

LEGISLATIVE COUNCIL BRIEF

Telecommunications Ordinance (Chapter 106)

TELECOMMUNICATIONS (AMENDMENT) REGULATION 2002

**TELECOMMUNICATIONS (CARRIER LICENCES)
(AMENDMENT) REGULATION 2002**

INTRODUCTION

This brief aims to inform Members on the Telecommunications (Amendment) Regulation 2002, and the Telecommunications (Carrier Licences) (Amendment) Regulation 2002 at Annexes 1 and 2 (collectively known as Amendment Regulations hereafter) respectively. The Amendment Regulations aim to reduce the annual mobile licence fee per mobile station from \$30 to \$24 with effect from 1 May 2002.

BACKGROUND and ARGUMENT

General Background

2. The mobile licence fees are payable on the issue and on the anniversary of the issue of licences each year. One component of the licence fee is a fee based on the “number of mobile stations used by customers of the services”, and is currently set at \$30 per station. Currently, there are three types of mobile licences :-

- (i) the licence fee payable under the Public Radiocommunications Service (PRS) licences – this fee is set by the Chief Executive in Council in the Telecommunications Regulations (Cap. 106 sub. leg.). As a result of sustained growth in the number of mobile phone users, we reduced the annual licence fee per mobile station under the PRS licences twice from \$75 to \$55 on 1 May 1999, and from \$55 to \$30 on

1 May 2000. The six mobile operators running the second generation mobile services (2G), trunked radio operators, radiolocation service operators and paging operators hold PRS licences;

- (ii) the licence fee payable under the mobile carrier licences – this fee is set by the Secretary for Information Technology and Broadcasting in the Telecommunications (Carrier Licences) Regulation (Cap. 106 sub. leg.). The four new mobile operators of the third generation mobile services (3G) hold mobile carrier licences; and
- (iii) the licence fee payable under the public non-exclusive telecommunications (PNETS) licences – this fee is set by the Telecommunications Authority (TA) under section 7(6) of the Telecommunications Ordinance (Cap. 106). The new mobile virtual network operators (MVNO) hold these licences.

Public Consultation

3. Having reviewed the fee level of the above three licences in late 2001, we originally proposed to reduce the licence fee based on the “number of mobile stations used by customers of the services” from \$30 to \$25 per station. We conducted a public consultation exercise from 11 January to 1 February 2002 on the proposed reduction. We also explained in the consultation paper that the Office of the Telecommunications Authority (OFTA) would take the opportunity to include the number of activated prepaid Subscriber Identity Module (SIM) cards in addition to the number of subscription customers when counting the number of mobile stations used by customers of the services in the calculation of licence fee payable by mobile operators. With the advancement in technology and changes in consumer pattern, the use of prepaid SIM cards has become more prevalent. The number of prepaid SIM cards surged from 42,335 in 1997 (representing 2% of total number of mobile customers) to 1,061,052 in 2000 (representing 20% of total number of mobile customers). Customers may now buy prepaid SIM cards and use them with mobile handsets directly procured from the market without opening subscription accounts.

4. As the basis for collecting the licence fees is based on the number of mobile stations, the current practice of mobile operators excluding the activated prepaid SIM cards should be changed. This change will ensure a fair method in calculating the licence fees collected from the mobile operators. Moreover, only the activated prepaid SIM cards will be subject to payment of licence fees for mobile stations.

5. It is our assessment that the broadening of the basis of the fee collection and the reduction of the licence fees for mobile stations should, overall, be revenue-neutral for the six 2G operators. As the licence fees payable by the six 2G operators are more or less the same as before, we do not expect consumers to be affected by the change. Paging operators, radiolocation service operators and trunked radio operators who also hold the PRS licences will benefit from the fee reduction. The four new 3G operators and the new MVNOs will also benefit when they commence service and take on customers in due course.

The Revised Proposal

6. During the consultation, we received a total of five submissions, all from the existing mobile operators. The submissions were generally supportive of the Government's initiative to reduce licence fee, and three requested further reduction. In particular, there were views that the latest pre-paid SIM card figure should be used to derive a fee proposal which was revenue-neutral for the six 2G operators.

7. We have reviewed our original proposal, taking into account the views in the submissions. We agree that we should make use of the latest number of activated pre-paid SIM cards available in setting a fee level which will be revenue-neutral. Based on the number of activated pre-paid SIM card in December 2001, we consider that the licence fee can be further reduced to \$24.

THE AMENDMENT REGULATIONS

8. To reduce the mobile licence fees:-

(a) under section 37 of the Telecommunications Ordinance (Cap. 106), and section 29A of the Interpretation and General

Clauses Ordinance (Cap. 1), the Secretary for Treasury has amended Part II of Schedule 1 to the Telecommunications Regulations (Cap. 106 sub. leg.); and

- (b) under section 7(2) of the Telecommunications Ordinance (Cap. 106), the Secretary for Information Technology and Broadcasting has amended Part 3 of Schedule 3 to the Telecommunications (Carrier Licences) Regulation (Cap. 106 sub. leg.).

