

ROAMING CONSENT LETTER

TO: The Office of the Telecommunications Authority
29th Floor, Wu Chung House
213 Queen's Road East
Wanchai
Hong Kong (the "**Authority**")

FROM:	[Insert name and address of Licensee]
	(the " Licensee ")
DATE:	[Insert date]

Dear Sirs,

1. We refer to the Notice dated 18th July, 2001 issued by the Authority in exercise of the powers conferred by section 32I of the Ordinance and the Regulation and all other powers enabling him to specify the terms and conditions of the Auction and the Spectrum Utilization Fee (the "Notice").
2. We refer to the (public radiocommunications service licence[s*] for personal communications service / public radiocommunications service licence[s*] for public mobile radio telephone service / mobile carrier licence[s*] dated

[Insert dates]

respectively*) granted to the Licensee (the "Licence[s*] "). Subject to paragraph 3, the Licensee consents to the amendment of [each of*] the Licence[s*] to incorporate the special condition set out in the Appendix to this letter in accordance with regulation 8(3) of the Telecommunications Regulations (Cap.106 sub.leg.A).

3. The consent is conditional on the Licensee, any person within the Licensee's Corporate Group or any person which is under common control with the Licensee becoming a Third Phase Bidder.

4. If the consent becomes unconditional in all respects, the Licensee shall return the Licence[s*] to the Authority so that the Authority can amend the Licence[s*] by an appropriate endorsement on (it / them*).
5. Unless otherwise stated, words and expressions used in this letter have the same meanings as those given to them in the Notice unless the context otherwise requires.

Yours faithfully,

SIGNED	[Signature of Licensee representative]
NAME	[Insert name of Licensee representative]
FOR	[Insert name of Licensee]

SIGNED	[Signature of Licensee representative]
NAME	[Insert name of Licensee representative]
FOR	[Insert name of Licensee]

*delete as appropriate

Appendix

Roaming Special Condition

- [].1 Subject to Special Condition [].2, if and for so long as the licensee or any member of its Group is a 3G Operator and the licensee remains a 2G Operator, the licensee shall provide Domestic Roaming on request by any New Entrant or as directed by the Authority and shall be required to do so whether or not a Domestic Roaming Agreement has been entered into between the licensee and that New Entrant.
- [].2 The obligation under Special Condition [].1 shall come into force on the date on which the New Entrant first offers services for which it is licensed under its 3G Licence to the public and shall continue until 5 years from the date the New Entrant obtains its 3G Licence.
- [].3 The licensee shall, within a reasonable period after the request from the New Entrant under [].1, enter into an agreement with the New Entrant or an amendment to that agreement, as the case may be, to provide Domestic Roaming provided that the licensee shall be required to enter into negotiations with that New Entrant at any time prior to the date specified in Special Condition [].2.
- [].4 The licensee shall ensure that a Domestic Roaming Agreement entered into or an amendment made under Special Condition [].3 contains terms and conditions which are reasonable. To the extent that all or any of the terms and conditions of a Domestic Roaming Agreement made under Special Condition [].3 (whether on or after the coming into force of this Special Condition) cease to be reasonable, the licensee shall, within a reasonable period, negotiate with the New Entrant an amendment to the Domestic Roaming Agreement so that the terms and conditions of the Domestic Roaming Agreement are reasonable. In the event of a dispute as to the reasonableness of any term or condition under a Domestic Roaming Agreement, either party may refer the dispute to the Authority for determination.
- [].5 Subject to Special Condition [].2, if a Domestic Roaming Agreement is not concluded after a period of 3 months after the date on which the New Entrant first requested the licensee to enter into a Domestic Roaming Agreement, either party may seek a determination from the Authority in respect of all or some matters to be dealt with under the Domestic Roaming Agreement. The determination which the Authority makes shall have regard to any technical, commercial and financial terms and conditions that the Authority considers fair and reasonable. The determination which the Authority makes may cover the period, if applicable, from the date on which the licensee is obliged to provide the Domestic Roaming under this Special Condition.
- [].6 The licensee shall comply with the requirements of any determination under Special Conditions [].4 and [].5 in relation to any Domestic Roaming Agreement.

