

**Consumer Council's Submission to the
Office of the Telecommunications Authority**

**Licensing Framework for Unified Carrier Licence
(March 17, 2008)**

1. The Consumer Council (CC) welcomes the opportunity to express its views on the proposals, including the special conditions (“SCs”) of consumer interests to be attached to a Unified Carrier Licence (UCL) and the arrangement for migration of existing carrier licences to UCL under the licensing framework for the UCL.

2. With market and technological developments, fixed-mobile convergence (FMC) is emerging which blurs the distinction between fixed and mobile networks. It will be necessary for the regulatory environment to remain conducive to the emergence of FMC, and the introduction of the UCL can facilitate the provision of converged telecommunication services in the Hong Kong market.

Special Condition of Compliance with Codes of Practice (SC1)

3. CC supports the proposed SC1 under which the Telecommunications Authority (TA) may issue guidelines or codes of practices (CoPs) to give practical guidance to carrier licensees to address public concerns on consumer-related issues.

4. Whilst CC is aware of that some operators challenged the expansion of TA’s powers and jurisdiction beyond the Telecommunications Ordinance (“the Ordinance”) into unspecified consumer issues, CC supports TA’s broad interpretation of section 7A of the Ordinance that the TA may attach special conditions consistent with the Ordinance and not inconsistent with the prescribed general conditions. For that matter, CC believes that s7(7) of the Ordinance provided for conditions to be prescribed which may relate to the manner of service provision, the prohibition of unfair market practice and compliance with directions, guidelines, codes of practice, regulations and the Ordinance. This would also lend support to TA’s jurisdiction. As TA indicates that similar SCs were already included in certain licences issued in 2005 and 2006, CC considers that SC1 should apply in the future to all licensees under the UCL regime.

5. The scope of regulation under the proposed SC1 is comprehensive, covering various aspects of the relationship between consumer and licensees. As the proposed SC1.3 requires consultation by the TA before issuing any COP or guidelines, CC considers that there will be appropriate engagement of the industry. In those circumstances, SC1 should be put in place to protect the interests of consumers.

6. CC believes it is important to ensure there is adequate protection conferred by the Ordinance on consumers against unfair trade practices, just as for other industries. In CC’s recently published report entitled “Fairness in the Marketplace for Consumers and Business”, CC suggested amending the

Ordinance to cover *unconscionable or improper conduct* in providing or acquiring telecommunications networks, systems, installations, customer equipment or services including (but not limited to) promoting, marketing or advertising network, system, installation, customer equipment or service. CC also recommended that either s.7M or s7(7) should be amended to the effect that it expressly covers all unfair trade practices before, during and after transaction, and the conduct of the licensee and its agents or employees.

7. CC considers that the suggested amendments will empower the TA to tackle unfair trade practices, other than deceptive and misleading conduct under the current s.7M or the other section, but until such amendment is made, the proposed licensing control mechanism in the COPs to be issued by the TA under SC1 is necessary to protect the interests of consumers of telecommunications goods and services.

Special Condition on Service Contracts and Dispute Resolution (SC 36)

8. In recent years, complaints about telecommunications services have remained at the top of CC's list of complaints, raising serious concern that the telecommunications service contract disputes are not handled by operators effectively. Independent complaint handling through an alternative dispute resolution regime and a mandatory approach to ensure fairer contract terms are needed.

9. CC welcomes the way forward proposed under SC36 that TA can issue codes of practice in respect of the requirements to apply in the contracting of telecommunications services to customers, and such requirements include the format and terms and conditions of the service contracts, and submission of consumer disputes for handling under an independent dispute resolution scheme which may be approved by the TA.

New License Fee and Migration of Existing Carrier Licence to UCL

10. CC noted that the TA proposes to adjust the subscriber-based fee for Fixed Carrier Licence from \$7 and Mobile Carrier Licence from \$18 to \$8 under UCL. At the same time it also suggests to introduce a fee of \$3 for each subscriber number allocated to the holder of a UCL, regardless of whether the number has been assigned to end customers or not.

11. CC previously gave support to the idea of using allocated number resources as basis for USC sharing in the belief that it could be an effective measure to prompt operators to make better utilization of the number resource given the tight number resource in its previous submission on the review of regulatory arrangement of Universal Services Arrangement. CC considers that the restructure of UCL fee will provide operator with the incentive to use numbers more efficiently. It may also help prolong the current 8-digit numbering plan and defer migration to a longer-digit numbering plan that will save cost and avoid causing inconvenience to the whole society.

12. Notwithstanding that the number fee is likely to increase the service charges payable by customers and the number fee, if imposed, could be charged to end customers, CC believes operators will think twice before

shifting the number fee to end customers under the highly competitive telecommunications market, lest they will lose their market share. However, CC is concerned that the imposition of number fee would be used as focal point or facilitating coordination between operators to increase service fees. CC urges TA to take necessary measures to prevent operators from using the imposition of the new fee structures as a facilitating mechanism to coordinate their fees increase when operators migrate from existing carrier license to UCL.