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Legislative Council

LC Paper No. CB(1)624/04-05
(These minutes have been seen by the Administration)

Ref : CB1/PL/ITB/1

Panel on Information Technology and Broadcasting

Minutes of meeting
held on Monday, 13 December 2004, at 2:30 pm
in the Chamber of the Legislative Council Building

Members present	**:**	Hon SIN Chung-kai, JP (Chairman) Hon Albert Jinghan CHENG (Deputy Chairman) Dr Hon LUI Ming-wah, JP Hon Jasper TSANG Yok-sing, GBS, JP Hon Howard YOUNG, SBS, JP Hon Timothy FOK Tsun-ting, GBS, JP
Public officers attending	**:**	Agenda Item IV - VI Mrs Marion LAI, JP Deputy Secretary for Commerce, Industry and Technology (Communications and Technology) Mr M H AU, JP Director-General of Telecommunications Agenda Item IV Mr K S WONG Assistant Director of Telecommunications (Support) Agenda Item V Mr Danny LAU Assistant Director of Telecommunications (Operations)

Agenda Item VI

Mr Y K HA
Assistant Director of Telecommunications
(Regulatory)

Attendance by invitation : Agenda Item IV

Telecommunications Operators

Hong Kong Broadband Network Ltd

Mr Ricky WONG
Chairman

Miss Jessie CHENG
Corporate Communications Manger

Hutchison Global Communications Ltd

Ms Mary CHEAH
Senior Legal Counsel

Mr Thomas YAU
Senior Manager – Regulatory & Commercial

New World Telecommunications Ltd

Mr Peter HUNG
Vice President – Marketing

Mr Malcolm LEONG
Legal Counsel – Regulatory

PCCW-HKT Telephone Limited

Mr Stuart CHIRON
Director of Regulatory Affairs

Mr Paul BERRIMAN
Head of Strategic Market Development

Industry Organization and Concern Groups

Consumer Council

Dr Victor HUNG
Chief Research & Trade Practices Officer

Hong Kong Internet Service Providers Association

Mr Lento YIP
Vice Chairman

Mr Eddy KUK
Committee Member

Senior Citizen Home Safety Association

Mr MA Kam-wah
Executive Director

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

Ms Sharon CHAN
Legislative Assistant (1)6

Action

I Confirmation of minutes and matters arising

LC Paper No. CB(1)414/04-05 -- Minutes of meeting held on 8 November 2004

The minutes of the Panel meeting on 8 November 2004 were confirmed.

II Papers issued since last meeting

LC Paper No. CB(1)415/04-05(01)	--	Press release on Consultation Paper on Guideline on Interconnection between In-building Coaxial Distribution Systems
LC Paper No. CB(1)474/04-05(01)	--	Report on 2004 Annual Survey on Information Technology Usage and Penetration in the Business Sector
LC Paper No. CB(1)474/04-05(02)	--	Thematic Household Survey Report No. 20

2. Members noted the papers issued since last meeting.

III. Date and items for discussion for next meeting

LC Paper No. CB(1)412/04-05(01)	--	List of outstanding items for discussion
LC Paper No. CB(1)412/04-05(02)	--	List of follow-up actions

Special meeting on 18 January 2005

3. Members noted that a special meeting would be held on 18 January 2005 from 4:40 pm to 5:40 pm to receive the briefing by the Secretary for Commerce, Industry and Technology on the relevant policy initiatives in the Chief Executive's Policy Address 2005.

Regular meeting for January 2005

4. Members agreed to discuss the following items at the next meeting to be held on 10 January 2005 at 2:30 pm:

(a) Overall report on the Cyberport project;

(b) Operation of the Film Guarantee Fund; and

(c) 2004 Public Opinion Survey on Film Classification
(deferred from the December 2004 meeting)

Meeting arrangement for February 2005

5. Members noted the result of the consultation on their availability in attending the February 2005 meeting as originally scheduled, or at two other proposed time-slots. As among the options, five out of six Panel members had opted to re-schedule the meeting to Friday, 4 February 2005, at 8:30 am, the Chairman said that the February meeting would be re-scheduled to be held on 4 February 2005 at 8:30 am. Members agreed.

