

**USE OF PUBLIC PAYPHONE KIOSKS
ON PUBLIC STREETS AND UNLEASED GOVERNMENT LANDS
FOR THE PROVISION OF PUBLIC WI-FI SERVICE**

**Statement
of the Telecommunications Authority**

15 February 2008

Background

It is the Government's policy to build an inclusive knowledge-based society and to promote advanced technologies and innovations. In his written reply to the Legislative Council dated 7 February 2007, the then Secretary for Commerce, Industry and Technology advised that the Government would consider proactively making available public facilities, such as lamp posts, at nominal rents to facilitate operators to install equipment for provision of wireless Internet access services in public places. In this connection, the Office of the Telecommunications Authority (“OFTA”) has revised the existing “Guidance Note for Submission of Application for Installing Micro-cell Base Station on Highway Facilities or on Unleased and Unallocated Government Land” (the “MCBS Guidance Note”)¹, which permits the use of highway facilities for installing Wi-Fi access points for provision of public Wi-Fi service. Moreover, to demonstrate its commitment to make available broadband wireless Internet access for the public and to develop Hong Kong into an advanced wireless city, the Government has also announced the decision to spend more than \$200 millions over a period of two years to provide free Wi-Fi services to the public in 350 Government premises.

2. In late 2006, PCCW-HKT Telephone Limited (“PCCW”) applied to the Telecommunications Authority (“TA”) to use its public payphone kiosks established on streets and unleased Government land (“payphone kiosks”) for provision of public Wi-Fi service. The TA was of the view that the proposal was in line with the Government policy to maintain Hong Kong’s edge as a world digital city.

¹ The document can be downloaded from OFTA’s web site at http://www.ofta.gov.hk/en/report-paper-guide/guidance-notes/gn_200704.pdf.

3. On 24 August 2007, OFTA issued an industry consultation paper about the use of PCCW's public payphone kiosks on public streets and unleased Government lands for the provision of public Wi-Fi service (the "Consultation Paper") and invited views and comments, including a set of draft Guidelines (the "draft Guidelines") to facilitate operators' negotiation. In response to the Consultation Paper, the TA received a total of 9 submissions (the "Submissions") from the following parties:

- Hong Kong Broadband Network Limited. ("HKBN")
- Hong Kong Cable Television Limited ("HKCTV")
- Hong Kong CSL Limited and New World PCS Limited ("CSLNW")
- HTHK Telecommunications (Hong Kong) Limited ("HTHK")
- Leapa Limited ("Leapa")
- New World Telecommunications Limited ("NWT")
- PCCW Limited ("PCCW")
- SmarTone Mobile Communications Limited ("SmarTone")
- Wharf T&T Limited ("Wharf T&T")

4. After considering the submitted views and comments, this Statement sets out below the TA's views and decisions on the issues raised in the Consultation Paper.

Issues Raised in the Consultation Paper

(i) ***The Government's decision to allow PCCW to use payphone kiosks for the provision of public Wi-Fi service (Para. 4 & 5 of the Consultation Paper)***

5. The Director of Lands has amended the block licence of PCCW (the "Block Licence") so that the TA may authorize public Wi-Fi service operators ("Service Operators"), including PCCW, to make use of payphone kiosks of PCCW for the provision of public Wi-Fi service. The TA has also amended PCCW's Fixed Carrier Licence ("FCL") authorizing the company to use its payphone kiosks installed and maintained under the Block Licence for the

provision of public Wi-Fi service.

Views and Comments from Respondents

6. HKBN, HKCTV, HTHK, NWT, SmarTone and Wharf T&T were not satisfied with the TA's decision which allowed PCCW to be the first operator to choose payphone kiosks to provide public Wi-Fi service. They considered that PCCW's first mover advantage was unfair to other Fixed Network Operators ("FNOs") from a competition perspective. CSLNW, HKBN, HTHK, NWT, SmarTone and Wharf T&T considered that the TA's decision was made without going through a due process and taking into account the interest of those who contributed to the universal service arrangement. They opined that as PCCW's payphone kiosks are funded/ subsidized by the industry, use of the kiosks for other purpose should be subject to consultation.

7. HKCTV and HTHK suggested that the TA and the Director of Lands should review their decisions and that use of payphone kiosks for Wi-Fi service should follow and be consistent with the principle of the MCBS Guidance Note. In particular, Wharf T&T and SmarTone considered that the arrangement stated in the MCBS Guidance Note should be applied for the installation of Wi-Fi facilities at payphone kiosks. CSLNW, HKBN, HTHK, NWT and Wharf T&T suggested that the TA should suspend deployment of payphones kiosks for Wi-Fi service by PCCW and initiate a fresh consultation in this regard. Leapa also suggested that the ongoing work to deploy Wi-Fi access points in payphone kiosks should be suspended till comments on the Consultation Paper were thoroughly considered.