- [].7 Any determination made under Special Conditions [].4 and [].5 shall be binding on the parties.
- [].8 The Authority may publish details of any determination made under Special Conditions [].4 and [].5.
- [].9 The Authority shall not be required to take steps to resolve any dispute referred to him under Special Condition [].4 and [].5 in respect of the New Entrant where another dispute has already been referred to him under these Special Conditions by that New Entrant which has not yet been determined or where he has previously resolved a dispute relating to a Domestic Roaming Agreement involving that New Entrant in circumstances where that Domestic Roaming Agreement is:
- (a) still valid and in existence; and
 - (b) remains in substantially the same form.

- [].10 In this Special Condition:

"Domestic Roaming" means the provision of mobile telecommunications services by means of the telecommunications systems of the licensee to customers of the New Entrant;

"Domestic Roaming Agreement" means an agreement which provides for Domestic Roaming;

"Group¹" means in relation to the licensee:

- (a) any holding company of the licensee;
- (b) any subsidiary of the licensee;
- (c) any subsidiary of any holding company referred to in (a);
- (d) a shareholder or partner in the licensee which beneficially owns (directly or indirectly) shares in the licensee in circumstances where there is one other shareholder or partner in the licensee which beneficially owns (directly or indirectly) the remaining shares in the licensee in circumstances where neither shareholder nor partner has control;
- (e) any undertaking in which the licensee beneficially owns (directly or indirectly) shares in circumstances where there is one other shareholder or partner in that undertaking which beneficially owns (directly or

¹ *The definitions of Group in this Special Condition may require to be amended and further definitions relating to the Group of the licensee may be required to be included to take account of any conditions to which any consent which the Authority may give under paragraph 3.1.3 of the Notice may be subject. Any amendments to this Special Condition will be structured to provide thresholds and parameters so as to be consistent with, and apply to, those conditions.*

indirectly) the remaining shares in the licensee, in circumstances where neither shareholder nor partner has control;

- (f) any undertaking in circumstances where two or more of its shareholders or partners which, acting in concert, together beneficially own, (directly or indirectly) more than 50% of the shares or voting rights in that undertaking, acting in concert together beneficially own (directly or indirectly) more than 50% of the shares, or voting rights of the licensee; and
- (g) any undertaking in which the licensee beneficially owns (directly or indirectly) together with one or more undertakings acting in concert more than 50% of the shares or voting rights of that undertaking,

and:

- (i) "subsidiary" and "holding company" have the meanings given to them in sections 2(4) and 2(7) of the Companies Ordinance respectively;
- (ii) "shares" have the meaning given to it in section 2(1) of the Companies Ordinance;
- (iii) "acting in concert" means actively co-operating to obtain or consolidate control;
- (iv) "control" means controlling the composition of the board of directors of a company, controlling more than half of the voting power of that company, holding more than half of the issued share capital of that company (excluding any part of it which carries no right to participate beyond a specified amount in a distribution of either profits or capital), the right to exercise a dominant influence over that undertaking by virtue of provisions contained in that undertaking's memorandum or articles of association or by virtue of a control contract, or the holding of the majority of the voting rights in that undertaking pursuant to an agreement without the shareholders or members; and
- (v) "undertaking" means (a) a body corporate or partnership or (b) an unincorporating association carrying on a trade or business, with or without a view to profit;

"New Entrant" means a 3G Operator which is not a 2G Operator and does not have a 2G Operator within its Group;

"2G Operator" means a person who holds a 2G Licence;

"2G Licence" means a public radiocommunications service licence for personal communications service, a public radiocommunications service licence for public mobile radio telephone service or a mobile carrier licence issued by the Authority under section 7 of the Ordinance for the establishment or maintenance of a telecommunications network for carrying communications to or from the public between moving locations or between fixed locations and moving locations situated

within Hong Kong and operating in all or any of the frequency bands 825-960 MHz, 1710-1785 MHz and 1805-1880 MHz;

"3G Operator" means a person which holds a 3G Licence other than an existing 2G Operator; and

"3G Licence" means a mobile carrier licence issued by the Authority under section 7 of the Ordinance for the establishment or maintenance of a telecommunications network for carrying communications to or from the public between moving locations or between fixed locations and moving locations situated within Hong Kong and operating in the frequency bands 1900-1980 MHz, 2015-2025 MHz and 2110-2170 MHz.