(*Post-meeting note:* Upon confirmation of the meeting arrangement, members were notified of the re-scheduling of meeting for February 2005 vide LC Paper No CB(1)491/04-05 issued on 14 December 2004.)

IV Consultation exercise on the regulation of Internet Protocol (IP) telephony

LC Paper No CB(1)412/04-05(03)	--	Questions raised by Hon Albert Jinghan CHENG on IP telephony and the Administration's response
LC Paper No CB(1)412/04-05(04)	--	Information note on "Developments in the Regulation of Internet Protocol Telephony in Selected Overseas Places" prepared by the Research and Library Services Division of the Secretariat

Other relevant papers issued previously

LC Paper No CB(1)145/04-05 (05)	--	Information paper provided by Administration
LC Paper No CB(1)145/04-05(06)	--	Executive summary of the consultation paper on regulation of Internet Protocol Telephony
LC Paper No CB(1)145/04-05(07)	--	General Conditions for Carrier Licence under Telecommunications Ordinance (Cap 106)

LC Paper No CB(1)145/04-05(08) -- Information note on Internet Protocol Telephony prepared by the Research and Library Services Division of the Secretariat

Presentation by deputations

6. The Chairman welcomed the deputations to the meeting and invited them to present their views on the consultation paper on regulation of IP Telephony.

Hong Kong Broadband Network Ltd (HKBN)
(LC Paper No CB(1)412/04-05(05))
(*tabled and subsequently issued on 15 December 2004*)

7. Mr Ricky WONG remarked that at present, HKBN was a major provider of voice over IP (VoIP) services in Hong Kong and the second largest operator in the residential telephone services market. He highlighted the following salient points in HKBN's submission:

(a) Major operators in the United Kingdom, United States of America, Japan and the Mainland had launched VoIP services. Hong Kong should not lag behind and should maintain its leading position as Asia's telecommunications hub by encouraging investment and competition in VoIP services.

(b) The voice quality of VoIP services on self-built networks was no different from that of traditional telephone services. VoIP services supported basic and advanced value-added services such as call forwarding, sequential routing, simultaneous ringing etc.

(c) The VoIP service providers were able to keep track of the IP address of the caller even if he/she had moved the VoIP adapter to a new location without notifying the VoIP service provider. The Internet service providers (ISPs) could then base on the IP address and provide the physical address information of the caller to the relevant authorities in case he/she had made an emergency call without indicating his/her physical location.

(d) To ensure uninterrupted telephone service during power outage, the Office of the Telecommunications Authority (OFTA) might consider mandating VoIP service providers to install backup power supply for users; or prohibiting the service providers to install VoIP services for specific groups, such as those using the "life-saving device", so that these groups would continue using traditional telephone services.

(e) VoIP was just an Internet application for which the consumers had already paid for using the Internet bandwidth. Hence, VoIP service providers should not be required to pay an "access charge" for the use of the network connection.

Hutchison Global Communications Ltd (HGC)
(LC Paper No CB(1)412/04-05(06))

8. Ms MARY CHEAH highlighted that changes to the existing telecommunications regulatory framework to cater for IP-based services should strike a proper balance between creating an environment conducive to the healthy growth of the IP-based service market and safeguarding the interests of the operators and subscribers of conventional telephone services over Public Switched Telephone Network (PSTN). As such, the Telecommunications Authority (TA) should allow the market to determine its own appropriate structure. Ms CHEAH also outlined the differences of pure VoIP services and integrated IP-based services and considered that the present consultation exercise should deal only with pure VoIP services. She then elaborated on the views of HGC on pure VoIP as follows:

(a) VoIP services with any-to-any connectivity should be subject to the same regulatory regime and licence conditions as traditional telephone services if the former were to serve as a full substitute for the latter. If VoIP service providers would be subject to less stringent obligations than fixed telecommunications network service (FTNS) operators, the interests of consumers could not be safeguarded.

(b) Consumers might not be able to distinguish VoIP services from traditional telephone services if the ordinary 8-digit numbering mode was used for the new services. The issue of portability of VoIP telephone numbers with prefix to the FTNS network and vice versa should also be addressed.