8. HKCTV opined that FNOs operating public payphone services should allow other network operators to have access to their Wi-Fi networks for provision of public Wi-Fi service based on equitable interconnection terms.

TA's Responses and Considerations

9. As mentioned in the opening paragraph of this Statement, it is the Government's policy to facilitate the provision of public Wi-Fi service by operators in public areas and the Government is committed to proactively making available public facilities for this purpose. When PCCW applied to the

Government to use its own payphone kiosks for public Wi-Fi service, the TA considered that such an initiative was in line with the Government's policy.

10. The TA further considered whether a public consultation should be conducted about the use of PCCW's payphone kiosks for public Wi-Fi service. But having considered the following matters he was of the view that consultation would not necessarily serve public interest:

- (a) First, the fact that PCCW, if allowed to use its payphone kiosks to provide a public Wi-Fi service, becomes the first mover in the market cannot by itself be a reason for consultation. The regulatory regime of telecommunications industry in Hong Kong always encourages and facilitates introduction of new and innovative services and that has been OFTA's policy when it was established in 1993;
- (b) Secondly, there was insufficient ground from the competition angle to justify consultation. The payphone kiosks in question are not bottleneck facilities as there are sufficient alternative public facilities (such as lamp posts) in the vicinity of the payphone kiosks to install Wi-Fi access points;
- (c) Thirdly, with regard to the allocation of spectrum resources, there is no constraint to the frequency spectrum because the relevant frequency bands deployed for Wi-Fi services, public or private, can be share-used by all interested parties²;
- (d) Fourthly, consultation would undoubtedly and considerably delay the potential benefits which the public could gain from an early introduction of public Wi-Fi service. Consultation may presumably be intended to give an equal opportunity to all FNOs which are willing and able to provide similar public Wi-Fi services. Such opportunity in fact is already allowed through the TA imposing terms and conditions in PCCW's licence to require equal access right to PCCW's payphone kiosks on the List (as defined in paragraph 1.2 of the draft Guidelines) to be given to other Service Operators which are interested in offering

² Public Wi-Fi networks operate in the frequency bands of 2.4 GHz and 5 GHz. They share the use of these frequency bands with other radio apparatus, such as cordless telephones, Bluetooth devices, private Wi-Fi devices, which are exempt from licensing requirement if they conform to the technical requirements of the Telecommunications (Telecommunications Apparatus) (Exemption from Licensing) Amendment Order 2005. The public Wi-Fi networks, and all telecommunications apparatus operating in accordance with the exemption order, have built-in capability to operate in an uncoordinated and unprotected manner.

public Wi-Fi services.

11. Apart from the above considerations, the TA was of the view that it was not justifiable to disclose prematurely the commercial proposal of PCCW to its competitors which a public consultation would have entailed. To do so would not only discourage PCCW from taking the commercial initiative to construct a public Wi-Fi service using public facilities. It would also send a wrong signal to the industry and discourage more enterprising operators from taking initiatives to provide new or innovative services in future.

12. It was with the above considerations in mind that the TA gave his support to PCCW's application and issued the Consultation Paper with a view to seeking views and comments from the industry on the following aspects:-

- (a) the impact of PCCW's initiative on the Universal Service Contribution (USC) scheme, considering that PCCW's public payphone service (including the payphone kiosks) falls within the scope of the Universal Service Obligation (USO) of PCCW, and
- (b) the mechanism for other Service Operators to deploy PCCW's payphone kiosks for providing public Wi-Fi service. The proposed mechanism was embodied in the draft Guidelines.

13. The TA notes that HKBN has launched its public Wi-Fi service on 22 January 2008 offering its free public Wi-Fi service to tenants in public housing estates. At the service launch, the Housing Authority has made it clear that it would welcome other interested Service Operators to offer similar services to the tenants. In both cases, i.e., the case of HKBN's provision of service at public housing estates, and the case of PCCW's provision of service at its public payphone kiosks, the Government has acted consistently in authorizing access of public facilities for Wi-Fi installations to the Service Operators in question without disclosing to its competitors prematurely their respective commercial proposals.

14. As explained in the Consultation Paper, PCCW is a Universal Service Provider ("USP") and it has the obligation to provide "basic services" in Hong Kong, including public payphone service. Under the current arrangement, PCCW is operating more than 4,600 payphones, with around 1,800 of them

established on public streets and unleased Government land. As the USP, PCCW is entitled to receive compensation for the net cost for the operation of the USO, including the net cost of the operation of eligible public payphones. While the contributing parties have to contribute a fee under the compensatory scheme towards the net cost for the USO in accordance with the licensing requirements set out in their licences, the fee for the period 1 January 2005 to 30 June 2007 has been confirmed to be zero³. Other than this licensing requirement, the contributing parties do not bear any legal responsibilities in relation to PCCW's payphones and the kiosks. Indeed, all Service Operators and the Kiosk Owner as a Service Operator will have to pay a fee as assessed by the TA for their use of payphone kiosks to provide public Wi-Fi service. The fee will go towards reducing the level of USC which the contributing parties will bear.

