

**Administration's Response to Concerns Raised
by the Legislative Council Sub-committee
On Telecommunications (Method for Determining Spectrum
Utilization Fees) (Third Generation Mobile Services) Regulation and
Telecommunications (Designation of Frequency Bands Subject to
The Payment of Spectrum Utilization Fee) Order**

Introduction

The Administration's original proposal was to adopt the "Lowest Winner" methodology (the so-called "fourth leaver" rule) to obtain the price willing to be paid by the lowest successful winner for the coming third generation mobile services (3G) auction. The rationale was that the methodology should set a fair market price for the use of the scarce public resources of 3G spectrum.

2. At the meeting of 4 June, Members requested the Administration to re-consider the proposal to adopt the so called "fifth leaver rule". The Subcommittee further decided that it would move an amendment to the regulation to this effect, if the Administration did not pursue it.

3. In contrast with the Government's original proposal, the "fifth leaver" rule represents a methodology whereby the price to be paid by all winners is determined by the price bid by the fifth highest bidder.

Administration's Response

4. Having have considered very carefully the implications of the "fifth leaver" methodology and the suggestion of Members following extensive discussion on the issue, we agree to Members' request to adopt the "fifth leaver" rule. A copy of the draft amendment which we propose to make to the Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation is attached at Annex.

5. Under the "fifth leaver" methodology, the royalty percentage payable will become the lowest common royalty percentage bid which is offered by all successful bidders. It should not be less than the royalty

percentage offered by the fifth highest bidder. Since the price is set by the fifth highest bidder under the revised methodology, in the event that there is no fifth highest bidder, which may be due to one of provisional winners ceasing to be qualified, the royalty percentage payable will be the reserve price.

6. In view of the adoption of the revised methodology, we need to review and revise the auction design and the auction rules, to bring them in line with the Regulation in order that the overall auction design remains intact. It is essential that the revised auction design with the “fifth leaver” methodology will continue to meet our objectives. It should remain capable of encouraging entry to the 3G market, enhancing competition in the market, minimizing market distortion and allocating the spectrum bands in a fair and efficient manner. As a measure to minimize collusion and preserve the integrity of the auction, it is important that we maintain the confidentiality feature of the auction.

7. We believe the overall approach of an auction based on royalty percentages and minimum guarantee payments already meets the objective of a fair and efficient licence allocation exercise. It also achieves the aim of encouraging entry into the 3G market, taking into account the current situation in the telecommunications market. Although we believe that a balanced package was proposed by Government in the original proposal, we do not have any in principle objection to the adoption of the “fifth leaver” methodology as the primary objectives of the exercise have been achieved. While we note the Subcommittee’s wish to provide an attractive environment for the operation of 3G through the revision, we cannot quantify potential revenue effects of such a change, as interest in the auction will depend on market conditions at the time.

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION OF THE LEGISLATIVE COUNCIL

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

Resolution made and passed by the Legislative Council under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) on June 2001.

RESOLVED that the Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation, published as Legal Notice No. 11 of 2001 and laid on the table of the Legislative Council on , be amended -

(a) in section 2 -

(i) in subsection (1) -

(A) by adding before the definition of "auction" -

"applicable royalty percentage (), in

relation to an auction,

means the lowest common royalty percentage bid -

(a) offered by all the remaining successful bidders; and

(b) which is not less than the royalty percentage bid offered by the fifth highest bidder;"

(B) by repealing the definition of "highest common royalty percentage";

(ii) in subsection (2), by repealing "highest common" and substituting "applicable";

(b) in section 4 -

(i) by repealing "在該拍賣中";

(ii) in paragraph (a) -

(A) by adding "subject to paragraph (c)," before "the bidders";

(B) by repealing "highest common" and substituting "applicable";

(iii) in paragraph (b) -

(A) by adding "該" before "拍賣所關乎";

- (B) by repealing "highest common" and substituting "applicable" wherever it occurs;
- (C) by repealing "concerned." and substituting "concerned;";
- (iv) by adding -
 - "(c) if there is no fifth highest bidder, as mentioned in the definition of "applicable royalty percentage" and as determined in accordance with the relevant terms, then the spectrum utilization fee shall be the relevant minimum fee, and paragraph (b) and the other provisions of this Regulation shall be construed accordingly."

Clerk to the Legislative Council

June 2001