(c) In the early stage of development, VoIP services should only be provided by local FTNS licensees. Further changes could be introduced when there was higher public awareness on the service capability of VoIP.

(d) VoIP service providers should pay an access charge to the broadband connection provider in the same manner as international call forwarding service providers paying an access charge to mobile network operators. The level of charge should be determined by commercial negotiation.

(*Post-meeting note:* The speaking note of Ms Mary CHEAH of HGC tabled at the meeting was subsequently issued to members on 15 December 2004 vide LC Paper No CB(1)412/04-05(06))

New World Telecommunications Ltd (NWT)
(LC Paper No CB(1)412/04-05(07))

9. Mr Peter HUNG pointed out that IP Telephony services would provide additional customer choices and spur competition in the telecommunications market. He shared the following views in NWT's submission:

(a) A new type of licence, based on the existing public non-exclusive telecommunication service (PNETS) licence for ISPs should be created for IP Telephony services. The licence should be easy to acquire and subject to minimal regulation. The quality standards, service features and pricing of IP Telephony services should be determined by the market.

(b) If marketed as a substitute for traditional telephone services, IP telephony services should have equivalent standards in terms of any-to-any connectivity, access to emergency services etc. Consumers should be fully informed of the limitations, if any, of IP Telephony services.

(c) To cope with the anticipated demand, notably from overseas users, a prefix to the existing 8-digit numbering mode should be used for IP Telephony services. However, porting of special IP Telephony numbers with extra digits might be technically difficult and hence should not be mandated in the preliminary stage.

(d) IP Telephony service providers should pay an access charge to the operator providing the broadband connection at a level agreed by both parties.

PCCW-HKT Telephone Limited (PCCW)
(LC Paper No. CB(1)454/04-05(01))

10. Mr Stuart CHIRON took members through PCCW's submission which in gist contained the following points:

(a) PCCW fully supported the development of new and innovative services such as IP managed networks and VoIP services.

(b) PCCW supported the policy of light-handed economic regulation on VoIP services because the markets in which VoIP services would be rolled out were already competitive.

(c) The existing regulatory framework and licensing regime for FTNS and for PNETS was well suited to address the introduction of VoIP services.

(d) The continual promotion of network investment and maintenance of investment incentives could help sustain the introduction of new technologies into the telecommunications market. As such, policies that favoured "free-riders" should not be adopted because they would reduce the incentive for network investment.

(e) When introducing new VoIP services, the social welfare aspects of telecommunications services, notably service quality, emergency call services, continuity of services, public safety and security, should not be compromised.

(f) VoIP service providers might operate under an FTNS licence if the service standard could fully satisfy all the obligations of the FTNS licence, including the social welfare aspects. Otherwise, VoIP services should be provided under a PNETS licence under which the VoIP service providers would not be entitled to the rights currently available to FTNS licensees.

(g) Network operators should have the right to charge service providers for the use of their network, including those supplying VoIP services, and determine the appropriable level of charges. TA should not intervene unless there was clear evidence of market failure.

(*Post-meeting note:* The speaking note of Mr Stuart CHIRON of PCCW tabled at the meeting was subsequently issued to members on 15 December 2004 vide LC Paper No CB(1)499/04-05(01))

Consumer Council (CC)
(LC Paper No. CB(1)412/04-05(09))
(*tabled and subsequently issued on 15 December 2004)*

11. Dr Victor HUNG said that CC supported the separation of IP Telephony service provision from carrier network operation to allow more consumer choices. He outlined the main points of their submission on regulation of IP Telephony as follows:

(a) Allowing PNETS licensees to offer VoIP services as substitutes for traditional telephone services at this stage might discourage network investment and hinder the development of IP Telephony services. In the end, consumers' choices would be affected. However, PNETS licensees could be allowed to use IP Telephony technology to provide only international call services to benefit consumers through competition.

(b) If IP Telephony service was intended to be a substitute for traditional telephone services, the service providers should be subject to similar licence conditions applicable to FTNS or fixed carrier (FC) licensees so that local voice service providers could compete on a level playing field. For example, the service providers should also make available printed and telephonic directory for public use unless the customers concerned had refused to disclose the information.

