

**Note on Subsidiary Legislation under  
Section 32I of the Telecommunications Ordinance  
as will be amended by the  
Telecommunications (Amendment) Bill 2001**

Introduction

1. Under sections 32I(1) and (2) of the Telecommunications Ordinance as will be amended by the Telecommunications (Amendment) Bill 2001, Secretary for Information Technology and Broadcasting (SITB) and Telecommunications Authority are respectively empowered to prescribe the level of, or the method for determining, the spectrum utilization fees and the frequency bands subject to the payment of spectrum utilization fees.

2. As announced by the Government on 13 February, we will adopt a royalty auction with minimum guaranteed payment for the 3G licensing exercise. The following draft subsidiary legislation, which is 3G specific, aims to give effect to this licensing method:-

- (i) Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation; and
- (ii) Telecommunications (Designation of Frequency Bands Subject to Payment of Spectrum Utilization Fees) Order.

3. The draft Regulation to be made by SITB and the draft Order to be made by the TA are attached at Annex A and B.

A. The Draft Regulation by Secretary for Information Technology and Broadcasting

4. The draft subsidiary legislation will support the Government in conducting the royalty auction to determine the “optimum” price for spectrum for the 3G licences. It will be the highest price willing to be paid by the fourth winner. The auction will be an ascending auction which ends when the fourth winner decides to leave, thereby getting the highest price this fourth winner is willing to pay. This fourth winner also sets “highest common royalty percentage” to be paid by all successful winners.

5. This design will be supported by another feature of the auction, namely preservation of the identity of the bidders at the royalty auction. By preserving the bidders’ identities, we can obtain the highest price willing to be

paid by the fourth winner. This feature has the added advantages of encouraging entry to the 3G market, and preventing collusion in the auction.

6. Apart from the main auction, the draft subsidiary also prescribes the other auctions as follows :

- (i) an auction amongst the connected bidders, if there are connected bidders amongst the four successful bidders; and
- (ii) an auction on the priority rights to choose one of the four sets of frequency bands.

7. Both are cash auctions. The auction amongst connected bidders may not be conducted at all. But this step is necessary in the overall auction design in case there are connected bidders amongst the successful bidders and fail to "disconnect" in compliance with the auction rules. The auction amongst the four successful bidders aims to allocate the four sets of frequency bands in an economically efficient manner. We do not expect that it would raise a lot of cash, nor would it affect the auction results in selecting the winners.

8. The draft subsidiary legislation also provides for other relevant matters including empowering SITB to set minimum fees for the auctions and the TA to set terms and conditions for the auctions.

## B. The Draft Order by Telecommunications Authority

9. The draft Order is a technical legislation for the TA to specify the 4 sets of frequency bands subject to auction for the 3G licensing exercises.

**TELECOMMUNICATIONS (METHOD FOR DETERMINING  
SPECTRUM UTILIZATION FEES)(THIRD GENERATION  
MOBILE SERVICES) REGULATION**

(Made by the Secretary for Information Technology and Broadcasting  
under section 32I of the Telecommunications Ordinance (Cap. 106))

**1. Interpretation**

- (1) In this Regulation -
- "auction" ( ) includes a tender;
- "bid" ( ) includes -
- (a) a tender;
  - (b) an intention to bid specified in an application in writing given to the Authority;
- "bidder" ( ) includes -
- (a) a tenderer;
  - (b) a person who has expressed an intention to bid by application in writing given to the Authority;
- "highest common royalty percentage" ( ), in relation to an auction, means the highest royalty percentage bids offered by all the successful bidders at the auction;
- "network turnover" ( ), in relation to a licensee, means the revenue arising from or attributable to the provision of any telecommunications services over any telecommunications network using the frequency bands assigned to the licensee;
- "relevant minimum fee" ( ), in relation to a spectrum utilization fee mentioned in a provision of this Regulation, means the minimum fee specified under section 7;
- "relevant terms" ( ) means the terms and conditions specified in the notice mentioned in section 8(b).
- (2) For the avoidance of doubt, it is hereby declared that the fact that an auction mentioned in this Regulation is not held shall not in any way

prejudice the operation of a provision of this Regulation (including the definition of "highest common royalty percentage").

## **2. Application**

The method for determining the spectrum utilization fees to be paid by the users of the spectrum which falls within the 4 sets of frequency bands designated in the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (L.N. of 2001) shall be as specified in sections 3, 4, 5 and 6.

## **3. Auction to determine annual spectrum utilization fee payable**

Subject to Sections 4, 5, 6 and 7 and compliance with the relevant terms, an auction shall be held in which -

- (a) the 4 bidders whose bids will produce the highest common royalty percentage, as determined in accordance with the relevant terms, shall be the successful bidders;
- (b) the spectrum utilization fee to which the auction relates shall be -
  - (i) an annual fee for each of the first 5 years of the period of validity of the relevant licence mentioned in section 7(12) of the Ordinance consisting of the relevant minimum fee applicable to the highest common royalty percentage;
  - (ii) for each year of the period of validity of the licence remaining after the expiration of the first 5 years, an annual fee consisting of -
    - (A) a royalty determined by reference to the network turnover of the licensee multiplied by the highest common royalty percentage; or

- (B) the relevant minimum fee based on the highest common royalty percentage, whichever is the highest for the year concerned.

**4. Spectrum utilization fee payable where auction not held due to insufficient bidders**

Subject to sections 5, 6 and 7 and compliance with the relevant terms, where there are not more than 4 bidders -

- (a) in relation to the auction mentioned in section 3; and
- (b) immediately upon the expiration of the period, as specified in the relevant terms, after which the Authority will not accept bids,

then -

- (c) the auction shall not be held;
- (d) each of the bidders shall be a successful bidder; and
- (e) the spectrum utilization fee shall be the relevant minimum fee.

