

立法會
Legislative Council

CB(3)/BC/1/00/3

LC Paper No. CB(3)554/00-01

Summary of questions/comments and suggested amendments regarding the Telecommunications (Amendment) Bill 2001

From submissions received by the Bills Committee

(as at 27 March 2001)

Legal Service Division's Comments and the Administration's Response

| Submission | Clause(s) | Question(s)/comments | Suggested amendments | Legal Service Division's comments on legal issues | Administration's Response |
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| PCCW-HKT (LC Paper No. CB(3) 529/00-01(01) issued on 22.3.01) | 2 & 3 | Proposed sections 7(12) and 32H(6) authorize the TA to regard <i>spectrum utilization fees as "a determining factor"</i> in determining applications for licence issuance or frequency allocation. It is submitted that frequency should be allocated and licences issued solely on the basis of success in the bid or tender process; TA should not have the right to deny allocating the frequency and issuing the licence to successful bidder or tenderer and should not be allowed to take into | Proposed section 7(12) should be revised as follows: "(12) [...] then the Authority shall determine applications for the licence with regard solely to the level of fees arising or resulting from that method." Proposed section 32H(6) should be revised as follows: "(6) [...] then the Authority shall determine applications for the assignment with regard solely to the | <ul style="list-style-type: none"> ● Proposed sections 7(12) and 32H(6), as drafted, confer on TA a discretion to regard the fees arising or resulting from an auction or tender or a combination of both as a determining factor in determining applications for licences and frequency assignment. The draft regulation made by the Secretary for Information Technology and Broadcasting (SITB) which is 3G-specific, on the other hand, stipulates that the 4 bidders whose bids will produce the highest common royalty | <ul style="list-style-type: none"> ● See paper "Administration's Responses to Bills Committee's Concerns at the Meeting of 6 March 2001" issued by ITBB on 23 March (LC Paper No. CB(3)536(00-01)(03)). ● The new sections 7(12) and 32H(6) of the Bill are general empowering provisions for the 3G licensing exercise as well as future exercises where spectrum utilisation fees are levied. The certainty that the highest bidders will be successful bidders |

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| | | account factors other than the spectrum utilization fee in determining applications for licences or assignment of spectrum. | level of fees arising or resulting from that method.". | <p>percentage as determined in accordance with the terms and conditions of the auction shall be the successful bidders. The draft regulation is made within the scope of the enabling provision, i.e. proposed section 32I(2).</p> <ul style="list-style-type: none"> ● TA, as a public officer appointed for the purposes of the Telecommunications Ordinance (Cap. 106), is under a duty to comply with the subsidiary legislation made under it. This would mean that TA would in effect determine applications for the licence and for assignment of frequencies with regard solely to the fees arising or resulting from an auction. Non-compliance with the subsidiary legislation by TA could be subject to judicial review. | <p>in this 3G auction is provided in the draft subsidiary legislation that is 3G-specific.</p> <ul style="list-style-type: none"> ● On Legal Adviser's suggestion to make specific provisions for 3G in the primary legislation, we consider it inappropriate and undesirable to do so as the primary legislation should be general provisions applicable to all future licensing exercises. We have already explained that the certainty is already provided for in the subsidiary legislation. |

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| | | | | <ul style="list-style-type: none"> <li data-bbox="1270 276 1697 1265">● Although it is unlikely for TA to depart from the regulation made by SITB in determining applications for 3G licences and applications for assignment of frequencies, it would appear undesirable when TA could have a discretion under proposed sections 7(12) and 32H(6) to regard or disregard the fees arising or resulting from an auction in his determination. Judicial review of TA's determination will succeed only if it can be established that there has been an abuse of power in the exercise of an administrative discretion, e.g. bad faith, a mistake in construing the limits of the power, illegality, irrationality or procedural irregularity. <li data-bbox="1270 1305 1697 1406">● To avoid the possibility that TA may, in the exercise of his discretion, | |