(c) To facilitate number portability, local IP Telephony services should be assigned with a special number block of 8-digit so that consumers might switch easily between fixed line and IP Telephony services.

(d) Consumers should be provided with adequate information about the quality of services of IP Telephony to make informed choices.

(e) It was necessary to stipulate as a licence condition that local telephone services provided for customers who were relying on the telephone line services for critical applications such as "life-lines" had to satisfy the backup power supply requirement.

Hong Kong Internet Service Providers Association (HKISPA)
(LC Paper No. CB(1)467/04-05(01))

12. Mr Lento YIP remarked that the Government should encourage and facilitate the introduction of IP-based telecommunications services such as IP Telephony services. He advocated that the PNETS licence should be modified to enable ISPs to provide IP Telephony services to customers. He presented the views of HKISPA as follows:

(a) 8-digit portable telephone number blocks should be assigned to ISPs to operate IP Telephony services. The numbers used for traditional telephone services and IP Telephony services should be portable between each others' networks.

(b) There was no question of free-riding. As ISPs had already paid for using the local access networks of FTNS operators in providing VoIP services through the latter's broadband connections, they should be on an equal footing as the FTNS operators in receiving LAC for delivery of calls. Or at least they should not be required to settle interconnection charges or LAC with the network operator.

(c) On locating callers making emergency calls through IP Telephony services, ISPs could establish a mechanism to trace the IP address being used for the call and identify the physical location of that specific IP address. Consumers should be well informed of the features and limitations of IP Telephony services so that they could make informed choice over telephone services.

(d) HKISPA agreed that IP Telephony intended as a substitute for traditional telephone service should be subject to minimum quality standard. For IP Telephony service not intended as a substitute, a different set of standard should apply.

Senior Citizen Home Safety Association (SCHSA)
(LC Paper No. CB(1)412/04-05(08))

13. Mr MA Kam-wah highlighted the importance of the reliability and stability of the telephone services which were hooked up with "life-lines". As such, IP Telephony service providers should provide services of acceptable minimum service standard, e.g. quality of voice communications, emergency call service, back-up power supply and after sales service. Mr MA referred to the following recommendations of SCHSA on the regulation of IP Telephony services:

(a) IP Telephony service providers should be required to provide uninterrupted services even during power outage so that SCHSA's clients, mainly of the elderly and persons with disabilities, could still make use of the "life-lines" to make emergency calls when required.

(b) Consumer education should be strengthened. IP Telephony service providers should be required to provide adequate information on their services for consumers to make an informed choice.

(c) IP Telephony service providers should be able to locate the caller who had made an emergency call even if he/she could not provide information on his/her location or address.

(d) IP Telephony service providers should take active steps to assist the consumers, in particular elderly people to make connection in switching to use the VoIP services.

(e) IP Telephony service providers should step up cooperation with agencies providing emergency services to the needy and ensure that their system interface worked well with the "life-lines" system.

Discussion with deputations and Administration

Licensing

14. On licensing, Mr Howard YOUNG sought the views of the telecommunications operators on the drawbacks, if any, of applying the same set of conditions under FTNS or FC licences, and of creating a new category of licence, for the provision of IP Telephony service.

15. Ms Mary CHEAH of HGC recapped HGC's position that in the early stage of development, IP Telephony service should be provided by only FTNS licensees. Creating a separate category of licences for VoIP services might not be in the best interest of consumers. She further explained that at present, the public generally perceived VoIP service as a full substitute for traditional telephone service without noticing the difference in the obligations to be undertaken by FTNS or FC licensees and VoIP service providers. For example, the public might not be aware that VoIP sevice might not function during power outage. On number portability, Ms CHEAH highlighted that in case a new set of numbering mode would be adopted for the new category of licence for VoIP services, there would be cost implications which might eventually be passed onto consumers. As such, Ms CHEAH suggested that a market review should be conducted at a later stage and concluded that the Administration should only consider creating a new category of licence for VoIP services when there was higher public awareness on the service standard of VoIP.

