

L.N. 21 of 2009**TELECOMMUNICATIONS (LEVEL OF SPECTRUM UTILIZATION FEES) (SECOND GENERATION MOBILE SERVICES) (AMENDMENT) REGULATION 2009**

(Made by the Secretary for Commerce and Economic Development under section 32I of the Telecommunications Ordinance (Cap. 106))

1. Commencement

This Regulation comes into operation on 3 April 2009.

2. Application

(1) Section 2 of the Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) Regulation (Cap. 106 sub. leg. AA) is amended by renumbering it as section 2(1).

(2) Section 2 is amended by adding—

“(2) Subject to section 4A, the spectrum utilization fee payable by the user of the spectrum which falls within the frequency bands set out in Part 2A of the Schedule to the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106 sub. leg. Y) consists of—

- (a) a fixed fee determined in accordance with the Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation (L.N. 108 of 2008); and
- (b) an annual fee determined in accordance with section 4B.”.

3. Interpretation

(1) Section 3(*d*) is amended by repealing the full stop at the end and substituting a semicolon.

(2) Section 3 is amended by adding—

“(e) “base station” (基地電台) means a transmitting and receiving station built on land for the provision of mobile telecommunications services.”.

4. Spectrum utilization fee

(1) The heading of section 4 is amended by adding “referred to in section 2(1)” after “fee”.

(2) Section 4(1) is amended by adding “referred to in section 2(1)” after “fees”.

5. Sections added

The following are added—

“4A. When spectrum utilization fee referred to in section 2(2) is not payable

(1) No spectrum utilization fee is payable for the use of a spectrum referred to in section 2(2) if the user of the spectrum is authorized by the Authority to use the spectrum through a base station located in a designated area for the sole purpose of providing mobile telecommunications services within the designated area.

(2) The Authority may specify an area to be a designated area for the purposes of subsection (1).

(3) The Authority must publish the details of the specification of the designated area in the Gazette.

4B. Annual fee referred to in section 2(2)(b)

(1) The annual fee referred to in section 2(2)(b) shall be determined as follows—

- (a) for each period of 12 months beginning with 30 September from 30 September 2009 to 29 September 2011, \$145 for every 1 kHz or part of every 1 kHz of the spectrum assigned for use by the holder of a relevant mobile carrier licence or relevant unified carrier licence (as the case may be); and
- (b) for each period of 12 months beginning with 30 September from 30 September 2011 to 29 September 2021—

- (i) 5% of the network turnover in the period of 12 months concerned; or
- (ii) \$1,450 for every 1 kHz or part of every 1 kHz of the spectrum assigned for use by the holder of a relevant mobile carrier licence or relevant unified carrier licence (as the case may be),

whichever is the higher for the period of 12 months concerned.

(2) For the purposes of subsection (1), the spectrum assigned for use by the holder of a relevant mobile carrier licence or relevant unified carrier licence (as the case may be) shall be, in respect of each period of 12 months beginning with 30 September, the spectrum assigned for use by the holder on 30 September of the period.”.

Mrs. Rita LAU
Secretary for Commerce and
Economic Development

2 February 2009

Explanatory Note

This Regulation specifies the spectrum utilization fee for the frequency bands set out in Part 2A of the Schedule to the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106 sub. leg. Y) as newly added by the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) (Amendment) Order 2009 (L.N. 20 of 2009).

2. The spectrum utilization fee consists of the following 2 parts—
 - (a) a fixed fee to be determined by auction in accordance with the Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation (L.N. 108 of 2008); and
 - (b) an annual fee determined in accordance with section 4B of the Telecommunications (Level of Spectrum Utilization Fees) (Second Generation Mobile Services) Regulation (Cap. 106 sub. leg. AA) as newly added by this Regulation.