

**Consultation Paper on  
Extending the Code of Practice  
for the Service Contracts for Public Mobile Radiotelephone Services to  
Other Public Telecommunications Service Providers**

**Background**

1. On 12 October 2001 the Telecommunications Authority (TA) issued the Code of Practice for the Service Contracts for Public Mobile Radiotelephone Services (CoP-04/2001) (“the Code”) with a view to ensuring the adoption of fair trade practices by the mobile service industry and adequate protections for the interest of consumers. The Code, voluntary in nature, requires that, among other things, the provisions in service contracts should be balanced, fair and reasonable and that the salient points of the contract should be presented in a prominent place or highlighted.

2. For telecommunications services other than public mobile radiotelephone services, such as local fixed telecommunications network services, Internet services and external telecommunications service, since 2001, billing and contractual disputes between consumers and telecommunications service providers have been on the increase. In 2001, such disputes constituted 16% of the consumer complaints against these service providers handled by OFTA. But in 2002 and 2003, the figure rose to 22%.

3. Most of these disputes were caused by contract terms or charges not agreeable to consumers. They claimed that they had not been informed of those terms or charges which were considered very important in a consumer’s perspective. Even in cases where those terms were stated in the service contracts, complainants related that salespersons had not alerted them of the terms and they were not presented prominently in the service contracts. For some service providers, customers are not provided with copies of the service contracts that they have entered into. In these circumstances, disputes on terms of service and charges are bound to arise. Should services providers be able to give each customer a copy of the service contract entered into, or at least when so requested, with salient points presented clearly and prominently, many of such disputes could have been avoided and consumer interest better protected.

4. Some of the billing and contractual disputes between complainants and service providers were about insufficient period of notice for change to tariff plans. The Code

recommends that if there is any unilateral power for service providers to alter the contractual terms of service, a prior notification of not less than 30 days should be given to a customer if the variation is unfavourable to him/her. If service providers other than public mobile radiotelephone service providers could also observe this principle, complaints about insufficient period notice for change to tariff plans/contract terms could have been reduced.

5. While many conscientious service providers have improved their internal practice on contract and related matters in the interest of providing quality customer service, reducing room for disputes and protecting their commercial interests, it would be desirable to have a published code of practice for the industry to follow.

### **Extending the Code to Other Service Providers**

6. The TA is of the view that the Code should be extended to all public telecommunications services to enhance the protection of consumer interests. A draft 'Code of Practice for the Service Contracts for the Provision of Public Telecommunication Services' was first raised for discussion in November 2003 with local fixed telecommunications network service operators, Internet service providers, the Society of Hong Kong External Telecommunication Service Providers and the Consumer Council. The draft Code was then pursued with the Internet and Telecom Association of Hong Kong which circulated it widely to its members for consultation. After taking the views of the industry and the Consumer Council into account, a revised draft of the 'Code of Practice for the Service Contracts for the Provision of Public Telecommunication Services' ("the proposed new code") at the Annex has been prepared.

### **Implementation**

7. Should the TA decide to implement the proposed new code, in the initial stage, only voluntary compliance is expected. However, in enforcing any provisions of the Telecommunications Ordinance and licence conditions (in particular, section 7M which prohibits misleading or deceptive conduct and the licence condition which obliges the licensee to provide good and satisfactory service), failure to comply with the proposed new code by the licensees may be taken into account by the Authority.

8. The TA will publish the names of service providers who pledge to comply with the proposed new code at the web site of the Office of the Telecommunications Authority at [www.ofta.gov.hk](http://www.ofta.gov.hk) for public information and monitoring. Without prejudice to the application of the proposed new code to all licensees referred to in paragraph 3 therein, service providers supporting the proposed new code will be encouraged to write to the TA to pledge that they comply with the proposed new code.

9. Whilst it is not the intention of the TA to vet the new service contracts on a case by case basis before they are introduced, service providers are encouraged to deposit an advance copy of their new service contracts with the TA before the new code takes effect. Accepting a copy of a contract as submitted does not imply acceptance by the TA that the contract has fulfilled the requirements of the proposed new code.

### **Invitation of Comments**

10. The TA would like to invite the public and the industry to comment on the proposed new code at the Annex. Views and comments should reach the Office of the Telecommunications Authority on or before 20 August 2004. Any person who submits views and comments should be aware that the TA may publish all or any part of the views and comments received and to disclose the identity of the source in such manner as the TA deems fit. Any part of the submission, which is considered commercially confidential should be marked. The TA would take such markings into account in making his decision as to whether to disclose such information or not. Submissions should be addressed to:-

Office of the Telecommunications Authority  
29/F Wu Chung House, 213 Queen's Road East  
Wan Chai, Hong Kong  
[Attn: Ms Ruby Chan, Public Affairs Manager (Consumer and Corporate  
Affairs)]  
Fax: (852) 2122 9625                      E-mail: [rsmchan@ofta.gov.hk](mailto:rsmchan@ofta.gov.hk)

11. An electronic copy of the submission should also be provided by e-mail to the address indicated above.

Office of the Telecommunications Authority  
23 July 2004

**DRAFT**

**Code of Practice for the Service Contracts  
for the Provision of Public Telecommunication Services**

**Preamble**

This voluntary Code of Practice (the "Code") recommends basic standards and guiding principles for the public telecommunications service providers <sup>1</sup> to follow when they prepare their service contracts.

2. For the avoidance of doubt, nothing in this Code absolves any public telecommunications service provider from operating in accordance with the terms of its licence and the legislation currently in force in Hong Kong.