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| | | | | <p>deny allocating the frequencies and issuing the licences to the successful bidders or tenderers in the 3G licensing exercise, the drafting of proposed sections 7(12) and 32H(6) may be improved to subject TA's discretion to the provisions of the regulation made by SITB under proposed section 32I(2) insofar as it relates to 3G licensing. Alternatively, a provision specific to 3G licensing may be added in sections 7 and 32H to reflect the policy intent that the 3G licences and frequencies will be issued and assigned by TA to the successful bidders in the 3G auction.</p> | |
| <p>The Law Society of Hong Kong (LC Paper No. CB(3) 541/00-01 issued on</p> | 4 | <p>The power given to the Secretary to determine in his discretion whether the method of calculating a spectrum utilization fee should be by auction or tender or such other</p> | <p>A possible way forward would be to amend this proposed provision by tying any decision of <i>the Secretary or the TA</i> to a consultation process,</p> | <ul style="list-style-type: none"> ● It is a matter of policy as to whether an obligation to consult should be included in the Bill. Under section 6C of the Telecommunications Ordinance (Cap. 106), TA, | <ul style="list-style-type: none"> ● SITB is required to prescribe the level or the method for determining the spectrum utilisation fee by regulation under section 32I(2), which is subject to scrutiny of the |

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| 26.3.01) | | method as the Secretary thinks fit and the power given to the TA to specify the terms and conditions of an auction or tender in <u>proposed new section 32I(2)</u> (Note by clerk: and new section 32I(4)(b)(ii)) are too wide. | and stating that any regulation so prescribed would be <i>subject to industry consultation</i> . A similar provision exists for spectrum management in section 32G(2). | <p>before performing any function or exercising any power under the Ordinance, may consult with the persons who may be directly affected by the performance of that function or the exercise of that power or members of the public.</p> <ul style="list-style-type: none"> ● Under the existing Ordinance, the consultation requirement is mandatory in relation to the exercise of certain TA's powers, e.g. division of the radio spectrum into a number of bands of frequencies under section 32H(2)(a) and designation of the frequency bands in which the use of the spectrum is subject to the payment of spectrum utilization fee by the users of the spectrum under 32I(1). | <p>legislature.</p> <ul style="list-style-type: none"> ● SITB's regulation must be passed together with TA's Order, which is also subject to scrutiny of the legislature, to designate the relevant frequency band under section 32I(1). Under this section, the TA is already subject to an express requirement for consultation and such consultation for the 3G licensing has been conducted. ● Having regard to the above, it is not appropriate to subject SITB to the statutory obligation of consulting the industry on the exact level of the fee she would charge and the method she would choose. The legislature will consider SITB's regulation in view of her policy objectives and considerations. |

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| PCCW-HKT (LC Paper No. CB(3) 529/00-01(01) issued on 22.3.01) | 4 | Proposed section 32I(2) would empower the Secretary to prescribe by regulation the level of, or method for determining, spectrum utilization fees, without a consultation obligation. It is submitted that <i>the Secretary should be obliged to consult with the telecommunications industry</i> and such other persons as may be directly affected by the proposed exercise of the power to determine the level of fees or the method for determining the spectrum utilization. | Proposed section 32I(2) should be amended as follows: "(2) Subject to the consultation requirement under subsection (11), the Secretary may by regulation prescribe - -..." Proposed section 32I(11) should be added as follows: "(11) Before exercising his powers under subsection (2), the Secretary shall carry out such consultation with - (a) the telecommunications industry; and (b) such other persons who may be directly affected by the exercise of such powers as is reasonable in all the circumstances of the case." | Please refer to LSD's comments on the submission of the Law Society of Hong Kong relating to the requirement for consultation above. | Same as above. |

