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Secretary for Commerce, Industry and Technology
(Attention: Miss Janet WONG, AS(C&T)B)
Commerce, Industry and Technology Bureau
2/F Murray Building
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Central
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Dear Miss Wong,

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

I refer to our telephone conversation yesterday and your email today relating to the above subsidiary legislation and should be grateful if the Administration could provide further clarification on the following matters:

Application of the provisions relating to spectrum utilization fees to 2G licensees

- (a) It is noted that the provisions relating to spectrum utilization fees are intended to apply to 2G licensees only after the expiry of the existing licences. However, it appears that this intent has not been reflected clearly in L.N. 208 and L.N. 210. Should a provision be added to provide that these provisions do not apply to an existing licence? As you know, there is a similar provision (i.e. section 5(2)) in the Telecommunications (Carrier Licences) Regulation (Cap. 106 sub. leg. V) (“the Carrier Licences Regulation”) relating to the fees payable for carrier licences, including mobile carrier licences.
- (b) I understand that the Administration holds the view that at present 2G licensees do not hold any mobile carrier licences until new mobile carrier licences are issued upon expiry of the existing licences. As L.N. 210 is to apply to “the relevant mobile carrier licence”, not to Public Radiocommunications Service (“PRS”) licences under which the 2G mobile services are currently licensed, the Administration comes to the view that 2G licensees are not required to pay spectrum utilization fees before the existing licences expire. However, it is noted that no definition is provided for “the relevant mobile carrier licence” in L.N. 210. I would also like to draw your attention to section 70 of the

Telecommunications Ordinance (Cap. 106) (“TO”) and section 6(1) of the Carrier Licences Regulation. Under section 70 of TO, an existing licence is deemed to be a licence granted under section 7 of TO and the other provisions of TO will apply to that licence. Section 6(1) of the Carrier Licences Regulation provides that the reference to “public radiocommunications service licence” in an existing licence shall include a reference to “mobile carrier licence” and accordingly, the licensee shall comply with the provisions of the existing licence in accordance with that reference as so construed. The effect of the aforesaid provisions would be that the existing 2G licences, although they are called PRS licences, are to be construed as “mobile carrier licences” and subject to the provisions of TO, including those relating to spectrum utilization fees. As a result, it seems that L.N. 210 could be construed to empower Government to charge existing licensees spectrum utilization fees with effect from 3 February 2005 notwithstanding that their existing licences have not expired. To avoid this construction, it would appear necessary to provide expressly that the provisions relating to spectrum utilization fees will not apply to existing licences. Alternatively, the term “the relevant mobile carrier licence” should be defined in L.N. 210.

CDMA and TDMA licences

- (a) According to the Administration’s information paper on “Licensing of Mobile Services on Expiry of Existing Licences for Second Generation Mobile Services and Related Subsidiary Legislation” (LC Paper No. CB(1)412/04-05(11)) issued to the Panel on Information Technology and Broadcasting on 7 December 2004, no new licences will be issued to two 2G licensees, namely, the CDMA licensee and TDMA licensee, but a 3-year migration will be granted during which the licensees concerned are required to pay spectrum utilization fees. Since the relevant licences cannot be further extended beyond their existing expiry dates under the Telecommunications Regulations (Cap. 106 sub. leg. A), what is the legal basis for granting the said migration period?
- (b) Under L.N. 210, spectrum utilization fees will be payable in respect of the relevant mobile carrier licence and “mobile carrier licence” means a carrier licence as defined in section 2 of Carrier Licences Regulation. Under that Regulation, a mobile carrier licence, unless it is an existing licence, will be issued for a period of 15 years. Since no new licences will be issued to CDMA and TDMA licensees and these licences will no longer be existing licences after they have expired, it seems that there will not be any relevant mobile carrier licence relating to services provided over the CDMA and TDMA networks when the CDMA and TDMA licences expire. In the circumstances, please explain how Government would be empowered to require CDMA and TDMA licensees to pay spectrum utilization fees in accordance with section 4 of L.N. 210.

I would appreciate it if you could let us have the Administration's reply in both languages as soon as possible.

Yours sincerely,

(Connie Fung)
Assistant Legal Adviser

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