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Date: 27 October, 2005

Dear Sir/ Madam,

**Consultation on Licensing Framework for Deployment of Broadband Wireless Access ("BWA")**

PCCW-HKT Telephone Limited ("PCCW") refers to the consultation paper issued by OFTA on 31 August 2005 concerning the licensing of new BWA services ("**BWA Consultation Paper**"). The BWA Consultation Paper presents the Telecommunication Authority's ("TA's") preliminary proposals regarding the manner in which BWA services should be regulated, and seeks the industry's comments on these initial proposals.

*Spectrum Issues*

It is clear that a significant number of issues discussed in the BWA Consultation Paper relate to the actual *spectrum* to be allocated for BWA services. The majority of the BWA Consultation Paper is taken up by a discussion of the following spectrum-related matters:

- *Selection of the spectrum band for BWA services and possible use of licence-exempt bands;*
- *Sharing of spectrum between BWA and Fixed Satellite Service providers on a co-primary basis or on a primary and secondary basis and the ensuing interference issues;*
- *Spectrum sharing between different modes (Frequency Division Duplex and Time Division Duplex) and the use of a block edge emission mask to deal with interference;*
- *The total amount of spectrum to be allocated for use by BWA services, the number of frequency blocks to be assigned and whether regional or territory-wide frequency assignment is appropriate;*
- *Setting of the Spectrum Utilisation Fee (SUF) and how it is to be paid;*
- *The manner in which the spectrum is to be awarded to operators;*
- *The period of usage for the spectrum; and*
- *How to deal with unused spectrum.*

In reality, all of these issues will directly or indirectly be affected by the decisions to be made in the *spectrum policy review* that the Government has said would be initiated this year. In fact, in the BWA Consultation Paper, when discussing the options available to the operator to dispose of unused spectrum, the TA even suggests that the spectrum policy review would be the appropriate forum to decide on how to deal with this issue:

*In the future, spectrum trading may be a feasible solution for disposal of unused spectrum depending on the outcome of the forthcoming spectrum review exercise.*<sup>1</sup>

The spectrum policy review would actually be the right forum to examine all of the spectrum-related issues (indicated above) as raised in the BWA Consultation Paper.<sup>2</sup>

Accordingly, it would be more logical to firstly formulate the broad policy for spectrum under the spectrum policy review before tackling the more detailed implementation matters pertaining to BWA. Indeed, to do otherwise would, at best, create an unstable set of regulations for BWA services which are of little sustainable use to the industry (and users) and, at worst, would result in a set of regulations that are irrational and harmful to the industry (and users).

#### *Unified Carrier Licence*

The TA has stated his intention to license BWA services under a new Unified Carrier Licence, which would be introduced to enable operators to offer both fixed and mobile services under the same licence. The conditions, period of validity and fees of this new licence are to be dealt with under a separate consultation exercise on fixed-mobile convergence. The TA has therefore refrained from discussing any of the licensing conditions for BWA services in the BWA Consultation Paper.

OFTA has now issued the aforementioned consultation paper on *Revision of Regulatory Regimes for Fixed-Mobile Convergence* (21 September 2005) (“**FMC Consultation Paper**”). Whilst the TA has baldly assumed in the BWA Consultation Paper that a Unified Carrier Licence will be created to handle BWA services, no such assumption is made in the FMC Consultation Paper. In fact, in the FMC Consultation Paper, the TA quite rightly takes a step back and asks the fundamental question of whether or not a unified licensing framework is actually required. Clearly, the assumption made by the TA in the BWA Consultation Paper regarding the creation of a new unified licence is premature. It does not make sense for the TA to assume that BWA services will be licensed under a Unified Carrier Licence when the industry has not yet had a chance to discuss whether such a licence is necessary and the TA has not

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<sup>1</sup> Paragraph 60 of the BWA Consultation Paper.

<sup>2</sup> The Government has previously recognized the need for a broad spectrum policy review, an approach long supported by the industry. That is, the Government has accepted the need for broad policy reviews before initiating specific consultations on implementation matters. The logic of this “policy first” approach is obvious.

yet decided that a unified licence is required. It would have been more logical for the TA to firstly deal with the fundamental issue concerning the need for a unified licence before deciding on the type of licensing required for BWA services.<sup>3</sup>

*Logical order to the consultations*

OFTA acknowledges, in the BWA Consultation Paper, that there have been requests from the industry to wait for the results of the spectrum policy review and the FMC Consultation before deciding on the more detailed issues pertaining to the regulation of BWA services. OFTA argues, however, that because of the urgency in offering BWA spectrum to the market and the lack of necessity to perform the spectrum policy review and the FMC Consultation before the BWA Consultation, there is no reason to delay the BWA Consultation.

PCCW disagrees with this approach. Firstly, the order in which the consultations are carried out is critically important. Because these consultations are inter-related, they need to be conducted in a logical order so that each operator can properly consider its position under each review in the proper context. This is needed to ensure that the broad policy consultation can proceed without being fettered by a previously decided consultation on implementation matters. It is also needed to avoid the TA having to subsequently revise any regulations arising from the consultation on implementation matters to reflect the broader policy decisions. The logic of this “policy first” approach is clear. It eliminates inconsistencies, is administratively efficient, provides certainty to investors and ultimately, is most beneficial to users.

At the same time, it cannot be said that there is any emergency or any circumstances which would justify the logical process of “policy first” being abandoned. Indeed, just recently, on 21 October 2005, the fixed line and mobile operators in the industry signed a letter to the TA supporting the logic of this “policy first” approach (“**Joint Letter**”).

*PCCW's request*

Given the significant number of spectrum issues dealt with under the BWA Consultation and the uncertainty surrounding the creation of a Unified Carrier Licence for BWA services (both of which will be properly dealt with under the spectrum policy review and the FMC Consultation respectively), PCCW urges OFTA to complete the high level policy reviews on spectrum policy and FMC before resuming the consultation on BWA. This approach would be consistent with that proposed by the industry in the Joint Letter.

On this basis, PCCW requests that the deadline set by OFTA for the submission of comments on the BWA Consultation Paper (31 October 2005) be held in abeyance until the industry has been given an opportunity to discuss with OFTA the proper

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<sup>3</sup> PCCW views OFTA's assumption of an unified licence in the BWA Consultation Paper to be not only inappropriate, but also unlawful.



order in which the reviews/ consultations on spectrum policy, FMC and BWA should be conducted, and a revised submission schedule for each of these reviews/ consultations agreed between OFTA and the industry.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Kevin Chu", is written in a cursive style.

**Kevin Chu**  
Manager, Regulatory Affairs