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| PCCW-HKT (LC Paper No. CB(3) 529/00-01(01) issued on 22.3.01) | 4 | TA's power to specify the terms and conditions on which an auction or tender (or combined auction and tender) will be conducted <i>should</i> be subject to an obligation to <i>consult</i> with persons affected by the exercise of that power. | Proposed section 32I(4)(b)(ii) should be amended to read as follows: "(ii) subject to the consultation requirement under section 32G(2), specify the terms and conditions of an auction or tender to which the method relates by notice published in the Gazette (including terms and conditions relating to the payment of the fee)." Section 32G(2) should be amended to read as follows: "(2) Without prejudice to the generality of section 6C, before exercising his powers under sections 32H(2)(a) and (b) and 32I(1) and (4)(b)(ii), the Authority should carry out such consultation with ...". | Please refer to LSD's comments on the submission of the Law Society of Hong Kong relating to the requirement for consultation above. | <ul style="list-style-type: none"> ● The TA will consult on any part of the terms and conditions of the auction or tender as appropriate. Section 6C of the Ordinance has already had such a provision regarding consultation by the TA before he performs his function or exercises his power. ● The TA however should not be subject to a statutory requirement to consult on the terms and conditions of auction or tender. In drawing up detailed terms and conditions, the Government has wider considerations in achieving its policy objectives, in ensuring that an auction or tender will be conducted in a fair, efficient and orderly manner, and in the wider public interest. The Government will set out its terms and conditions |

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| | | | | | clearly, and make it available to all potential bidders at the same time, to ensure equity and transparency. It is up to the bidders to decide whether to participate. |
| CSL (LC Paper No. CB(3) 547/00-01 issued on 26.3.01) | - | CSL supports the TA's past initiatives to conduct consultation on the licensing and regulatory framework for 3G services in Hong Kong. However, CSL strongly believes that further industry consultation is required on the important issues which remain unanswered from the previous consultation papers and industry workshops. | The Bill should include explicit obligations for the Secretary or TA, as appropriate, to conduct a thorough and conclusive consultation on the full and complete scheme so as to enable industry and other parties affected by the proposed legislation to have an opportunity to adequately express their views and influence the licensing process. | Please refer to LSD's comments on the submission of the Law Society of Hong Kong relating to the requirement for consultation above. | <ul style="list-style-type: none"> ● For the 3G licensing exercises, the TA has conducted two rounds of consultation on the licensing framework in March and October 2000 respectively. The consultation paper also sets out TA's views on the important regulatory issues including the treatment of new entrants, 3G standards in Hong Kong, availability of new 3G spectrum, mobile number portability, numbering requirement and roaming arrangement between 3G and 2G networks. ● In January 2001, the TA conducted an industry |

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| | | | | | <p>workshop on the open network requirement in response to the views received in the two rounds of consultation.</p> <ul style="list-style-type: none"> ● Most recently in March 2001, the TA initiated a consultation exercise on rules on connected bidders. ● We believe that <u>all</u> major issues on the 3G licensing exercise have already been put forward for consultation with the industry and the public. There is adequate opportunity for the industry and parties interested to express their views. ● On the suggestion to include an explicit obligation to consult the industry in the Bill, please see our response above. |

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| PCCW-HKT (LC Paper No. CB(3) 529/00-01(01) issued on 22.3.01) | 4 | Proposed section 32I(2)(b) expressly contemplates the Secretary prescribing by regulation a method for determining spectrum utilization fees which involves "a combination of auction or tender". It is assumed that there is a typographical error, " <i>auction or tender</i> " being intended to read " <i>auction and tender</i> ". (Please note that a translator's note has been entered in the Chinese version.) | The phrase "auction or tender or a combination of auction or tender" in proposed section 32I(2)(b)(i) should be amended as "auction or tender or a combination of auction and tender". (Please note that a translator's note has been added in the Chinese version.) The expression "auction or tender" appearing in proposed sections 32I(4)(b)(i), 32I(4)(b)(ii), 32I(5), 32I(5)(a), 32I(5)(b), 32I(5)(g)(iii) and 32I(7) should be amended to read as "auction or tender or a combination of auction and tender." | <ul style="list-style-type: none"> • In the context of proposed section 32I(2)(b)(i), it would appear that "or" in the context of "a combination of auction or tender" must mean "and" because "combination" means joining or putting things together. However, to make the English and Chinese texts consistent, "or" should be amended to "and" in that context. • The proposed amendment by PCCW-HKT to proposed section 32I(4)(b)(i) and (ii) may not be necessary. Proposed section 32I(4) is without prejudice to the generality of subsections (2) and (3) and is intended to enable SITB to make a regulation to confer on TA certain powers when the method prescribed by SITB under subsection (2) is auction or tender or a method which relates to | <ul style="list-style-type: none"> • On section 32I(2)(b)(i), we have taken on board the suggestion and will introduce a technical CSAs to this effect. • On section 32I(4)(b)(i) and (ii), the amendment to replace "auction or tender" with "auction or tender <u>or a combination of auction or tender</u>" is unnecessary. The expression "an auction or tender to which the method relates" already includes a combination of auction or tender, and any method which relates to auction or tender. Hence for method which relates to auction or tender, SITB is empowered under section 32I(4)(b), by regulation, to empower TA to implement that method. For any other method, SITB may rely on the general power under section 32I(2)(b) to implement that method. |