16. Mr Peter HUNG of NWT held a different view. He considered that ISPs should be allowed to operate VoIP services under existing PNETS licences. He believed that the participation of ISPs would facilitate the technological development of IP-based services. If ISPs were required to provide the service under an FTNS licence and meet the obligations therein, the development of VoIP services might be impeded.

17. Mr Stuart CHIRON of PCCW considered that the views of HGC and NWT had grounds and that it was appropriate to allow both FTNS and PNETS licensees to provide VoIP services. However, he stated the view of PCCW that VoIP services provided under an FTNS licence should meet all the relevant licence requirements while those provided under a PNETS licence should be offered as a value-added service.

18. Mr Ricky WONG of HKBN referred to its submission (CB(1)412/04-05(05)) and pointed out that VoIP was a mature and well-tested service commonly deployed by many jurisdictions around the world. He urged the OFTA to expedite the formulation of the regulatory framework. On licensing, Mr WONG considered that various industry players, including PNETS licensees, should be allowed to offer VoIP services and that there should not be any restriction on the number of licences to be issued. He stressed that this would enable consumers to benefit from keen competition.

19. The Deputy Chairman declared that he was one of the founding members and a board member of SCHSA. He considered it reasonable to create a new category of licence with appropriate licence conditions for the provision of VoIP services. These conditions should be well-conceived and adequate in safeguarding consumers' interest.

Consumer issues

20. The Deputy Chairman was very concerned about the limitations of VoIP services and the implications on the socially disadvantaged groups, many of whom might have been attracted to switch to use the more economical option of VoIP services without considering the service features. He cautioned that any delay in locating the physical address of those VoIP users who had made emergency calls through the "life-line" system might give rise to serious consequence. He urged the VoIP service providers to seek technical solutions to solve the problem.

21. In response, Mr Ricky WONG of HKBN explained that his company had followed the guidelines issued by the Hong Kong Police Force (HKPF) in identifying the callers making emergency calls. He informed members that HKBN was currently offering VoIP under its FC licence. Therefore, HKBN had to comply with the licence conditions therein.

22. In this regard, Mr MA Kam-wah of SCHSA pointed out that VoIP services might take place over any broadband connection located anywhere. In case a user had made an emergency call at a location different from the address he/she provided to the VoIP service provider, the emergency agencies would not be able to locate him/her.

23. Commenting on Mr MA's concern, Mr Ricky WONG of HKBN said that there were about 250 000 customers using HKBN's on-net VoIP services through its self-built network. The on-net VoIP services rode on the fixed-line network connected to the customers' premises. HKPF and relevant emergency agencies were able to trace the addresses of the customers making emergency calls according to the information made available by the service providers. For off-net VoIP services, as long as the users would not move the VoIP adapter to another location, the addresses of the callers could still be traced by the relevant parties. Nevertheless, Mr WONG noted the concern of the SCHSA and said that HKBN would be prepared to discuss the issue further with the relevant agencies providing "life-lines" services.

24. Mr Stuart CHIRON of PCCW pointed out that the off-net VoIP services provided by HKBN rode on another operator's network. Given off-net VoIP services could be used on any broadband connection located anywhere, it might not be easy for the relevant agencies to trace the physical address from which an emergency call was made.

Way forward

25. On the way forward, the Director-General of Telecommunications (DG/Tel) said that several operators had requested OFTA's permission to submit their views shortly after the consultation deadline of 4 December 2004. DG/Tel assured members that the Administration would consider the views received thoroughly and formulate proposals on a fair and reasonable regulatory

framework for VoIP services.

26. Summing up, The Chairman thanked the deputations and said that the Panel was very concerned about issues related to the regulation of IP Telephony. He called on the Administration to balance different interests and formulate regulatory measures that could address the concerns of all stakeholders. The Chairman also requested the Administration to report further progress of the subject to the Panel in due course.

