed carrier (restricted) licence, or a satellite broadcasting service under a satellite television uplink and downlink licence.</p> <p>The licensee may establish and maintain an external telecommunications circuit based on a non-cable based external network at the Hong Kong end.</p>
Cable-based external fixed service	<p>All external telecommunications services between fixed points capable of being provided utilising the network, other than telecommunications services the subject of an exclusive licence issued under the Ordinance, a deemed licence, a public radiocommunications service licence, a mobile carrier licence, a radio paging system licence, a service subject to licensing under any other Ordinance, a fixed carrier (restricted) licence, or a satellite broadcasting service under a satellite television uplink and downlink licence.</p> <p>The licensee may establish and maintain an external telecommunications circuit based on a cable based external network or non-cable based external network at the Hong Kong end.</p>