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21 December 2004

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)**

As a follow up to our letter of 16 December 2004 and the subsequent discussion among the Office of the Telecommunications Authority, Department of Justice, our Communications and Technology Branch and your office, I am writing to elaborate further our views on the two issues you raised as follows:-

Application of the Provisions Relating to Spectrum Utilization Fees to 2G Licensees

2. On section 70 of the Telecommunications Ordinance (Cap. 106), we understand that the section only deemed all licences then existed at the time of the enactment of the Telecommunications (Amendment) Ordinance 2000 (36 of 2000) to be "licences granted under the new



legislation” such that the licences and their holders (i.e. licensees) would be subject to the Telecommunications (Amendment) Ordinance as if the licences had been granted under Cap. 106 as amended. While this section provides for the transitional arrangement for licences granted before the commencement of the Amendment Ordinance, it applies broadly to the terms and conditions of the licences and hence should be a generic section. That section does not provide for an one-to-one matching exercise among the licences then existed and the new licences to be issued after the commencement of the Amendment Ordinance. Should the legislative intent of making this section be so specific, this section should have been drafted with specific details to pair up the types of licences.

3. In respect of section 6 of the Telecommunications (Carrier Licences) Regulation (Cap.106V), we consider that its application should be confined to the interpretation of the terms and conditions of licences. In fact, this regulation has not suggested that a Public Radiocommunications Service (PRS) licence is equivalent to a mobile carrier licence.

4. We understand that the Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) Regulation (L.N. 210), if adopted in its current form, will not in effect subject the existing PRS licensees to the requirement to pay any spectrum utilization fee.

CDMA and TDMA Licences

5. We have explained that while section 7 of Cap.106 provides for the granting of telecommunications licences to authorise licensees to establish means of telecommunications and provide telecommunications services, section 32H of Cap.106 separately provides the Authority with the power to assign, vary or withdraw frequencies. As such, while the new mobile carrier licence to be issued will be valid for 15 years, the radio frequencies to be assigned, the purpose for which the frequencies are to be used, and the conditions (including the period of assignment) under which the frequencies are to be used will be determined by the Authority. Hence, the validity period of the licence needs not be the same as the period for which the frequencies are to be assigned, provided that the different and shorter periods for which the specific spectra of frequencies would be assigned are clearly specified in the licence.

6. We have also explained the administrative means by which the Authority will employ for the migration of the existing TDMA and CDMA customers over a period of 3 years after the expiry of the two existing licences. We have already consulted the two licensees and they are agreeable to this arrangement.

Yours sincerely,



(Li Yeuk Yue, Tony)

for Secretary for Commerce, Industry and Technology