

立法會
Legislative Council

LC Paper No. CB(1)560/04-05

Ref. : CB1/SS/3/04

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

Background brief

Purpose

This paper sets out the background of the proposed subsidiary legislation (L.N. 208 to 210 of 2004) made under the Telecommunications Ordinance (Cap. 106) (TO) and summarizes members' views expressed at the Panel on Information Technology and Broadcasting.

Background

2. Under section 32I of TO, the Telecommunications Authority (TA) may by order designate the frequency bands in which the use of spectrum is subject to the payment of spectrum utilization fees (SUF) by the spectrum users. The level of, or the method for determining, the SUF will be prescribed by the Secretary for Commerce, Industry and Technology (SCIT). Section 32I(8) of TO provides that SUF paid by licensees shall be paid into the General Revenue. At present, while SUF are payable by licensees providing third generation (3G) mobile services, those providing second generation (2G) mobile services are not subject to payment of such fees. The Administration considers it appropriate to start charging 2G licensees SUF upon expiry of their current licences because radio spectrum is a scarce public resource and licensees should be required to pay for their right to use it to provide commercial services.

The subsidiary legislation

3. The purpose of L.N. 208 and L.N. 210 is to extend the requirement to pay SUF to licensees of 2G mobile services in the new round of licences upon expiry of their existing ones. L.N. 208 designates additional sets of frequency bands in which the use of spectrum is subject to the payment of SUF by the spectrum users. These sets of frequency bands are currently deployed for provision of 2G mobile services. L.N. 210 specifies the level of SUF for these additional frequency bands and empowers TA to take remedial action should a licensee fail to keep proper accounts for the purpose of determining SUF. Under L.N. 210, the amount of SUF payable by 2G licensees is determined as follows :

- (a) For the first five years of the new licence, the annual SUF will be \$145 per kHz of the total radio frequencies then assigned to the licensee; and
- (b) From the 6th licence year onwards to the expiry of the licence, the annual SUF will be 5% of the network turnover, subject to a minimum fee of \$1,450 per kHz of the total radio frequencies then assigned to the licensee.

4. L.N. 209 makes consequential amendments to the Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation (Cap. 106, sub. leg. X) to make it clear that this Regulation only applies to the four sets of frequency bands that have been designated for providing 3G mobile services.

Public Consultation

5. According to the Administration, two rounds of consultation have been conducted in August 2003 and March 2004 during which the public and the industry were consulted on the licensing requirements, including the introduction of SUF, of mobile telecommunications services upon expiry of existing 2G licences.

Discussion at the Panel

6. The Panel on Information Technology and Broadcasting was briefed on the proposed subsidiary legislation on 13 December 2004. While members have not taken a position on the proposed subsidiary legislation, they have raised the following concerns.

7. On the frequency bands to be assigned to the CDMA licensee and TDMA licensee upon expiry of their current licences, members are concerned

whether the proposed allocation of only one-third of the originally assigned spectrum would be sufficient for coping with the service demands of local subscribers and inbound roamers, notably those from the Mainland, using the CDMA network. The Administration advised that based on its assessment, the proposed spectrum capacity should be able to cope with the service demands in the run-up to November 2008 when the three-year migration period for the CDMA and TDMA licensees expired.

8. Given that the level of SUF payable by 3G licensees is higher than that payable by 2G licensees, members enquired whether the 2G licensees would pose unfair competition to 3G licensees in future when technology advancement would enable 2G licensees to provide services similar to those offered by 3G networks. The Administration pointed out that in due course, the annual SUF for 2G licensees would be 5% royalty over the licensee's network turnover, which was the same charging formula as that of SUF for 3G licensees.

9. As a related subject, members noted that the Administration intended to initiate a separate spectrum policy review on the allocation and assignment of radio spectrum for telecommunications and related services.