15. In the Statement issued 8 June 2007⁴, the TA has determined that any revenue generated from activities on the public payphone kiosks other than payphone service should be accounted for as relevant revenue in calculating USC. In this connection, PCCW has agreed to pay market rate for using public payphone kiosk for Wi-Fi installation, and as given in the Consultation Paper, the fees collected (or deemed to be collected) will be used to reduce the level of USC. Therefore, as long as the fees payable by PCCW for using the payphone kiosks for the provision of public Wi-Fi service is properly accounted for under the USC scheme, the use of the payphone kiosks of PCCW for such a purpose should be permissible. The issue relating to whether the market rate proposed by the TA in the Consultation Paper would truly reflect the market situation are further discussed in paragraphs 18 - 24 below.

16. Based on the discussion above, the TA considers that in allowing PCCW to proceed with its public Wi-Fi project, he has struck the proper balance between the need to protect the interest of the USC contributors in relation to PCCW's public payphone service on the one hand, and the need to

³ According to the TA Statement entitled "Universal Services Contribution – Confirmed Levels for the period 1 January 2005 to 30 June 2007 and Provisional Level from 1 July 2007" issued on 28 December 2007, the net USC for the period 1 January 2005 to 30 June 2007 was zero. PCCW will refund to the contribution parties for the provisional USC that they had paid for the period during 1 January 2005 to 30 June 2007 and USC contributors are not required to pay the provisional USC after 1 July 2007 until the confirmed level under the revised USC framework is determined.

⁴ "Review of the Regulatory Framework on Universal Service Arrangement" issued on 8 June 2007, (<http://www.ofta.gov.hk/en/tas/ftn/ta20070608.pdf>).

preserve the confidentiality of PCCW's commercial initiative on the other.

17. Regarding HKCTV's view that FNOs should open their public Wi-Fi networks to other Service Operators, the TA has already pointed out in paragraph 10 above that there is no bottleneck restraining the provision of public Wi-Fi service. In other words, any FNO, including HKCTV, can freely enter the market without any hindrance. In his Statement⁵ issued on 27 April 2007, the TA made it clear that he considered that the telecommunications market in Hong Kong had developed to such a stage that ex ante regulation (i.e. regulation before the event) should be withdrawn unless market failure existed or was expected to exist after withdrawal of the regulation. The TA was of the view that the rationale for using regulation to mandate open network access (ONA) had become questionable and he therefore decided not to impose the ONA obligation in the CDMA2000 licence. Consistent with the decision he has made on that occasion, the TA will not impose any ONA obligation on the public Wi-Fi network of any Service Operator. If HKCTV is interested to gain access to the public Wi-Fi network of PCCW or other Service Providers, it will have to be arranged on a commercial basis.

(ii) Contribution to the USC (para. 10 to 12 of the Consultation Paper)

18. In the USO Statement issued on 8 June 2007, it is stated that any revenue generated from activities on the public payphone kiosks other than payphone service should be accounted for as relevant revenue in calculating USC, and that the TA will seek assistance from independent professionals to determine the prevailing fair market value where necessary. The TA has assessed the market rate and decided to adopt a provisional fee of HK\$130 per month for each payphone kiosk deployed for public Wi-Fi service. The TA may consult interested parties (including PCCW) or appoint an independent consultant to assess the prevailing fair market value as and when required.

Views and Comments from Respondents

19. HKBN, NWT, Wharf T&T and HTHK considered that the amount of

⁵ "Licensing of Spectrum in the 850 MHz Band to Enable the Provision of CDMA2000 Service" issued on 27 April 2007 (<http://www.ofta.gov.hk/en/tas/mobile/ta20070427.pdf>).

USC contribution was arbitrarily determined and that it was not justified to adopt a uniform rate of HK\$130 for all payphone kiosks. In particular, Wharf T&T considered that PCCW should pay some \$30,000 for each Wi-Fi installation at each payphone kiosk and that the TA should initiate a consultation on the assessment of fee payable by PCCW. Wharf T&T further suggested that PCCW should bear the full cost of USC as it used the payphone kiosks for advertising and provision of Wi-Fi service. CSLNW suggested that the full market rent should be charged to PCCW in addition to \$130 per month per kiosk, and that such rent has to be contributed to the USC.

20. HKBN suggested that the market rate for each individual kiosk should be assessed separately using a market driven approach such as by way of auction. SmarTone suggested that the TA should review the issue with the industry and appoint an independent consultant to assess the value with a view to determining the fee that PCCW should pay.