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| | | | | <p>auction or tender. A combination of auction with tender can be regarded as a method which relates to auction or tender. If SITB decides to prescribe a method other than one which relates to auction or tender, she may rely on the general power under proposed section 32I(2) to provide for the implementation of that method.</p> <ul style="list-style-type: none"> Proposed section 32I(5) is without prejudice to the generality of subsection (4)(b)(ii) and would apply to auction or tender in the event that either auction or tender is chosen as the method for determining the spectrum utilization fees. Proposed section 32I(5) would not restrict or derogate from the general power which may be conferred on TA under proposed section | <ul style="list-style-type: none"> Sections 32I(5) and (7) are specific provision applying to the auction or tender as referred to in section 32I(4)(b)(ii). With prefix “Without prejudice to the generality of subsection 4(b)(ii)”, it does not restrict the terms and conditions that may be specified by TA under section 32I(4)(b)(ii). No amendment is therefore considered necessary. |

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| | | | | 32I(4)(b)(ii) to specify the terms and conditions of an auction or tender or a method relating to auction or tender (including a combination of both). | |
| PCCW-HKT (LC Paper No. CB(3) 529/00-01(01) issued on 22.3.01) | 4 | Proposed section 32I(4)(a) would provided that <i>Secretary has "... the power to make a regulation to provide for ..." "empowering the Secretary to specify the minimum amount of the fee ..."</i> . It is submitted that the provision is <i>unnecessary</i> , given that draft section 32I(2)(a) would empower the Secretary to prescribe by regulation the level of spectrum utilization fees. | Proposed section 32I(4)(a) should be deleted. | <p>There is a need to retain proposed section 32I(4)(a) for the following reasons:</p> <ul style="list-style-type: none"> Proposed section 32I(2) empowers SITB to either prescribe the level of spectrum utilization fees direct or prescribe the method for determining such fees. Proposed section 32I(4) is applicable only where SITB decides to make a regulation prescribing the method for determining the spectrum utilization fees. Proposed section 32I(2)(a) would therefore operate independently of proposed section 32I(2)(b) and (4). | <ul style="list-style-type: none"> Section 32I(2)(a) refers to an administratively set level of fees to be collected from each user of the spectrum designated. The fees so determined is a set fee which must be paid by each user, no less and no more. In case of an auction, tender or other methods, the level of fees to be collected is not pre-determined. Section 32I(2)(b) therefore provides SITB with the power to set the method for the determination of the fees. It is however necessary to empower SITB to set the <u>minimum</u> fees to be paid in the form |

