

L.N. 210 of 2004**TELECOMMUNICATIONS (LEVEL OF SPECTRUM
UTILIZATION FEES) (SECOND GENERATION
MOBILE SERVICES) REGULATION**

(Made under section 32I of the Telecommunications
Ordinance (Cap. 106))

1. Commencement

This Regulation shall come into operation on 3 February 2005.

2. Application

The amount of the spectrum utilization fees to be paid by the users of the spectrum which falls within the frequency bands set out in Part 2 of the Schedule to the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106 sub. leg. Y) shall be determined in accordance with section 4.

3. Interpretation

In this Regulation—

- (a) “mobile carrier licence” (移動傳送者牌照) means a mobile carrier licence as defined in section 2 of the Telecommunications (Carrier Licences) Regulation (Cap. 106 sub. leg. V); and
- (b) “network turnover” (網絡營業額), in relation to calculating a spectrum utilization fee, means the revenue arising from or attributable to the provision of any telecommunications services over any telecommunications network using the frequency bands to which that fee relates.

4. Spectrum utilization fee

- (1) The spectrum utilization fees shall be—
 - (a) for each of the first 5 years of the period of validity of the relevant mobile carrier licence, \$145 for every 1 kHz or part thereof of the spectrum assigned for use by the licensee; and
 - (b) for each of the remaining years of the period of validity of the relevant mobile carrier licence—
 - (i) 5% of the network turnover in the year concerned; or

(ii) \$1,450 for every 1 kHz or part thereof of the spectrum assigned for use by the licensee, whichever is the higher for the year concerned.

(2) For the purposes of subsection (1), the spectrum assigned for use by the licensee shall be—

- (a) in respect of the first year of the period of validity of the relevant mobile carrier licence, the spectrum assigned for use by the licensee on the issue of the licence; and
- (b) in respect of each subsequent year of the period of validity of the relevant mobile carrier licence, the spectrum assigned for use by the licensee on each anniversary of the issue of the licence.

5. Action that may be taken by Authority if licensee fails to keep proper accounts for purposes of determining spectrum utilization fees

Where the determination of a spectrum utilization fee relates, whether in whole or in part, to the accounts of a licensee and the accounts have not, in the opinion of the Authority, been kept in accordance with—

- (a) the conditions to which the licence is subject; or
- (b) any accounting practices specified under section 7H of the Ordinance and applicable to the licensee,

then—

- (c) the Authority may—
 - (i) treat the accounts in such manner as he considers necessary to bring them into conformity with those conditions or accounting practices, as the case may be; and
 - (ii) assess the network turnover in relation to the licensee on the basis of the accounts as so treated; and
- (d) the accounts as so treated and the network turnover as so assessed shall be used for the purposes of determining that fee, and the other provisions of this Regulation shall be construed accordingly.

John TSANG
Secretary for Commerce, Industry
and Technology

7 December 2004

Explanatory Note

This Regulation—

- (a) specifies the level of the spectrum utilization fees for the frequency bands set out in Part 2 of the Schedule to the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106 sub. leg. Y); and
- (b) empowers the Telecommunications Authority to take remedial action should a licensee fail to keep proper accounts for the purposes of determining spectrum utilization fees.