21. NWT considered that, in determining USC contribution, OFTA should take into account all relevant benefits received by PCCW, such as advertising by post signage on Wi-Fi service, the first mover advantage riding on existing infrastructure and cherry picking of the kiosk locations. HTHK opined that the Government should invite views from USC contributors and should not presume that fee payment was the only way for contribution to the USC scheme. It considered that the TA should consult on the methodology for determining the USC which was chargeable to PCCW. CSLNW suggested that if the Block Licence should be amended, the Government should consult the public and the industry, and any revenue derived should be accounted for as revenue for USC calculation.

TA's Responses and Considerations

22. Acting on the evidence provided by PCCW and based on his own market information and assessment, the TA has adopted a provisional market rate at \$130 per month for using each payphone kiosk for installing Wi-Fi access point. This amount shall be paid by the Service Operator irrespective of whether it is the owner of the payphone kiosk. The rate was not arbitrarily determined in this regard. Moreover, it should be pointed out that the rate quoted in the Consultation Paper and the draft Guidelines refers to the use of

the kiosk for installing Wi-Fi access point, including the post signage indicating the presence of Wi-Fi service in the relevant kiosks. However, the rate does not cover the revenue which may be generated by advertisements. The issue of PCCW using the payphone kiosks for advertisements, other than the post signage indicating the presence of Wi-Fi service, is dealt with in paragraph 39 in this Statement.

23. PCCW has some 1,800 public payphone kiosks scattered throughout the territory and it has deployed some 980 of them for public Wi-Fi service. To determine the market value of each and every payphone kiosk, either by using a bidding process or market survey, would be administratively burdensome and incur significant costs. Regarding Wharf T&T's view that the rate should be \$30,000 per kiosk per year, the TA would welcome the company to come forward with evidence supporting such a claim. As indicated in the Consultation Paper, if the need arises, the TA may review the provisional fee in 12 months time and consult interested parties or appoint an independent consultant to assess a fair rate based on the prevailing market value.

24. Regarding CSLNW's suggestion that if the Block Licence should be amended the Government should consult the public and the industry, the TA would relay the view to the Director of Lands for his consideration. In fact, the review of the Block Licence of PCCW and other FNOs are warranted and timely as the FCLs held by PCCW and a few other FNOs are due to expire in June 2010.

(iii) Shared use of the payphone kiosk by more than one operator (para. 14 of the Consultation Paper)

25. In the Consultation Paper, it is stated that co-location of two Wi-Fi access points at the same kiosk may generate interference. Sharing of payphone kiosks by two or more operators of public Wi-Fi service should therefore be avoided as far as possible. It is also mentioned that any request for sharing of a kiosk would be processed on a case-by-case basis but in assessing the merit of the request, the TA would have regard to the fact whether there are other viable alternatives in the vicinity, such as highway facilities.

Views and Comments from Respondents

26. HKBN considered that the TA should consult the industry about shared use of the kiosks with a view to developing technical guidelines or code of practice to facilitate simultaneous roll-out of Wi-Fi services for all operators. HKBN and NWT preferred that OFTA established a scheme in which each network operator would be given equal opportunity at the same time to select public payphone kiosk for Wi-Fi installation. SmarTone commented that if there was shared use problem, PCCW should first coordinate the use of payphone kiosks for Wi-Fi service with other interested parties. CSLNW asked for more details on treatment in case where there were more than one operator choosing the same kiosk.

27. Leapa suggested that, in order to avoid interference due to co-location of two Wi-Fi access points at the same kiosk, there should be restriction on the use of wireless channels or the portion of the frequency bands for public Wi-Fi service. It further proposed to reserve some radio channels for non-public Wi-Fi purposes, and to set criteria in assessing merit of requests for sharing kiosks. Leapa considered that the TA should not encourage monopoly of kiosks by individual operator if sharing of a kiosk was technically infeasible.

28. PCCW supported that co-location of two or more Wi-Fi access points at the same kiosk should be avoided so as to allow the service providers to provide a better quality Wi-Fi service. It commented that, due to inherent problems of shared use such as branding confusion, insurance, indemnity and liability issues, service maintenance and environmental consideration, the TA's approval of sharing the use of kiosk should be determined under the principle of section 36AA of the Telecommunications Ordinance ("TO").

TA's Responses and Considerations

29. As there should be sufficient alternative public facilities in the vicinity of a payphone kiosk, the need to share a payphone kiosk by two or more operators should be rather remote. Nonetheless, if such a need does arise, the TA will take into account all relevant factors including the principles of section 36AA in assessing a request that he may receive for the shared-use of a payphone kiosk.