**5. Auction to remove connected bidders**

Subject to section 7 and compliance with the relevant terms, where 2 or more of the successful bidders mentioned in section 3 or 4 are connected as mentioned in the relevant terms, then an auction shall be held only for those successful bidders so connected (or, if there are 2 sets of those successful bidders so connected, an auction for each set shall be held) in which -

- (a) a successful bidder at the auction cannot be so connected to another successful bidder, if any, at the auction;
- (b) the bidder whose bid produces the highest spectrum utilization fee mentioned in paragraph (c) shall be the successful bidder;

- (c) the spectrum utilization fee to which the auction relates shall be a cash amount payable by the successful bidder immediately upon demand by the Authority.

**6. Auction to determine respective priority rights of successful bidders in the allocation of sets of frequency bands**

Subject to section 7 and compliance with the relevant terms, after sections 3, 4 and 5 have been complied with, an auction shall be held -

- (a) to determine the respective priority rights -
  - (i) of the successful bidders remaining after the operation of those sections; and
  - (ii) in relation to the allocation of the sets of frequency bands mentioned in section 2; and
- (b) in which -
  - (i) the priority rights shall be assigned in descending order from the bidder whose bid produces the highest spectrum utilization fee mentioned in subparagraph (ii);
  - (ii) the spectrum utilization fee to which the auction relates shall be a cash amount payable by each of the successful bidders immediately upon demand by the Authority.

**7. Secretary may specify minimum fee of spectrum utilization fee**

The Secretary may specify the minimum fee of any spectrum utilization fee mentioned in a provision of this Regulation -

- (a) by notice published in the Gazette or otherwise; and
- (b) by means of -
  - (i) a minimum fixed fee;

- (ii) a minimum fee determined by reference to a formula or percentage or the occurrence of an event or series of events;
- (iii) a series of 2 or more minimum fees in relation to the same spectrum utilization fee where the relevant minimum fee is determined by reference to the occurrence of an event or series of events;
- (iv) a minimum fee the determination of which varies upon the occurrence of an event or series of events;
- (v) a minimum fee determined by reference to another minimum fee, or by reference to the means of determining another minimum fee, whether or not the other minimum fee is or will become payable;
- (vi) a minimum fee the determination of which varies, or is calculated by reference to, the period of validity of a licence or any part thereof; or
- (vii) any combination of 2 or more of any of the means specified in subparagraph (i), (ii), (iii), (iv), (v) or (vi), whether in whole or in part.

**8. Authority may promote, etc. an auction to which the method mentioned in section 2 relates**

The Authority may -

- (a) promote, hold, conduct, suspend, cancel or conclude an auction to which the method mentioned in section 2 relates;
- (b) specify the terms and conditions of an auction to which that method relates by notice published in the Gazette (including terms and conditions relating to the payment of spectrum utilization fees).

**9. Action that may be taken by Authority if licensee fails to keep proper accounts for the purposes of determining spectrum utilization fees**

Where the determination of a spectrum utilization fee (including a relevant minimum fee) relates, whether in whole or in part, to the accounts of a licensee and the accounts have not, in the opinion of the Authority, been kept in accordance with -

- (a) the conditions to which the licence is subject; or
- (b) any accounting practices specified under section 7H of the Ordinance and applicable to the licensee,

then -

- (c) the Authority may treat the accounts in such manner as he considers necessary to bring them into conformity with those conditions or accounting practices, as the case may be; and
- (d) the accounts as so treated shall be used for the purposes of determining that fee, and the other provisions of this Regulation shall be construed accordingly.

Secretary for Information Technology  
and Broadcasting

2001

**Explanatory Note**

This Regulation -



- (a) specifies the method for determining the spectrum utilization fees to be paid for the frequency bands designated in the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (L.N. of 2001)(sections 2 to 6);
- (b) empowers the Secretary for Information and Technology to specify the minimum fee to be paid in relation to any spectrum utilization fee specified in a provision of the Regulation (section 7);
- (c) empowers the Telecommunications Authority to, inter alia, hold the auction or tender (see the definition of "auction" in section 1) to which the method relates and specify the terms and conditions of the auction or tender (section 8); and
- (d) empowers the Telecommunications Authority to take remedial action should a licensee fail to keep proper accounts for the purposes of determining spectrum utilization fees (section 9).

**TELECOMMUNICATIONS (DESIGNATION OF  
FREQUENCY BANDS SUBJECT TO PAYMENT OF  
SPECTRUM UTILIZATION FEE) ORDER**

(Made by the Telecommunications Authority under section 32I(1) of  
the Telecommunications Ordinance (Cap. 106) after carrying out the  
consultation required under section 32G(2) of the Ordinance)

**1. Designation of frequency bands subject to  
payment of spectrum utilization fee**

The following frequency bands are designated as the frequency bands in which the  
use of spectrum is subject to the payment of spectrum utilization fee by the users of the  
spectrum:

MHz	MHz	MHz
1920.3-1935.1	2110.3-2125.1	1914.9-1919.9
1935.1-1949.9	2125.1-2139.9	1904.9-1909.9
1950.1-1964.9	2140.1-2154.9	1909.9-1914.9
1964.9-1979.7	2154.9-2169.7	2019.7-2024.7

Telecommunications Authority

2001

**Explanatory Note**

This Order is made under section 32I(1) of the Telecommunications Ordinance (Cap. 106) and designates the frequency bands in which the use of

spectrum is subject to the payment of spectrum utilization fee by the users of the spectrum.