Under the Amendment Regulations, the annual licence fee payable per mobile station will be reduced to \$24. This is achieved by reducing the fees for the first 200 mobile stations or less from \$6,000 to \$4,800 a year and for each subsequent 100 mobile stations or less from \$3,000 to \$2,400 a year.

9. The commencement sections provide for the Amendment Regulations to take effect from 1 May 2002. The TA will amend the fees for PNETS licences accordingly on the same date.

LEGISLATIVE TIMETABLE

10. The legislative timetable will be —

Publication in the Gazette	8 March 2002
Tabling at the Legislative Council	13 March 2002

BASIC LAW IMPLICATIONS

11. The Department of Justice advises that the Amendment Regulations are consistent with the Basic Law.

HUMAN RIGHTS IMPLICATIONS

12. The Department of Justice advises that the Amendment Regulations have no human rights implications.

FINANCIAL AND STAFFING IMPLICATIONS

13. The reduction of the annual licence fee per mobile station under the three mobile licences is generally derived from a revenue-neutral basis. It would have insignificant effect on the financial performance of the OFTA Trading Fund. The reduction does not have any staffing implications.

ECONOMIC IMPLICATIONS

14. At present, the mobile licence fee is paid by the mobile operators and not separately recovered from customers. As the fee reduction is basically a revenue-neutral arrangement for the six 2G operators, there should not be any significant cost implication on them. For pagers, the trade practice is that licence fees are paid for by pager users direct. The pager users will therefore stand to benefit from the reduction. Other operators, including the radiolocation service operators, trunked radio operators, the new 3G operators and the MVNOs will also benefit from the reduction.

ENVIRONMENTAL IMPLICATIONS

15. There is no environmental implication.

PUBLIC CONSULTATION

16. To amend the fee payable for the mobile carrier licences, the Secretary for Information Technology and Broadcasting is required under section 7(3) of the Telecommunications Ordinance (Cap. 106) to consult members of the public who are interested before making the necessary legislative amendment. The Secretary for Information Technology and Broadcasting completed the consultation exercise on 1 February 2002, details of which are set out in paragraphs 6 - 7 above.

17. We briefed the Information Technology and Broadcasting Panel of the Legislative Council on 8 February 2002. The Panel is supportive of the proposal to reduce the licence fees.

PUBLICITY

18. A press release will be issued to tie in with the gazettal of the Amendment Regulations. A spokesman will be available for answering media enquiries.

ENQUIRIES

19. For any enquiries relating to this Brief, please contact:-

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7 March 2001

Information Technology and Broadcasting Bureau

TELECOMMUNICATIONS (AMENDMENT) REGULATION 2002

(Made under section 37 of the Telecommunications Ordinance (Cap. 106) and section 29A of the Interpretation and General Clauses Ordinance (Cap. 1))

1. Commencement

This Regulation shall come into operation on 1 May 2002.

2. Schedule 1 amended

Schedule 1 to the Telecommunications Regulations (Cap. 106 sub. leg.) is amended, in Part II, under the heading "PUBLIC RADIOCOMMUNICATIONS SERVICE LICENCE" -

- (a) in paragraph 1(d), by repealing "\$6,000" and substituting "\$4,800";
- (b) in paragraph 1(e), by repealing "\$3,000" and substituting "\$2,400".

Secretary for the Treasury

Explanatory Note

The purpose of this Regulation is to amend Part II of Schedule 1 to the Telecommunications Regulations (Cap. 106 sub. leg.) in order to reduce the annual licence fee payable for a public radiocommunications service licence. The annual licence fee is calculated by reference to, inter alia, the number of mobile stations used by customers of the service provided under the licence.

**TELECOMMUNICATIONS (CARRIER LICENCES)
(AMENDMENT) REGULATION 2002**

(Made under section 7(2) of the Telecommunications
Ordinance (Cap. 106))

1. Commencement

This Regulation shall come into operation on 1 May 2002.

2. Fees payable for carrier licences

Schedule 3 to the Telecommunications (Carrier Licences)
Regulation (Cap. 106 sub. leg.) is amended, in Part 3 -

- (a) in section 1(d), by repealing "\$6,000" and substituting "\$4,800";
- (b) in section 1(e), by repealing "\$3,000" and substituting "\$2,400".

Secretary for Information Technology
and Broadcasting

Explanatory Note

The purpose of this Regulation is to amend Part 3 of Schedule 3 to the Telecommunications (Carrier Licences) Regulation (Cap. 106 sub. leg.) in order to reduce the annual licence fee payable for a mobile carrier licence. The annual licence fee is calculated by reference to, inter alia, the number of mobile stations used by customers of the service provided under the licence.