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| | | | | <ul style="list-style-type: none"> SITB's power to specify the minimum amount of the spectrum utilization fee is necessary having regard to the provisions (i.e. sections 4 and 7) of the draft Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation [Please refer to Annex A to LC Paper No. CB(3)536/00-01(02)]. | <p>of a “reserve price” commonly used for an auction, and the minimum guaranteed payments for the royalty auction. Section 32I(2)(a) which empowers the setting of a pre-determined fee by each user, no less and no more, is not applicable in cases of an auction.</p> |
| CSL (LC Paper No. CB(3) 547/00-01 issued on 26.3.01) | 5 | Proposed section 34(5) would involve the forfeiture of the whole of any spectrum utilization fee that has been paid, where a license is cancelled, withdrawn or suspended. CSL strongly supports the contention that the forfeiture of the whole of any spectrum utilization fee that has been paid, where a license is cancelled, withdrawn or | It is submitted that <i>successful bidders who eventually decide to terminate the 3G business before the licence expires should be liable to pay the yearly minimum guaranteed payment until the licence expires.</i> | <ul style="list-style-type: none"> The effect of proposed section 34(5) is that any spectrum utilization fee <u>paid</u> to the Government is not refundable if the licence to which the fee relates is cancelled, withdrawn or suspended. The provision, as drafted, does not make a licensee liable to pay the yearly payment for the remainder of the licence period. | <ul style="list-style-type: none"> We note CSL’s support for the requirement to impose penalty in the event that the successful bidders are to terminate their 3G business after obtaining the licence. <p>The new section 34(5) seeks to stipulate that any spectrum utilisation fee <i>already</i> paid will not be refunded upon licence cancellation, withdrawal or</p> |

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| | | suspended. CSL is in the view that this will ensure bidders who enter into the bidding process are in fact serious bidders. | | <ul style="list-style-type: none"> Given that in the 3G licensing framework, a licensee is required to pay the spectrum utilization fee which will be spread over the period of validity of the licence, provisions may be made to cover the situation of pre-mature termination of the licence by the licensee and cancellation, withdrawal or suspension of the licence by TA or the Chief Executive in Council. | suspension. As explained in LegCo Brief “Licensing Framework for Third Generation Mobile Services” issued by ITBB on 13 February 2001 (ITBB CR 7/23/10(01), the licensees will provide a 5-year rolling guarantee of the guaranteed, minimum royalty payment. This is to balance the protection of government’s interest and not to overburden successful bidders on the requirement of guarantees. In the event that a 3G licence is revoked either because the licensee terminates its own business, or because it is found subsequently to have breached the auction rules (see new section 32I(g)(ii)), the Government may enforce the 5-year rolling guarantee. |

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| PCCW-HKT (LC Paper No. CB(3) 529/00-01(01) issued on 22.3.01) | 5 | It is submitted that the proposed amendment to section 34(5) could work <i>substantial injustice to a licensee whose licence is cancelled, withdrawn or suspended</i> , particularly where it may be cancelled <i>on the grounds of "public interest"</i> . Clarification is required of the grounds on which the spectrum utilization fee may be forfeited under section 34(5), so that forfeiture only occurs in cases in which the licensee or person to whom the permit, permission or consent is granted has contravened the Ordinance or a condition of the licence, permit, permission or consent. | Section 34(5) should be amended as follows: "(5) Where any licence, permit, permission or consent granted under this Ordinance is cancelled, withdrawn or suspended, no part of any fee or other sum paid in respect thereof or thereunder shall be refunded save that this subsection shall have no effect in relation to any licence, permit, permission or consent that is cancelled, withdrawn or suspended by reason only that the public interest so requires. " | Proposed section 34(5) operates only where a licence granted under the Telecommunications Ordinance (Cap. 106) is cancelled, withdrawn or suspended. In exercising the discretionary power to cancel, withdraw or suspend a licence under section 34(4), both TA and the Chief Executive in Council must act reasonably and in good faith, and upon proper grounds. The exercise of that discretion is subject to judicial review. | <ul style="list-style-type: none"> ● Under section 34 of the existing Ordinance, (a) the TA may cancel, withdraw and suspend a licence if the licensee has breached the Ordinance or licence condition; and (b) the Chief Executive in Council may do the same on public interest grounds. The exercise of the power is subject to safeguards including representation by the licensee, and the test of reasonableness and proportionality, in the same section. ● The power to cancel, withdraw and suspend a licence is a deterrent power of the Government. The new section 34(4D) seeks to stipulate that in considering whether to cancel, withdraw or suspend a (which must arise out of a very serious breach of Ordinance, licence condition, or auction rules, or is in such |

