

LEGISLATIVE COUNCIL BRIEF

Telecommunications Ordinance
(Chapter 106)

TELECOMMUNICATIONS (DESIGNATION OF FREQUENCY BANDS SUBJECT TO PAYMENT OF SPECTRUM UTILIZATION FEE) (AMENDMENT) ORDER 2012

and

TELECOMMUNICATIONS (DETERMINING SPECTRUM UTILIZATION FEES BY AUCTION) (AMENDMENT) REGULATION 2012

INTRODUCTION

A
B This paper briefs Members on the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) (Amendment) Order 2012 (“the Amendment Order”, copy at **Annex A**), and the Telecommunications (Determining Spectrum Utilization Fees by Auction) (Amendment) Regulation 2012 (“the Amendment Regulation”, copy at **Annex B**) which will be published in the Gazette on 19 October 2012.

JUSTIFICATIONS

2. With the increasing popularity of smart phones, notepads and other advanced communications devices, mobile services in Hong Kong have continued to grow rapidly in recent years. Adequate and timely supply of radio spectrum to meet the incessant demand for additional network capacity is considered essential and critical to the healthy development of the mobile industry.

3. According to the Spectrum Release Plan (“SRP”) for 2012 – 2014¹ published by the former Telecommunications Authority on 19 December 2011, a total of 50 MHz of radio spectrum in the 2515 – 2540 MHz band and 2635 – 2660 MHz band (“the 2.5/2.6 GHz Band”) is available for assignment. The spectrum can be used to deploy advanced mobile telecommunications technology such as the long term evolution (“LTE”)² technology for the provision of wireless broadband services.

4. Legislative amendments to the order and regulation made under section 32I (1) and 32I(2) of the Telecommunications Ordinance (Cap. 106) (“the TO”) are required to enable the levy of spectrum utilization fee (“SUF”) on the concerned spectrum and to determine the SUF by auction.

THE AMENDMENT ORDER

5. The Amendment Order designates an additional frequency band (i.e. 2635 – 2660 MHz) in which the use of spectrum is subject to the payment of SUF. The other part of the 2.5/2.6 GHz Band (i.e. 2515 – 2540 MHz) has already been designated in the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106Y) (“the Order”) in July 2008³.

The AMENDMENT REGULATION

6. The Amendment Regulation specifies auction as the method for determining the SUF to be paid by users of the spectrum falling within the frequency band set out in the Amendment Order. The Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation (Cap. 106AC) (“the Regulation”) amended in July 2008 has already specified that the SUF for the other part of the 2.5/2.6 GHz Band (i.e. 2515 – 2540 MHz) will be determined by auction³.

¹ The SRP provides information about the potential supply of spectrum to users through an open bidding or tendering process in the following three years. The latest version of the SRP is available at http://www.ofca.gov.hk/filemanager/ofca/common/Industry/broadcasting/spectrum_plan2011_en.pdf.

² LTE is a technical standard developed for high-speed mobile communications services, commonly known as fourth generation (“4G”) services.

³ The 2515 – 2540 MHz band has already been designated in the Order, and the method for determining SUF for such radio spectrum has been prescribed in the Regulation, originally for a spectrum auction held in January 2009. However, the frequency band was not released in that auction since coordination with the Mainland on technical issues in relation to the use of spectrum in that frequency band had not yet been completed by that time.

LEGISLATIVE TIMETABLE

7. The legislative timetable will be –

Publication in the Gazette	19 October 2012
Tabling at the Legislative Council	24 October 2012
Commencement of the Amendment Order and the Amendment Regulation	14 December 2012

IMPLICATIONS OF THE AMENDMENT ORDER AND AMENDMENT REGULATION

8. The Amendment Order and Amendment Regulation have positive financial implications. SUF will be levied on users of the concerned spectrum which is a scarce public resource. The SUF will be determined by auction and the Secretary for Commerce and Economic Development will specify the minimum amount of the SUF (i.e. the reserve price in the auction) by notice published in the Gazette nearer the time of the auction.

9. The Amendment Order and Amendment Regulation are in conformity with the Basic Law, including the provisions concerning human rights. They will enable the auction of radio spectrum for meeting the incessant demand for network capacity, and thus are conducive to the development of the telecommunications sector. They have no civil service, productivity, environmental, or sustainability implications. They do not affect the binding effect of the TO.

PUBLIC CONSULTATION

10. The former Telecommunications Authority conducted a two-month public consultation from December 2011 to February 2012 to solicit views from the industry and interested parties on the arrangements of the radio spectrum assignment in the 2.5/2.6 GHz Band and the related licensing matters. We also consulted the Legislative Council Panel on Information Technology and Broadcasting on the subject in January 2012, in which members of the Panel raised no objection to the proposals to designate the concerned spectrum for use subject to the payment of SUF

and to set the SUF by auction. Having considered the views received during the public consultation, the Communications Authority (“CA”) issued a statement on 4 July 2012⁴ to announce its decisions, among others, to hold an auction to determine the parties to whom the 2.5/2.6 GHz Band shall be assigned, as well as the SUF to be paid by the users of the spectrum.

PUBLICITY

11. The CA will, by notice published in the Gazette, specify the terms and conditions of the auction, including the application period for the auction, the criteria for qualifying a bidder to participate or disqualifying a bidder from participating in the auction, etc., after the Amendment Order and Amendment Regulation have come into effect. A press release will also be published to invite interested parties to participate in the concerned spectrum auction.

ENQUIRY

12. For enquiries, please contact Mr Ivanhoe Chang, Principal Assistant Secretary for Commerce and Economic Development (Communications and Technology) at 2810 2713.

**Communications and Technology Branch
Commerce and Economic Development Bureau
17 October 2012**

⁴ The statement is available at http://www.coms-auth.hk/filemanager/common/policies_regulations/ca_statements/07_2012.pdf

Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) (Amendment) Order 2012

(Made by the Communications Authority under section 32I(1) of the Telecommunications Ordinance (Cap. 106) after carrying out the consultation required under section 32G(2) of the Ordinance)

Chairperson,
Communications Authority

2012

1. Commencement

This Order comes into operation on 14 December 2012.

2. Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order amended

The Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106 sub. leg. Y) is amended as set out in section 3.

3. Schedule amended

The Schedule, after Part 4—

Add

“Part 4A

MHz
2635–2660”.

Explanatory Note

This Order designates an additional frequency band in which the use of spectrum is subject to the payment of spectrum utilization fee.

Telecommunications (Determining Spectrum Utilization Fees by Auction) (Amendment) Regulation 2012

(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 14 December 2012.

2. Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation amended

The Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation (Cap. 106 sub. leg. AC) is amended as set out in section 3.

3. Section 3 amended (method for determining spectrum utilization fee)

Section 3(1)—

Repeal

“Part 4”

Substitute

“Part 4, 4A”.

Secretary for Commerce and
Economic Development

2012

Explanatory Note

The Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) (Amendment) Order 2012 adds a new Part 4A to the Schedule to the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106 sub. leg. Y). Users of the spectrum which falls within the frequency band set out in the new Part 4A are required to pay spectrum utilization fee. The Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation (Cap. 106 sub. leg. AC) as amended by this Regulation specifies auction as the method for determining the spectrum utilization fee.

2. The frequency band set out in the new Part 4A is 2635–2660 MHz.