

立法會
Legislative Council

LC Paper No. CB(1)662/04-05
(These minutes have been seen
by the Administration)

Ref: CB1/SS/3/04/1

**Subcommittee on
Telecommunications (Designation of Frequency Bands subject to Payment of
Spectrum Utilization Fee) (Amendment) Order 2004,
Telecommunications (Method for Determining Spectrum Utilization Fees)
(Third Generation Mobile Services) (Amendment) Regulation 2004 and
Telecommunications (Level of Spectrum Utilization Fees)
(Second Generation Mobile Services) Regulation**

**Minutes of first meeting
held on Wednesday, 22 December 2004, at 2:30 pm
in Conference Room B of the Legislative Council Building**

- Members present** : Hon SIN Chung-kai, JP (Chairman)
Dr Hon LUI Ming-wah, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
- Member absent** : Hon Abraham SHEK Lai-him, JP
- Public officers attending** : Mrs Marion LAI, JP
Acting Permanent Secretary for Commerce, Industry
& Technology (Communications and Technology)
- Ms Gracie FOO
Deputy Director-General of Telecommunications
- Mr Y K HA
Assistant Director of Telecommunications
(Regulatory)
- Miss CHIM Kin-ning, Christine
Regulatory Affairs Manager (Economic Regulation)
Office of Telecommunications Authority

Ms LAM See-man, Francoise
Senior Government Counsel

Clerk in attendance : Miss Polly YEUNG
Chief Council Secretary (1)3

Staff in attendance : Ms Connie FUNG
Assistant Legal Adviser 3

Ms Debbie YAU
Senior Council Secretary (1)1

Action

I. Election of Chairman

Mr Jasper TSANG presided over the election of the Chairman of the Subcommittee. He invited nominations for the chairmanship of the Subcommittee.

2. Mr SIN Chung-kai was nominated by Mr Howard YOUNG and seconded by Ms Audrey EU. Mr SIN Chung-kai accepted the nomination. There being no other nominations, Mr SIN was declared Chairman of the Subcommittee. Mr SIN then took over the chair.

II. Meeting with the Administration

LC Paper No. CB(1)580/04-05(01) -- The Administration's letter
(*tabled and subsequently issued on 23 December 2004*) providing supplementary
information further to its reply
dated 16 December 2004 to the
Assistant Legal Adviser's letter of
15 December 2004

LC Paper No. CB(1)562/04-05(01) -- Marked-up copy of L.N. 208 and
209 of 2004 prepared by the Legal
Service Division

LC Paper No. CB(1)562/04-05(02) -- Letter dated 15 December 2004
from the Assistant Legal Adviser
(ALA) to the Administration

- LC Paper No. CB(1)562/04-05(03) -- Reply dated 16 December 2004 from the Administration to ALA's letter of 15 December 2004
- LC Paper No. CB(1)562/04-05(04) -- The subsidiary legislation gazetted on 10 December 2004 (L.N. 208, 209 and 210 of 2004)
- CTB(CR)7/23/11 -- The Legislative Council Brief issued by the Commerce, Industry and Technology Bureau
- LC Paper No. LS21/04-05 -- Legal Service Division Report on the proposed subsidiary legislation
- LC Paper No. CB(1)560/04-05 -- Background brief on the subsidiary legislation (L.N. 208, 209 and 210 of 2004) prepared by the Secretariat

Other relevant papers issued previously

- LC Paper No CB(1)384/04-05(02) -- Statement of the Telecommunications Authority on Licensing of Mobile Services on Expiry of Existing Licences for Second Generation Mobile Services (English version only)
- LC Paper No CB(1)412/04-05(11) -- Information paper on "Licensing of Mobile Services on Expiry of Existing Licences for Second Generation Mobile Services and related subsidiary legislation"

3. The Subcommittee deliberated (Index of proceedings attached at Appendix).

CDMA and TDMA licences

4. On the continuing operation of the CDMA/TDMA services or otherwise beyond November 2008, the Administration advised that the issue would be considered in the context of the spectrum policy review.

Spectrum utilization fee (SUF)

5. On the sharp differential between the SUF for the first five years (i.e. \$145 per kHz of radio frequency assigned) and the sixth year onwards (i.e. \$1,450 per kHz of radio frequency assigned), the Administration said that the SUF for the 2G spectrum was set at a modest level for the first five years to allow operators to upgrade their networks for the provision of advanced mobile services and to identify additional revenue sources. The Administration considered it appropriate that the SUF structure for the 2G and 3G spectra should converge from the sixth year onwards because the gap between the service capabilities of the 2G and 3G networks was expected to narrow down. In fact, four of the current six 2G mobile services operators already held 3G licences. Moreover, there were reports that the other two operators had approached the 3G licensees with a view to leasing 3G network capacity from them.