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| | | | | | <p>a serious nature which public interest requires) the spectrum utilisation fee already paid by the licensee should not be a relevant consideration factor in exercising their power. It is a key policy principle that the 3G licensee which has paid a certain amount of spectrum utilisation fee, should not, because of such fee paid, claim a certain degree of immunity from the deterrent power of licence revocation.</p> <ul style="list-style-type: none"> ● By stipulating section 34(4D), we put it beyond doubt that the Government would not consider payment of fees as a relevant consideration in cancellation, withdrawal and suspension of licence. |
| The Law Society of Hong Kong | 5 | Clause 5 sets out that if a licence is cancelled, withdrawn, or suspended | A provision clarifying the position on payment post-operation | Please refer to LSD's comments on the submission of CSL relating to forfeiture | <ul style="list-style-type: none"> ● For the 3G licensing exercise, we have already announced that the |

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| (LC Paper No. CB(3) 541/00-01 issued on 26.3.01) | | then the spectrum utilization fee paid pursuant to section 32I is not refundable. It does not, however, state what is to become of the licence fee still payable. According to the Framework, 3G licensees are to bind themselves to a long-term payment scheme for the duration of the licence (15 years). It is therefore unclear what is to happen to such an obligation in the event of the operation of clause 5. | should be included, so that <i>operators will be no longer bound to continue with the payment for the licence once it is cancelled.</i> | of spectrum utilization fees above. | <p>Government may enforce the 5-year rolling guarantee in case of revocation of licence. Such would be clearly set out in full in the Information Memorandum inviting applications for licence and bidders will know in full the detailed arrangement.</p> <ul style="list-style-type: none"> On the suggested provision in the Bill, we do not think that the inclusion is appropriate. The Bill is a general piece of legislation for all licensing exercises and not specific to 3G. The suggested requirement that “operators will be no long bound to continue with the payment for the licence once it is cancelled” may not be applicable to future licensing exercises (eg. deferred cash payment). We consider that the present draft to empower the TA to specify in the terms and conditions, |

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| | | | | | which is specific to individual licensing exercise, the terms and conditions relating to the payment of fees is a more appropriate arrangement. |

Legislative Council Secretariat

4 April 2001

**Committee Stage Amendments (CSAs)
Proposed by the Administration to
The Telecommunications (Amendment) Bill 2001**

Introduction

The Administration intends to propose Committee Stage Amendments (CSA) to the Telecommunications (Amendment) Bill 2001 (“the Bill”), a draft of which is attached at Annex 1. Below is a brief explanation of the CSAs proposed.

Proposed CSAs

Section 32I(2)(b)(i) in Clause 4(a)

2. We propose a textual amendment to replace the words a combination of auction or tender” with “a combination of auction and tender” in response to the industry submissions.

Section 32I(4)(a) in Clause 4(b)

3. Section 32I(4)(a) in Clause 4(b) of the Bill empowers the Secretary for Information Technology and Broadcasting (SITB) to, by regulation, specify the minimum spectrum utilization fees, whether by notice published in the gazette or otherwise.

4. As explained at the Bills Committee meeting on 26 March, the minimum spectrum utilization fee SITB will set for the 3G licensing exercise will contain the following :

- (i) the minimum royalty percentage, and the spectrum utilization fee payable over the 15-year licence period based on that minimum royalty percentage – they, as a whole, constitute what is commonly known as the ‘reserve price’; and

- (ii) the series of minimum payments of spectrum utilization fee over the 15-year licence period based on the highest common royalty percentage set by the fourth winner.

——— Please see extract of powerpoint presentation at Annex 2 for ease of reference.

5. SITB should be sufficiently empowered under section 32I(4)(a) of the Bill to specify the minimum spectrum utilization fees, including the minimum fees for the 3G exercise set out in paragraph 4 above. After consulting the Department of Justice, we propose this CSA to sufficiently empower SITB in the Bill. Members may wish to note that the provision is the same as the minimum fee in clause 7 of the Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation to be made by SITB.

