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8 January 2005

Legislative Council Secretariat  
Legal Service Division  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

(Attn: Ms Connie Fung, Assistant Legal Adviser)

Dear Ms Fung,

**Subsidiary Legislation made under the  
Telecommunications Ordinance (Cap.106)  
(L.N. 208 to L.N. 210 of 2004)**

I wish to advise that, following discussions with you, we intend to move a resolution at the LegCo meeting on 2 February 2005 to amend the subsidiary legislation to implement Spectrum Utilization Fee (SUF) for Mobile Carrier Licences to be issued upon the expiry of existing Public Radiocommunications Service (PRS) licences for second generation mobile services.

The proposed resolution will cover three areas of amendment –

**(a) Scope of application of the Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) Regulation (L.N. 210)**



We maintain our view that the above Regulation, as presently drafted, should not be interpreted as covering the existing PRS licences issued for second generation mobile services, and will not in effect subject the existing PRS licensees to the requirement to pay any spectrum utilization fee. Nevertheless, we recognise and appreciate your suggestion that if the meaning of “relevant mobile carrier licence” could be elaborated in this Regulation, it will be easier for one to understand the exact coverage of this Regulation. As such, we have no objection to your proposal to specify more explicitly the mobile carrier licences to which the Regulation would apply.

**(b) Amendment of Chinese text of Section 10 of the Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation (Cap.106X)**

We note your suggestion that the Chinese text in section 10 of Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation (Cap.106X) should also be amended to tie in with the improved wording we choose to adopt in a similar section (section 5) of the Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) Regulation (L.N.210). The Department of Justice originally intended to follow the normal course of action to make such consequential textual amendments to existing legislation in separate exercises carried out from time to time. We however have no objection to your proposal to include such amendments as part of the proposed resolution.

**(c) Commencement date of the Telecommunications (Designation of Frequency Bands Subject to Payment of Spectrum Utilization Fee) (Amendment) Order 2004 (L.N.208), the Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) (Amendment) Regulation 2004 (L.N.209), and the Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) Regulation (L.N.210)**

Taking into account the effective date of the proposed resolution, we consider it tidier to amend the commencement date of the above three pieces of subsidiary legislation to 4 February 2005. While we understand that this is not absolutely necessary, we intend to include this amendment in the proposed resolution.

Subject to your further views, we will prepare a draft resolution for the above three amendments accordingly for your consideration.

Yours sincerely,



(Li Yeuk Yue, Tony)  
for Secretary for Commerce, Industry and Technology

