

By Fax 2110 1056 and Post

Mr Gregory So, GBS, JP  
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Commerce and Economic Development Bureau  
21/F, West Wing  
Central Government Offices  
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Hong Kong

Dear Sir,

**Re-Assignment Arrangements for Spectrum in the 1.9-2.2 GHz Band ("3G Spectrum")**

We thank you for your letter dated 10 July 2013 which refers in turn to our letter dated 31 May 2013. We respond under various headings set out below. At the outset we should say that we are disappointed and concerned that OFCA has apparently ignored the clear requests which were not only expressed in our letter dated 31 May 2013, but were also reinforced in our letter dated 7 June 2013. These requests were intended to draw attention to deficiencies not only in the content, but also in the scope and focus of the service continuity and quality study being undertaken by Network Strategies (the "Study"), and also to the clear requirement, in the interests of fairness and consistency, that the Study be published and further public consultation be held on its findings, before any decision on re-assignment of the 3G Spectrum took place as presently scheduled for October 2013.

In contrast, you now appear to be downplaying the importance of the Study, which was belatedly commissioned in March 2013 (shortly before the Second Consultation period closed), supposedly with a view to providing an objective quantitative assessment of the admitted adverse impact that adoption of Option 3 would have on service quality and on customers.

The fact that OFCA was commissioning such a Study only became apparent following comments expressed by Legislative Council members and others at the public hearing on 27 March 2013, when the issue of service degradation was raised. This issue is an extremely important one, and a matter of great public interest. The public are entitled to know and express their views on the Study, as well as OFCA's proposed decision, and the reasoning underpinning it, in the light of the Study, before a final decision is issued. In short, there needs to be a full appraisal of the costs and benefits of the Government's preferred Option 3 (as well as the other two options), and public consultation on such appraisal, before a decision is made. No proper cost/benefit analysis has yet been produced, either before or

after the commissioning of the Study, in spite of paragraph 4.4 of the Radio Spectrum Policy Framework requiring such an analysis. Your letter provides no explanation of why the October 2013 deadline for the decision cannot be extended to allow such proper analysis and public consultation to take place. It is illogical to insist on such a deadline, when the deadline itself was intended for the benefit of the existing 3G network operators, which are now requesting a relaxation of the deadline.

### *The Importance of Network Strategies' Study*

You state that, according to the First and Second Consultation Papers, the Government is aiming to achieve several policy objectives in re-assigning the 3G Spectrum. But even if this is so, it does not explain why the Government rightly took account of the need for service continuity in ruling out Option 2 but has not appreciated that the very same concern applies with equal force to Option 3. In addition, concern about service degradation and the lack of any empirical data analysis by OFCA in the consultation to date led to the commissioning of the current Study in the first place, notwithstanding our doubts as to the likely usefulness of the Study as it is currently scoped, on which we seek the opportunity to comment before any final decision is made. Our concern is, in particular, that the chosen model will not accurately reflect the degradation of service which each MNO and the customers will experience if Option 3 is chosen.

We thought it was common ground that the need to ensure service continuity and where possible to uphold and enhance service quality is paramount. Removing spectrum in the context of greatly increased demand is on its face perverse and a counter-intuitive response in this context. Indeed, it is quite unsettling that a simplistic linear analysis was employed to downplay the service degradation impact (and the resulting harm to consumers) in order to support Option 3, when in reality all the factors, and an overwhelming majority of respondents to the Consultation, clearly favour Option 1, or at least are neutral. But even here the clear fact is that consumers will be substantially worse off under Option 3 without any corresponding benefits to outweigh the very real detriments to quality of service. With respect, it seems that to all intents and purposes, the decision is all but made to adopt Option 3, and now all the effort is being placed in defending that misguided and premature position. We hope we are wrong in this supposition.

### *Opportunity to Comment on the Study*

It is correct to state that OFCA invited the MNOs to participate in the Study at various stages. However, you exaggerate the opportunity given by OFCA to engage with the consultants. Moreover, the extension of the timeline of the Study has not been to allow greater participation by MNOs but is due to other constraints, for example the belated realisation by OFCA that appropriate confidentiality agreements needed to be put in place before the MNOs could release data to Network Strategies. This delayed its provision. As MNOs, we have

commented on a number of occasions in writing and in person to OFCA that the Study is being needlessly rushed.

We remain of the firm view that the Study timetable remains far too tight and should be extended, although your letter appears to rule this out implicitly and without reason. Our serious dissatisfaction both with the timetable and the way in which the Study is being carried out (including the model being used) has not been answered by you and remains a live topic. For present purposes, we simply wish to underline that the extent of effective participation by the MNOs has been extremely limited and whilst all MNOs have been keen to cooperate with Network Strategies and have provided the requested data, our comments as to the approach and the modeling appear to have been wholly disregarded, mainly because OFCA's brief to Network Strategies itself precludes such comments from being taken into account. The consultant's work is still artificially limited by the scope and limited timetable set by OFCA. This grossly undermines the utility of our engagement with the consultants, and the process generally, to the ultimate detriment of the public interest in a properly informed and reasoned decision being taken on this critical issue.

In fact, we have doubts whether a robust Study can be carried out under the current brief given to Network Strategies. That brief fails to consider all the relevant factors, does not seriously look at the actual situation in Hong Kong, totally disregards the issue of costs and in no way represents a complete appraisal. There is little purpose to be served if the exercise becomes one to tick a procedural box. If that is indeed the case, then the Study will be a waste of taxpayers' money but we will continue to participate in the hope that we are mistaken.

We also wish to make it clear for the avoidance of doubt that our participation, and the fact we have made comments on the Study (including the preliminary assessment), is not to be taken or understood as endorsement of the process or model adopted by Network Strategies.

#### *Request for Further Consultation on Spectrum Utilisation Fee ("SUF")*

In your letter, you make it clear that OFCA sees no need to consult further on the level of the SUF. The various options contained in the First Consultation Paper appear to have now been abandoned, with little analysis and replaced by two new but similar options, both of which would extract huge sums from licensees and ultimately consumers, and thus are no more than a new indirect tax. The proposed two new options would also expose us to unreasonable regulatory and business risks, as the level of the SUF is tied to the unknown results of the proposed auction, thus rendering both options fundamentally inequitable and not transparent.

Further, the last paragraph of your letter states that the Government considers that overall ample opportunities have been given to all interested parties to provide their comments and views. This seemingly implies that there will be no further round of consultation on the

Study or opportunity to comment on its findings before the SCED makes the decision on 3G Spectrum re-assignment and pricing.

There is no rational basis for continuing to endorse and support Option 3, given the overwhelming evidence that service degradation is going to be both severe and long term. The stage management of the Study, its limited brief, the simplistic modeling and rejection of constructive criticism of the rushed Study all lends itself to a charge of unfair procedure even before the outcome of the Study is known.

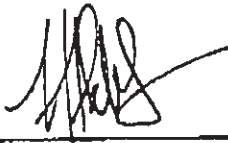
We would be grateful if you would urgently clarify whether the Government and/or OFCA will conduct a third round of public consultation and whether OFCA will exercise its discretion to extend the October 2013 deadline before issuing its decision.

Yours faithfully,

c.c. Mr Ambrose Ho, Chairman, Communications Authority  
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Ms Yue Tin-po, Chief Council Secretary, Legislative Council Panel on Information Technology and Broadcasting  
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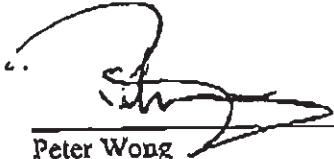
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