Section 32I(10) in Clause 4(b)

6. The Government will recover any outstanding spectrum utilization fees owed by a licensee as a civil debt to the Government. We propose to add an express provision to that effect.

Information Technology and Broadcasting Bureau
03 April 2001

GFOX: DMA#40635v3

1st draft: 22.3.2001

2nd draft: 23.3.2001

3rd draft: 29.3.2001

TELECOMMUNICATIONS (AMENDMENT) BILL 2001

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Information Technology and Broadcasting

Clause

Amendment Proposed

- 4
- (a) In paragraph (a), in the proposed section 32I(2)(b)(i), by deleting "or tender; or" and substituting "and tender; or".
 - (b) In paragraph (b) -
 - (i) by deleting the proposed section 32I(4)(a) and substituting -
 - "(a) empowering the Secretary to specify the minimum fee -
 - (i) by notice published in the Gazette or otherwise; and
 - (ii) by means of -
 - (A) a minimum fixed fee;

(B) a minimum fee determined by reference to a formula or percentage or the occurrence of an event or series of events;

(C) 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;

(D) a minimum fee
the
determination of
which varies
upon the
occurrence of an
event or series of
events;

(E) 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;

(F) 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

(G) any combination
of 2 or more of
any of the means
specified in sub-
subparagraph
(A), (B), (C),
(D), (E) or (F),
whether in whole
or in part;"

(ii) by deleting the proposed section 32I(10) and
substituting -

"(10) A spectrum utilization fee (including any part thereof) owing to the Government shall be recoverable by the Government as a civil debt.

(11) Without prejudice to the generality of subsection (4)(a), in this section (including subsection (3)) -

"event () includes a date; "spectrum utilization fee"

() includes a fixed fee, a fee calculated by a formula or a fee ascertained by another method, or any combination thereof."

**Extract of powerpoint presentation
at Bills Committee Meeting on 26 March 2001**

Minimum Spectrum Utilisation Fee SITB will set = Bidding schedule

Minimum Guaranteed Payments

If the highest
common royalty
percentage is

| | <u>Year 1</u> | ... | <u>Year 5</u> | <u>Year 6</u> | <u>Year 7</u> | ... | <u>Year 15</u> |
|---------|---------------|-----|---------------|---------------|---------------|-----|----------------|
| $R_1\%$ | $\$X_{1-5}$ | ... | $\$X_{1-5}$ | $\$X_6$ | $\$X_7$ | ... | $\$X_{15}$ |
| $R_2\%$ | $\$Y_{1-5}$ | ... | $\$Y_{1-5}$ | $\$Y_6$ | $\$Y_7$ | ... | $\$Y_{15}$ |
| $R_3\%$ | $\$Z_{1-5}$ | ... | $\$Z_{1-5}$ | $\$Z_6$ | $\$Z_7$ | ... | $\$Z_{15}$ |
| . | . | ... | . | . | . | ... | . |

- $R_1\%$ is the “reserve price”

Minimum Spectrum Utilisation Fee SITB will set = Bidding schedule

(1) the “ Reserve Price” → $R_1\%$

Any bidder commits to offer $R_1\%$, that is

- For each of the first 5 years of the licence period, an annual fee, X_{1-5} , based on $R_1\%$;
- from Year 6 onwards, an annual fee of
 - $R_1\%$ multiplied by network turnover
 - or
 - the minimum guaranteed fee based on $R_1\%$, X_6

whichever is the higher

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(2) the highest common royalty percentage set by the fourth winner

The four successful bidders offer to pay say, $R_2\%$, that is

- For each of the first 5 years of the licence period, an annual fee, Y_{1-5} , based on $R_2\%$;
- from Year 6 onwards, an annual fee of
 - $R_2\%$ multiplied by network turnover
 - or
 - the minimum guaranteed fee based on $R_2\%$, $Y_6 \dots\dots$
 Y_{15}

whichever is the higher