Admin

V Amendment of Telecommunications (Telecommunications Apparatus) (Exemption from Licensing) Order

LC Paper No CB(1)412/04-05(10) -- Information paper provided by Administration

27. At the invitation of the Chairman, the Deputy Secretary for Commerce, Industry and Technology (Communications and Technology) DSCIT(CT) briefed members on the proposal to amend the Telecommunications (Telecommunications Apparatus) (Exemption from Licensing) Order (Cap. 106Z) ("the Order") in order to exempt more telecommunications apparatus from the licensing requirement. She said that under section 8(1) of the Telecommunications Ordinance (TO) (Cap 106), licences were required for importing, exporting, possessing, using, dealing in the course of trade, and demonstrating with a view to sale, radio-communications apparatus. Section 39 of the TO provided that the Chief Executive in Council might by order exempt any person from any of the provision(s) in the TO. In the light of latest technological and market developments, the OFTA considered it desirable to amend the Order, which was made in February 2003, to expand and update the list of apparatus eligible for exemption from the licensing requirement. Members noted that the Amendment Order was subsidiary legislation subject to negative vetting by the Council.

28. Mr Howard YOUNG welcomed the proposal to simplify licensing requirements. Noting that model flying aircraft apparatus operating in the 35 MHz, 40 MHz and 72 MHz bands would be exempted under the Amendment Order, he was concerned whether the increasing use of these model flying aircraft could cause interference with other apparatus or give rise to safety hazard.

29. On safety concerns about the model flying aircraft, the Assistant Director of Telecommunications (Operations) (AD/Tel(O)) advised that the matter was subject to other laws. The Amendment Order only recommended that a few channels in the 35 MHz, 40 MHz and 72 MHz be allocated for air modelling on a licence-exempted basis. The proposed allocation would not cause interference to other apparatus. In fact, with the allocation of more channels, the interference between model flying aircraft could be reduced.

30. Mr Jasper TSANG asked whether consideration would be given to amending the principal ordinance to provide for a generic scope of apparatus which required licensing or which could be exempted from such a requirement. In response, DG/Tel remarked that the radio-communications spectrum was a scarce public resource and the Administration would ensure its efficient use through licensing. In line with market changes and technological advancement, OFTA used to exempt by way of amending the Order those apparatus of low transmitter power and used by a considerable number of people. This could help relieve the burden of both the users and regulators in processing the licences.

31. In this connection, Mr Jasper TSANG further asked whether a general exemption could be provided in accordance with certain criteria, e.g. low transmitter power but high usage. In response, DG/Tel pointed out that apart from transmitter power, it was also necessary to specify the frequency bands involved in each case to ensure that the use of the apparatus concerned would not affect other radiocommunications services such as aeronautical and broadcasting services. Moreover, new exemptions would be granted to other radio apparatus in future as the related technology developed. He stressed that the current arrangement was in line with international practices.

32. On the licensing requirement for new products, AD/Tel(O) advised that OFTA would keep itself posted of market development. For new radiocommunications products emerging in the market, OFTA would assess the interference potential and then determine the need or otherwise for individual licensing. In the meantime, the users might also apply on their own accord for the relevant licence for the use of the product. If necessary, OFTA could issue a temporary permit for the product concerned.

33. Summing up, the Chairman concluded that the Panel had no objection to the proposed amendment to the Order.

VI 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)	--	Information paper provided by Administration
LC Paper No CB(1)384/04-05(01)	--	Press release on "New licences for existing 2G mobile services to be granted"

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)
CTB(CR)7/23/11	--	Legislative Council Brief 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"

34. At the invitation of the Chairman, DSCIT(CT) briefed members on the background and the key decisions and recommendations made in the TA's Statement dated 29 November 2004 on the licensing of mobile services on expiry of existing licences for second generation (2G) mobile services and the proposed subsidiary legislation to implement the charging of spectrum utilization fee (SUF) for the new licences. DSCIT(CT) highlighted that two rounds of consultation had been launched on 1 August 2003 and 19 March 2004 respectively. Taking into account the outcome of a consultancy study commissioned by OFTA and the submissions from the industry in response to the second consultation paper, the Government intended to initiate a spectrum policy review on the allocation and assignment of radio spectrum for telecommunications and related services. Members noted that the subsidiary legislation related to the charging of SUF for the new licences had been published in the Gazette on 10 December 2004 and would be tabled at the Council on 15 December 2004.