30. As explained in footnote 2, public Wi-Fi networks have built-in capability to operate in an uncoordinated manner. Notwithstanding such capability, the TA would expect Service Operators to coordinate among themselves to resolve any mutual interference that may occur between their networks. In case the interference cannot be resolved by the concerned Service Operators, the TA may pursuant to Clause 4(c) in Schedule 3 to their FCLs direct them to coordinate the use of the frequency bands.

(iv) Payphone kiosks owned or operated by other operators

31. Apart from PCCW, some other FNOs also operate payphone kiosks for the provision of public payphone service on public streets and unleased Government land. The TA is prepared to render his support to any public payphone operator who is interested to make use of its own payphone kiosks for public Wi-Fi service following the same arrangements for PCCW, i.e., it should open access of its payphone kiosks to other operators duly authorized by the TA, supply to OFTA for publication relevant information of the payphone kiosks available to others, and pay a fee for the use of each payphone kiosk for Wi-Fi installation in reduction of the USC level.

Views and Comments from Respondents

32. CSLNW commented that the scope of the draft Guidelines was limited to FNOs and this was not conducive to the establishment and maintenance of a level playing field. It considered that Mobile Network Operators (“MNOs”) should also be allowed to utilise payphone kiosks in the same way as FNOs and suggested that the draft Guidelines be expanded to include kiosks operated by other FNOs.

TA’s Responses and Considerations

33. According to Special Condition 25.2 of the FCL of PCCW, PCCW is obliged to grant access of its payphone kiosks to “other licensees, which are authorized by the Authority to provide services which are of the same kind as” the public Wi-Fi service which PCCW provides. These “other licensees” are

not confined to FNOs. If MNOs are interested to provide public Wi-Fi service, they may apply to the TA for amendment of their Mobile Carrier Licences (MCLs) incorporating the necessary licensing provisions so that they may offer public Wi-Fi service as well. The TA has so far not received any expression of interest from MNOs to operate a public Wi-Fi service. Until and unless he has received such an application, the TA does not see any immediate need to extend the scope of the draft Guidelines to cater for the MNOs.

(v) **Handover between access points (para. 4b of Annex 1 of the Consultation Paper)**

34. Under Schedule 3 to the FCL, which specifies the technical particulars of the radio stations for provision of public Wi-Fi services, use of the frequency bands will be subject to the condition that handover between access points (i.e., the process of transferring the control or connection of customer equipment from one access point to another without loss or interruption of service) is not allowed.

Views and Comments from Respondents

35. Leapa opined that prohibition on handover between access points would inflict severe limitation on the usage of public Wi-Fi service and would induce unnecessary barrier for future service extensions and enhancement.

TA's Responses and Considerations

36. According to the FCL, FNOs are allowed to provide limited mobility service only. The restriction on handover between access points is to ensure strict compliance with the scope of the FCL. Unlike FNOs, MNOs will not be subject to such a restriction as a MCL permits the provision of service with full mobility. To provide public Wi-Fi service without any restriction on handover between access points, the interested Service Operator may apply for a MCL or a new Unified Carrier Licence when the new licensing regime is in place.

(vi) Advertisement on public payphone kiosks

37. According to the Block Licence, PCCW may post signage indicating the presence of Wi-Fi service in a payphone kiosk which has been authorized by the TA for installation of a Wi-Fi access point.

Views and Comments from Respondents

38. HKCTV considered that the Director of Lands should impose deterrent measures against operators who failed to observe the requirement about advertisement placed on the payphone kiosks. CSLNW suggested that the TA should not allow PCCW to place advertisements at its payphone kiosks.

TA's Responses and Considerations

39. As indicated in paragraph 5 of this Statement, the Block Licence is administered by the Director of Lands. The TA notes the comments of HKCTV and CSLNW and he will relay them to the Director of Lands for his consideration. On his own part, the TA will ensure that use of payphone kiosks by Service Operators will comply with the relevant licence conditions of their FCLs and the principle as stipulated in paragraph 18 of this Statement will be strictly adhered to.

(vii) Telecommunications licensing regime

Views and Comments from Respondents

40. PCCW believed that a review of the Wi-Fi licensing experience led to a conclusion that the Government must consider overhauling the current telecommunications licensing regime with a view to transitioning from the current technology specific licensing to a technology neutral approach. SmarTone also considered that there should be an overall review of what and how Government can do to rollout of not just Wi-Fi but other technologies.

TA's Responses and Considerations

41. The TA agrees with PCCW and SmarTone about the need to overhaul the current licensing regime. At present, Wi-Fi service is capable of supporting fixed and nomadic services, and its capability to support full mobility service in the near future is a distinct possibility. It is with this in mind that the Secretary for Commerce, Economic and Development ("SCED") has issued a consultation paper on 21 December 2007 concerning the creation of the Unified Carrier Licence ("UCL"). The TA has also issued a consultation paper on the same day, consulting the industry and interested parties on the proposed special conditions for UCL and the migration arrangement to the UCL regime. The two consultations aim to create an environment conducive to the development of telecommunications services in an era of fixed-mobile convergence. The deadline for submission to both consultation exercises is 20 February 2008. The TA would encourage all interested parties to respond to the two consultation papers.