6. On the estimated revenue to be derived from the SUF levied on 2G licensees, the Administration advised that based on the radio frequencies currently assigned, a mobile carrier licensee would pay about \$2.4 to \$3.4 million for each of the first five licence years. Assuming that only the minimum fee was payable by the 2G licensee from the sixth year onwards, it would pay an annual fee of about \$24 million to \$34 million.

7. Members noted that two rounds of consultation on the licensing arrangements, which included the introduction of SUF, of mobile telecommunications services on expiry of existing 2G licensees had been conducted. According to the Administration, the existing 2G licensees did not object to the levy of SUF. However, some of the respondents' views varied on the level of SUF.

Clause-by-clause examination

L.N. 208

8. Members noted that in the view of the Assistant Legal Adviser 3 (ALA3), the present drafting of L.N. 210 (when read together with L.N. 208) might not clearly reflect the Administration's intent to apply the provisions relating to SUF to 2G licensees only after the expiry of their existing licences. They also noted that according to the Administration, the incumbent 2G licensees did not hold any 2G mobile carrier licences until new mobile carrier licences were issued upon expiry of their current PRS licences. As such, the requirement to pay SUF would not arise until they were holders of mobile carrier licences. Nevertheless, at members' request, the Administration undertook to further examine the drafting aspects as raised by ALA3 and revert to the Subcommittee.

Admin

L.N. 210

9. Referring to proposed section 4(2) of L.N. 210, members queried whether 2G licensees could take advantage by returning certain frequency spectrum to TA shortly before each anniversary of the issue of the licence so that a lower level of SUF would be levied on account of the reduced spectrum; and then requesting additional assignment of spectrum after the SUF payment.

10. In response, the Administration said that it would need to examine whether it was proper for the TA to re-assign the returned spectrum to the same licensee within such a short duration. Nevertheless, the Administration pointed out that operators would unlikely resort to such a practice because there was no guarantee that the spectrum they had returned earlier would be re-assigned to them readily after the anniversary of the issue of the licence. Moreover, there was cost implication in terms of re-adjustment in equipment and facilities to operate in changed frequency channels. In addition, in deciding whether or not to assign frequencies to a licensee, TA had to conduct consultation with all relevant stakeholders in accordance with the requirements under TO.

Admin 11. Members noted the difference between the Chinese texts of proposed section 5 (c) and (d) of L.N. 210 and the corresponding provisions applicable to 3G mobile services (namely, section 10 (c) and (d) of Cap 106X). For example, the Chinese rendition of the term “assess” in proposed section 5 of L.N. 210 was “評核” while “評估” was used for the same English term in section 10 of Cap 106X. The Administration considered that “評核” was more appropriate and would consider whether consequential amendment should be made to section 10 of Cap 106X to achieve consistency with L.N. 210.

Legislative timetable

12. Members noted that the Chairman of the House Committee would move a resolution at the Council meeting on 5 January 2005 to extend the scrutiny period of the subsidiary legislation to 2 February 2005. As such, if it was necessary to amend the subsidiary legislation, the deadline for giving notice of the relevant motion was 26 January 2005. The Subcommittee had to report to the House Committee by 21 January 2005.

Date of next meeting

13. Members agreed to invite written views on the proposed subsidiary legislation via two channels. Firstly, a general notice would be posted on the Council’s website on the Internet to invite submissions by 6 January 2005. Secondly, letters would be sent to the following parties inviting them to provide written submissions and to indicate their intention, if any, of attending the next meeting of the Subcommittee to be held on 12 January 2005 at 8:30 am:

- (a) The six mobile services operators;
- (b) Consumer Council;
- (c) Hong Kong Bar Association; and
- (d) The Law Society of Hong Kong.

(Post-meeting note: The Subcommittee has posted a general notice on the website of the Council to invite submissions. It has also written to the nine parties above inviting them to provide written submissions. Members have been informed of the arrangements and invited to propose other invitees vide LC Paper No CB(1)585/04-05 issued on 23 December 2004.)