CDMA Licences

35. Members noted the Administration's decision not to offer new CDMA and TDMA licences due to the licensees' inefficient use of the assigned spectrum. However, the Government would give the CDMA and the TDMA licensees a migration period of 3 years, with one-third of the original assigned spectrum (i.e. 2x2.5 MHz paired spectrum), for customer migration.

36. Mr Howard YOUNG was concerned that whether the allocation of only one-third of the originally assigned spectrum would enable the licensees to cope with the service demands of local subscribers and inbound roamers, notably those from the Mainland, using the CDMA network. In response, DG/Tel advised that based on the Administration's assessment, one-third of the originally assigned spectrum would be more than sufficient to carry all its existing traffic volume and cope with future service demands in the run-up to November 2008 when the 3-year migration period for the licensees expired.

37. Mr Jasper TSANG considered that the proposed customer migration arrangement might lead to the phasing out of the CDMA service from the market by November 2008. He was concerned whether this would be in the best interest of consumers as mobile services using the CDMA network could provide a more economical option for quality reception in certain parts of Hong Kong. On the Administration's claim about inefficient use of the assigned spectrum by the CDMA licensee, Mr TSANG enquired whether this was due to the technical constraint of the system *per se*, or the licensee's inadequate management of the assigned spectrum.

38. In response, DG/Tel said that the continuing operation of the CDMA system or otherwise beyond November 2008 would be considered in the context of the spectrum policy review. In the event that the CDMA system was recommended to continue operation after November 2008, DG/Tel assured members that sufficient lead time would be given to the prospective licensee to undertake the necessary preparatory work. Where necessary, the Administration would also see to it that the legislative and administrative procedures would be completed in time to facilitate the launch of service.

39. On the timetable of the spectrum policy review, DSCIT(CT) said that the Administration had initiated some preparatory work. However, given the wide scope of the exercise, the controversial nature of some of the regulatory issues and having regard to overseas experience, DSCIT(CT) remarked that at this stage, it was difficult to advise on a specific timetable. Nevertheless, the entire exercise would likely straddle some two to three years.

Payment of Spectrum Utilization Fee

40. Members noted the Administration's view that radio spectrum was a scarce public resource and that it was reasonable to require the licensees to pay for their right to use it to provide commercial telecommunications services. They noted the Administration's proposal that the SUF required to be paid by the 2G licensees would be broadly consistent with that for third generation (3G) licensees. The first 5-year period was a transition period for the licensees to factor SUF into their cost structures and to upgrade their networks for the provision of advanced mobile services. The level of annual SUF would be $145 per kHz of the total radio frequencies then assigned to the licensee. From the 6th year and onwards to the expiry of the licence, the annual SUF would be 5% of

the network turnover with a minimum fee of $1,450 per kHz of the total radio frequencies then assigned to the licensee.

41. Given that the level of SUF payable by 3G licensees was higher than that payable by 2G licensees, the Chairman enquired whether the 2G licensees would pose unfair competition to 3G licensees in future, when 2G licensees would be able to provide services similar to those offered by a 3G network as technology advanced. Mr Howard YOUNG also enquired about the level of SUF payable by the CDMA licensee.

42. In response, DG/Tel pointed out that in due course (i.e. from the 6th years onwards), the annual SUF for 2G licensees would be 5% royalty over the licensee's annual network turnover, which was the same charging formula as that of SUF for 3G licensees, albeit that the minimum levels of SUF payable by 2G licensees and 3G licensees were different. DG/Tel further advised that for a 2G licensee without 3G licence, 5% of network turnover would be expected to exceed the minimum level of SUF payable by 2G licensees. As such, the difference between the minimum levels of SUF under 2G and 3G licences would not cause unfair competition between 2G and 3G licensees. DG/Tel also said that during the 3-year migration period, the CDMA licensee would be required to pay SUF proportional to the assigned bandwidth annually at the same rate as other 2G licensees. He confirmed that the income from SUF paid by the licensees would form part of the General Revenue.

43. Summing up, the Chairman said that the Panel noted the proposed subsidiary legislation to implement the charging of SUF but it had not taken a position on the legislative proposals.

VII Any other business

44. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 1
Legislative Council Secretariat
6 January 2005