Issues Relating to the draft Guidelines

(A) General Comments

Views and Comments from Respondents

42. Wharf T&T considered that, without reference terms and conditions for access to PCCW's payphone kiosks, the negotiation would be protracted. It further commented that there was no guidance as to how the TA would determine the terms and conditions if the parties could not resolve the issue.

TA's Responses and Considerations

43. Consistent with the light-handed approach that he has all along adopted, the TA would encourage interested Service Operators to negotiate commercially with PCCW. While it is premature to discuss the terms and conditions of a determination that the TA may have to make if indeed he considers it justified to do so, the relevant licence conditions in the FCL of PCCW already contain some of the basic principles which govern the terms

and conditions of access. These include, for example, the fair-compensation principle in Special Condition 25.2 and the non-discriminatory principle in Special Condition 25.3.1.

(B) Specific Comments

(i) Application Procedure

Views and Comments from Respondents

44. PCCW proposed that the interested Service Operators should send the plan to it as the Kiosk Owner by registered mail. It also suggested that it needs only acknowledge receipt of the plan submitted, provided that the plan is submitted in accordance with paragraph 2.2 of the draft Guidelines. Furthermore, it should be allowed to request further details if the application submitted did not contain sufficient detail for proper assessment or for commercial negotiations. PCCW opined that the Service Operator must not seek the assistance of OFTA until it has provided sufficient details to PCCW as the Kiosk Operator and when both parties fail to reach commercial agreement. PCCW thought that in resolving any failure to reach a commercial agreement, the TA should seek to resolve such a deadlock by reference to section 36AA of the TO (essential facilities).

TA's Responses and Considerations

45. Similar to the conclusion he has reached in paragraph 43, the TA would encourage PCCW to negotiate with the interested Service Operators. The procedures advocated by PCCW are details which should better be left to the industry, but if there is a need the interested parties can always seek assistance from the TA.

46. The case of sharing the use of the same payphone kiosk by two or more Service Operators has already been addressed in paragraphs 25 – 30 of this Statement. In case a public payphone kiosk is free of any existing Wi-Fi installation and a Service Operator applies to PCCW for the use of that kiosk, PCCW is required to grant access of that payphone kiosk pursuant to Special

Condition 25 of its FCL. Furthermore, PCCW is required to process the application in accordance with the procedures laid down in the final version of the draft Guidelines. The factors listed in Section 36AA(3) are not relevant and Section 36AA is not applicable.

(ii) **Charges and USC Contribution**

47. According to the draft Guidelines, a Service Operator should pay a fee to PCCW as the Kiosk Owner for the use of PCCW's payphone kiosks for Wi-Fi installation and PCCW should report annually to OFTA the total fees collected and the amount is to be deducted from the total costs for the provision of universal service. In addition, Service Operator shall pay PCCW as the Kiosk Owner reasonable charges on the works carried out by PCCW in connection with the Wi-Fi installations as well as the electricity supplied. Other than these and the fee mentioned, no other money shall be payable by the Service Operators to PCCW.

Views and Comments from Respondents

48. PCCW suggested that before any amendment to the provisional fee of \$130 was made, the industry should be properly consulted and that appropriate analysis should be undertaken with regard to both the actual need for any change to the fee and the actual prevailing market rate. PCCW considered that it should be compensated for its administrative cost in collecting USC settlement from other operators in relation to the use of payphone kiosks for Wi-Fi service, and that the Government should otherwise be responsible for collecting such USC contribution. PCCW opined that commercial arrangements should include payments relating to service charges, insurance charges, maintenance charges, electricity charges, hardware installation charges, signage installation charges, signage maintenance charges; and any other expenses and charges deemed appropriate for the provision of the service to any third party operator.

TA's Responses and Considerations

49. As PCCW will manage and process applications from other Service

Operators for using its payphone kiosks for Wi-Fi installation, it is reasonable and appropriate for PCCW to collect payment direct from relevant Service Operators in this regard. As the fee should properly reflect the fair market rate, the same is inclusive of all administrative charge incurred in the collection. The TA does not agree that PCCW can levy any other charges to recover any administrative cost.

50. According to Special Condition 25.2 of PCCW's FCL and Clause 3.3 of the draft Guidelines, any charges imposed by PCCW as the Kiosk Owner on the Service Operators should be reasonable and appropriate to cover expenses relating to the works carried out by it as the Kiosk Owner in connection with the Wi-Fi installations and the electricity supplied. Clause 3.3 specifically stipulates that the Kiosk Owner should not impose other charges. Certainly, if a Service Operator contracts out the installation and maintenance of its Wi-Fi access point to PCCW, then this would purely be a commercial arrangement between the two parties.