3. In this Code,

“public telecommunications service providers” (“service providers”) include:

- local fixed telecommunications network service (FTNS) licensees,
- local fixed carrier licensees,
- mobile virtual network operators, Internet service providers and external telecommunications service operators under the Public Non-Exclusive Telecommunication Service Licences.

A "fixed term contract" is a service contract whether on its own or with any other contract under which

- the consumer has made pre-payment to the service provider, and in return, the

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<sup>1</sup> In this Code Public Telecommunications Service Providers do not include mobile network operators, whose service contracts should be prepared according to the principles set out in the ‘Code of Practice for the Service Contracts for the provision of Public Mobile Radiotelephone Services’ issued by the Telecommunications Authority on 12 October 2001.

service provider has agreed to rebate periodically an agreed amount over a period of time to the consumer; or

- the consumer has agreed to make periodic payments of a specified amount to the service provider over the specified contractual period.

A "general service contract" is a service contract which is not a "fixed term contract" and which can be terminated by either contracting parties by giving the required notice to the other party.

A "service contract" means the agreement, including such supplemental agreement, memorandum or note thereto, by which the service provider agrees to provide and the customer agrees to subscribe to the telecommunications services and the associated value-added services provided by the service provider.

"compensation", in relation to a fixed term contract, includes:-

(a) forfeiture or refund of any unused amount of pre-payment or advance payment made by the consumer;

(b) payment of a specified sum of money fixed by the service provider and the consumer;

in each case, such amount to be forfeited, refunded or payable should represent a genuine pre-estimate of the loss that the service provider or (as the case may be) the consumer would be likely to suffer from an early termination of the service contract.

4. The Code is applicable to all service contracts entered into between a service provider and an individual consumer who neither enters into the contract in the course of a business nor holds himself out as doing so.

### **Guiding Principles**

5. Services providers should follow the following guiding principles for all their service contracts:-

- (a) Provisions in contracts should be balanced, fair and reasonable i.e. they should not be written in a way that is preferential to the service provider.

- (b) Contracts should be written in plain and legible language.
- (c) Contracts should be made available in either Chinese or English as requested by the customer.
- (d) Service providers should not specify that the Chinese or English version of the contract would prevail over the other.
- (e) The font size for the body text and any footnote of a contract should not be less than 9. This requirement applies to both the Chinese and English versions of the contract. There should be sufficient contrast between the printed words and the background of the paper used for the contract document. A combination of black against a white background, deep blue against white or black against yellow is recommended.
- (f) There should be clear provisions, in a prominent place or highlighted, of the salient points of the service contract, which should include but not be limited to the following:-
  - (i) The nature of the contract, i.e. whether it is a "fixed term contract" or a "general service contract";
  - (ii) Details of the service plan which the consumer has subscribed to;
  - (iii) The contractual period (for "fixed term contract" only);
  - (iv) For "general service contract", whether there is any unilateral power for the service provider to alter the contractual terms of the service (including but not limited to the price of the contract), and if so, the length of the notification period. A prior notification of not less than 30 days is recommended if the variation is unfavourable to consumer;
  - (v) For "fixed term contract", whether there is any unilateral power for the service provider to alter the contractual terms of the service (including but not limited to the price of the contract), and if so, the specific

conditions under which such unilateral alteration power can be exercised and the length of the notification period. A prior notification of not less than 30 days is recommended if the variation is unfavourable to the consumer;

(vi) For "fixed term contract", the conditions for an early termination of the contract by the consumer or the service provider;

(vii) For "fixed term contract", the compensation clauses and terms if any, for any early termination of the contract by the consumer or by the service provider.

(g) Contracts should include a reminder concerning deposits and pre-payments of charges, if applicable. Reference is made to the Practice on the Handling of Customers' Deposits and Pre-payments of Charges issued by the TA on 26 April 2001.

(h) A copy of a contract entered into by a service provider and a customer should be given to the customer on request and be made available within a reasonable period of time.

## **Enforcement**

6. The Code is voluntary in nature. Service providers are to self-police the compliance of this Code. Each of them has the responsibility to maintain both the integrity and goodwill of the telecommunications industry. The Telecommunications Authority ("TA") will publish the names of service providers who pledge to comply with the Code at the web site of the Office of the Telecommunications Authority at [www.ofta.gov.hk](http://www.ofta.gov.hk) for public information and monitoring. He will monitor industry response to the Code. If the Code and the associated self-disciplinary mechanism are ineffective, the TA will review further options, including inserting special conditions in the licences, to regulate the business practice of service providers in relation to the preparation of service contracts.

7. The Code becomes effective on the date of issue. All new service contracts offered on or after the date of issue should conform to the requirements of the Code as

early as possible and not later than 6 months from the date of issue of the Code. For the purposes of transition, all existing “fixed term contracts” entered before the date of issue shall remain in force until their expiry or termination but service providers are encouraged not to exercise their contractual rights, if any, to vary unilaterally the contract to the disadvantage of the consumers. For existing “general service contracts”, they may remain in force until their termination but service providers should give an advance notice of at least 30 days if they wish to vary unilaterally the contract to the disadvantage of the consumers.

### **Change to the Code**

8. The TA reserves the right to amend and approve modifications, as and when necessary. Before he proceeds to amend and/or modify the Code, he will consult interested parties and members of the public before making a decision on the matter.

**Office of the Telecommunications Authority**

[date]