III. Any other business

14. There being no other business, the meeting ended at 3:50 pm.

Council Business Division 1
Legislative Council Secretariat
10 January 2005

**Proceedings of the first meeting of the Subcommittee on
Telecommunications (Designation of Frequency Bands subject to Payment of
Spectrum Utilization Fee) (Amendment) Order 2004,
Telecommunications (Method for Determining Spectrum Utilization Fees)
(Third Generation Mobile Services) (Amendment) Regulation 2004 and Telecommunications
(Level of Spectrum Utilization Fees) (Second Generation Mobile Services) Regulation
on Wednesday, 22 December 2004 at 2:30 pm
in Conference Room B of Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 - 000135	Mr SIN Chung-kai Mr Jasper TSANG Mr Howard YOUNG Ms Audrey EU	Election of Chairman	
000136 - 000924	Chairman The Administration	(a) Introductory remarks. (b) Briefing by the Administration.	
000925 - 001355	Chairman Mr Howard YOUNG The Administration	Continuing operation of the CDMA/TDMA services or otherwise beyond November 2008 and the impact on users if CDMA services were phased out.	
001356 - 002157	Chairman Mr Jasper TSANG The Administration	(a) The need to levy spectrum utilization fee (SUF) for 2G spectrum because it was a scarce public resource. (b) The Administration's explanation on (i) the sharp differential between the levels of SUF for 2G spectrum levied during and after the first five years of the new mobile carrier licences; and (ii) increasing convergence of the service capabilities of 2G and 3G networks by 2010 or 2011. (c) Two rounds of consultation conducted in August 2003 and March 2004.	
002158 - 002906	Chairman Ms Audrey EU The Administration	(a) The proposed subsidiary legislation as the legal basis for levying SUF on 2G spectrum.	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) Application of SUF to new mobile carrier licensees, not existing 2G licensees holding PRS licences.</p> <p>(c) The Administration's remark that incumbent 2G licensees had no objection in principle to the requirement to pay SUF.</p>	
002907 – 003524	Mr Howard YOUNG The Administration	The advent of 3G technology and growing market demand for more advanced mobile services.	
003525 - 003650	Mr Jasper TSANG The Administration	The method for determining SUF was to be stipulated in L.N. 210 and would not be negotiable, but the mobile carrier licensees could pay less SUF by returning surplus spectrum to the Telecommunications Authority (TA).	
003651 - 004055	Chairman The Administration Clerk	<p>(a) Invitation of written views.</p> <p>(b) Extension of the scrutiny period.</p> <p>(c) Date of next meeting.</p>	Members to note decisions in paragraphs 12 and 13 of the minutes.
004056 - 004841	Chairman The Administration Assistant Legal Adviser 3 Ms Audrey EU	<p><u>Clause-by-clause examination</u></p> <p><u>L.N. 208</u></p> <p>Whether the present drafting reflected the legislative intent that provisions relating to SUF would apply to 2G licensees only after the expiry of the existing licences; and the need or otherwise to add an explicit provision stating that the proposed provisions on SUF would not apply to existing 2G licences.</p>	The Administration to note and take action as per paragraph 8 of the minutes.
004841 - 005005	Chairman The Administration	<p><u>L.N. 209</u></p> <p>Members raised no query.</p>	

005006 - 010836	Chairman Ms Audrey EU The Administration Mr Jasper TSANG Mr Howard YOUNG	<u>L.N. 210</u> - <u>sections 1 to 4</u> (a) The estimated amount of annual SUF to be received by the Government as part of the general revenue. (b) The Administration's view that 2G licensees would unlikely take advantage by returning some frequencies to the TA shortly before SUF payment, and requesting additional frequencies shortly afterwards.	
010837 - 011152	Chairman The Administration Assistant Legal Adviser 3	<u>L.N. 210</u> - <u>section 5</u> Difference in the Chinese texts of section 5(c) and (d) of L.N. 210 and section 10 (c) and (d) of Cap 106X. For example, the difference in the Chinese renditions of the term "assess" used in the two provisions.	The Administration to follow up as per paragraph 11 of the minutes.
011153 - 011414	Chairman Assistant Legal Adviser 3 The Administration	<u>CDMA/TDMA Licences (CB(1)562/04 – 05 (02), (03) and CB(1)580/04-05(01))</u> Members noted the legal basis for granting the CDMA licensee and TDMA licensee a 3-year migration period and the administrative means to implement this arrangement.	
011415 - 012024	Chairman The Administration Mr Jasper TSANG Mr Howard YOUNG Ms Audrey EU Clerk	Date of next meeting.	