(iii) Installation and Maintenance of the Access Point

Views and Comments from Respondents

51. PCCW mentioned that paragraph 4.1 of the draft Guidelines appeared to assume the outcome of the commercial negotiations and ensuing relationship between it as the Kiosk Owner and the Service Operator in that it would be the Service Operator who installed access point in the kiosk. PCCW suggested removing such an assumption in the final version of the draft Guidelines.

TA's Responses and Considerations

52. The TA agrees that it should be a commercial arrangement whether Service Operators may appoint PCCW or other parties to perform Wi-Fi installation on payphone kiosks. The draft Guidelines should not be designed to rule out any commercial cooperation between the concerned parties. Paragraph 3.3 of the Guidelines is amended to make it clear that the Service Operator may, at its own commercial decision, contract out the installation and maintenance to the Kiosk Owner.

Issue of the Guidelines

53. Having considered all the Submissions from the industry regarding the Consultation Paper and the draft Guidelines, the TA hereby issues the Guidelines in the Appendix to this Statement. The Guidelines will be effective on **15 February 2008**. To allow sufficient time for Service Operators to make the necessary preparations and to reach commercial agreements with the Kiosk Owner, and in order that the Service Operators may have a fair opportunity to make use of the payphone kiosks for their Wi-Fi service, the TA will process any application that he may receive meanwhile from all Service Operators (including the Kiosks Owner in its capacity as a Service Operator) for the deployment of any of the payphone kiosks on the List (as defined in paragraph 1.2 of the Guidelines and which is published in OFTA's web site at http://www.ofta.gov.hk/en/datastat/payphone_others.pdf) for public Wi-Fi service only after **15 April 2008**.

Office of the Telecommunications Authority
15 February 2008

Guidelines
on the Use of Public Payphone Kiosks
Established and Maintained by PCCW-HKT Telephone Limited
on Public Streets and Unleased Government Land
To Provide Public Wi-Fi Service

15 February 2008

Foreword

In Hong Kong, an operator which intends to provide public Wi-Fi service across public streets or unleased government land is required to hold a fixed carrier licence incorporated with the necessary special conditions for the provision of the relevant service.

2. At present, PCCW-HKT Telephone Limited (PCCW) has installed and maintained a number of payphone kiosks on public streets and unleased Government land under a block licence issued by Director of Lands (“block licence”) for providing public payphone service. Other fixed network operators (FNOs) who intend to deploy PCCW’s payphone kiosks for the provision of public Wi-Fi service may seek PCCW’s agreement to do so on a commercial basis. They will then seek the formal authorization of the Telecommunications Authority (TA) to use the payphone kiosks after commercial agreement with PCCW has been reached. For these purposes, they shall observe, follow and comply with the procedure as stated in these guidelines.

3. FNOs shall pay PCCW for the reasonable charges on any works carried out by PCCW at their request in connection with the Wi-Fi installations as well as electricity supplied by PCCW. In addition, FNOs which are authorized by the TA to use PCCW’s payphone kiosks for the provision of public Wi-Fi service are required to pay a fee which will be used to reduce the universal service contribution (USC) for maintaining the universal service obligation of PCCW. The level of the fee is determined by the TA and may be reviewed and revised as and when necessary.

4. For any further information and enquiry regarding this document or related issues, please contact:

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Office of the Telecommunications Authority
29/F., Wu Chung House,
213 Queen's Road East,
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1. General

1.1 This document sets out the procedure for FNOs authorized by the TA for application to PCCW with regard to the use of PCCW's payphone kiosks for the installation of Wi-Fi equipment.

1.2 In this document,

- (a) "Kiosk Owner" means PCCW being a FNO which owns, establishes and maintains the payphone kiosks;
- (b) "List" means the list of payphone kiosks available for application by FNOs for Wi-Fi equipment installation. The List is published in OFTA's web site and will be updated from time to time;
- (c) "Service" means the public Wi-Fi service where the associated equipment are installed in payphone kiosks on public streets and unleased government land;
- (d) "Service Operator" means any FNO which has installed or which is duly authorized by the TA to install Wi-Fi equipment at the payphone kiosks.

1.3 Without limiting or affecting in any way and in any condition of their respect licence, the guidelines shall be observed by the Kiosk Owner and the Service Operator.

1.4 The Kiosk Owner shall use all reasonable endeavours to provide Service Operator access to facilities at the payphone kiosks promptly and efficiently and at reasonable and fair compensation to the Kiosk Owner so that any Service Operator can install its own Wi-Fi equipment for the provision of the Service.

1.5 In relation to the provision of access to facilities such as space and electricity supply at the payphone kiosks, the Kiosk Owner shall not unduly discriminate any Service Operator seeking to provide the Service and should negotiate in good faith and use all reasonable endeavours to reach and enter into agreement on access to facilities with the Service Operator.

2. Application Procedure

2.1 A Service Operator which intends to make use of the payphone

kiosks given in the List for Wi-Fi installations shall apply direct to the Kiosk Owner together with a plan containing the required information in Appendix 1.

2.2 The Service Operator shall send the plan to the Kiosk Owner at the following address:

General Manger, Regulatory Affairs
PCCW-HKT Telephone Limited
40/F, PCCW Tower, TaiKoo Place,
979 King's Road, Quarry Bay,
Hong Kong

and copy the same to OFTA at the following address:

Telecommunications Engineer (Regulatory 12)1
Office of the Telecommunications Authority
29/F., Wu Chung House,
213 Queen's Road East,
Wanchai, Hong Kong

2.3 The Kiosk Owner shall acknowledge receipt of the plan submitted in paragraph 2.2 within 3 business days. The Kiosk Owner and Service Operator shall exchange necessary information concerning the proposed Wi-Fi equipment to be installed at the relevant payphone kiosks. The Kiosk Owner shall assess the plan submitted and negotiate in good faith with the Service Operator on the technical details of the installation, maintenance and use of payphone kiosk facilities (such as electricity supply), the work procedure for equipment installations, the commercial terms as well as other pertinent terms and conditions. The Kiosk Owner shall use its best endeavours to reach and enter into agreement with the Service Operator within a reasonable timeframe.

2.4 The Kiosk Owner shall inform OFTA as soon as it has entered into commercial agreement with the Service Operator and it shall provide OFTA with a list of the payphone kiosks that will be used by that particular Service Operator. The TA will follow up and give his authorization to the Service Operator for the installation of Wi-Fi equipment in the payphone kiosks concerned.

2.5 In case the Service Operator and Kiosk Owner are unable to agree within a reasonable time on any relevant terms and conditions for use of the payphone kiosks, the matter at issue may be referred to the TA for determination.

3. Charges and Universal Service Contribution

3.1 A Service Operator shall contribute a fee for the reduction of universal service contribution (USC) for its use of each payphone kiosk for the Service authorized by the TA. The amount of fee is determined by the TA according to the fair market rate. The current rate of using a payphone kiosk for the provision of the Service is \$130 per month per payphone kiosk. The TA will review and revise the market rate as and when necessary.

3.2 The Service Operator shall start its fee contribution towards universal service funds on the same date when the TA gives his authorization to use the payphone kiosks for the Service (please see paragraph 2.4 above). The contribution for an incomplete month will be calculated on a pro-rata basis by reference to the current monthly rate of \$130 or any new rate subsequently adopted by the TA. The Service Operator should pay the fee to PCCW direct and PCCW will report annually to OFTA the total fees collected in each calendar year period. This amount will be deducted from the total costs for the provision of universal service.

3.3 The Service Operator may at its discretion and own commercial decision and without prejudice to the application of the Guidelines entrust to Kiosk Owner work related to the installation, operation and maintenance of the Wi-Fi facilities for the Service and if so, it shall pay the Kiosk Owner reasonable and appropriate charges to cover the expenses incurred by the Kiosk Owner in relation thereto. The Service Operator shall also pay for electricity supplied by the Kiosk Owner. Other than these and the fee mentioned in paragraph 3.1 above, no other money shall be payable by the Service Operator to the Kiosk Owner for the use of the payphone kiosks.

4. Installation and Maintenance of the Access Point

4.1 The Service Operator shall follow reasonable requirements of the Kiosk Owner when it installs equipment in the payphone kiosks such that

the normal operation of the public payphone service will not be adversely affected. The Service Operator shall ensure that the equipment installation at the respective payphone kiosk will not cause damage to the payphone kiosk, the payphone or other facilities of the Kiosk Owner.

5. Information Update to OFTA

5.1 The Service Operator shall provide updates to OFTA about its Wi-Fi hotspot installations at the payphone kiosks via the online service for “Update Location Information of Wi-Fi Access Points” at http://apps.ofta.gov.hk/apps/clar/content/lic_login.asp?language=english. The Service Operator shall inform the Kiosk Owner and OFTA as soon as its stops using an approved payphone kiosk for the Service so that OFTA may update the List in respect of any released payphone kiosks and reconcile the calculation of the USC fees.

Appendix 1: Information to be provided by the Service Operator

- (a) Technical details of the access point
 - i. Technical parameters of the access point to be deployed, including the technical standard, frequency band and transmitter power
 - ii. Physical dimensions and weight of the equipment
 - iii. Electricity requirement including the power consumption
- (b) a list of payphone kiosk(s) (together with the Kiosk ID and address) to be applied for
- (c) Proposed installation plan and installation method
- (d) Proposed implementation schedule