

LEGISLATIVE COUNCIL BRIEF

Telecommunications Ordinance
(Chapter 106)

TELECOMMUNICATIONS (METHOD FOR DETERMINING SPECTRUM UTILIZATION FEE) (ADMINISTRATIVELY ASSIGNED SPECTRUM IN THE 1.9 - 2.2 GHZ BAND) REGULATION

TELECOMMUNICATIONS (DETERMINING SPECTRUM UTILIZATION FEES BY AUCTION) (AMENDMENT) REGULATION 2014

TELECOMMUNICATIONS (METHOD FOR DETERMINING SPECTRUM UTILIZATION FEES) (THIRD GENERATION MOBILE SERVICES) (AMENDMENT) REGULATION 2014

INTRODUCTION

A This paper briefs Members on the Telecommunications (Method for Determining Spectrum Utilization Fee) (Administratively Assigned Spectrum in the 1.9 – 2.2 GHz Band) Regulation (“New Regulation”, copy at **Annex A**), the Telecommunications (Determining Spectrum Utilization Fees by Auction) (Amendment) Regulation 2014 (“106AC
B Amendment Regulation”, copy at **Annex B**), and the Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) (Amendment) Regulation 2014 (“106X Amendment
C Regulation”, copy at **Annex C**) which will be published in the Gazette on 16 May 2014.

JUSTIFICATIONS

2. A total of 118.4 MHz of paired spectrum in the 1.9 – 2.2 GHz band (“Relevant 3G Spectrum”) was assigned through auction to four

mobile network operators on 22 October 2001¹ for a term of 15 years. The assignment will expire on 21 October 2016. The spectrum assignees are referred to collectively as the “incumbent 3G operators”.

3. In view of the forthcoming expiry of the existing assignments, the Communications Authority (“CA”) announced on 15 November 2013 that a hybrid administratively-assigned cum market-based approach (“the hybrid approach”) will be adopted to re-assign the Relevant 3G Spectrum. Under the hybrid approach, each of the incumbent 3G operators will be offered a right of first refusal to be re-assigned two-thirds (or 19.8 MHz) of the Relevant 3G Spectrum they currently hold. The remaining one-third of the Relevant 3G Spectrum, together with any spectrum in respect of which the incumbent 3G operators do not exercise the right of first refusal will be re-assigned by way of auction. The Secretary for Commerce and Economic Development (“SCED”) also gave his considerations as to the setting of spectrum utilization fees (“SUF”) for the Relevant 3G Spectrum on the same day². The details and rationale for the above are set out in the Statement of the CA and the SCED published on 15 November 2013³.

4. On 2 May 2014, the CA announced its decision to give consent, with conditions imposed, to HKT Limited’s (the holding company of Hong Kong Telecommunications (HKT) Limited, one of the incumbent 3G operators) proposed acquisition of CSL New World Mobility Limited (the holding company of CSL Limited, another incumbent 3G operator) pursuant to section 7P of the Telecommunications Ordinance (Cap. 106). One of the conditions imposed is that the merged entity shall divest a total

¹ Apart from the 2 x 14.8 MHz of the Relevant 3G Spectrum, each incumbent 3G operator was also assigned with 5 MHz of unpaired spectrum in the 1.9 – 2.2 GHz band, though it has not been used since the assignment in 2001.

² On 15 November 2013, the SCED announced his decision to propose regulation under section 32I of the Telecommunications Ordinance (Cap. 106) to prescribe that:

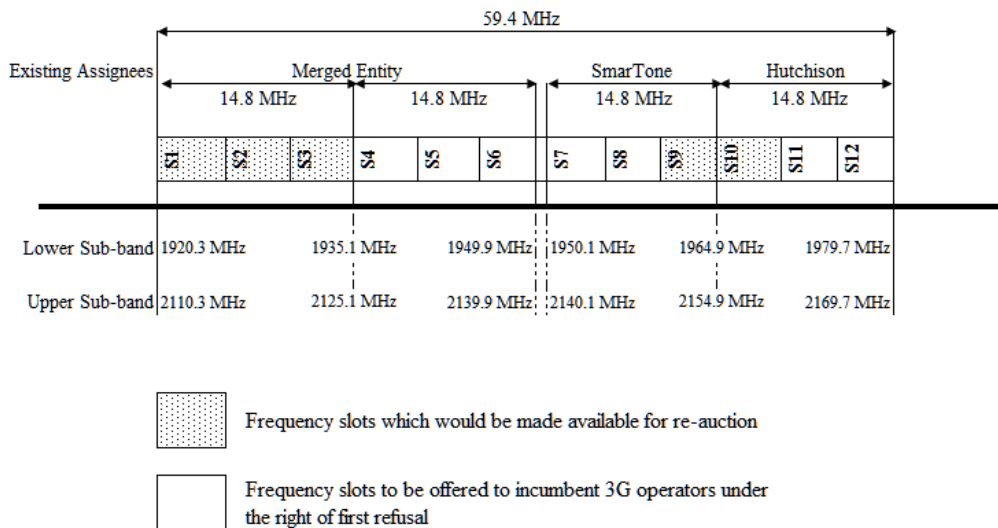
- (i) the SUF of the spectrum re-assigned through auction will be determined by auction. The SCED also announced that he considers it appropriate to set the auction reserve price of such spectrum at \$48 million per MHz at 2016 price level;
- (ii) the SUF per MHz of the spectrum re-assigned through the exercise of right of first refusal will be the higher of \$66 million at 2016 price level or the SUF per MHz of the spectrum re-assigned through auction, subject to a cap of \$86 million per MHz.

³ The Statement of the CA and the SCED on *Arrangements for the Frequency Spectrum in the 1.9 – 2.2 GHz Band upon Expiry of the Existing Frequency Assignments for the Provision of 3G Mobile Services and the Spectrum Utilisation Fee* is available at: http://www.coms-auth.hk/filemanager/statement/en/upload/237/ca_statements20131115_en.pdf.

of 29.6 MHz of 3G Spectrum by not seeking to renew the assignment of and not acquiring the 1920.3 – 1935.1 MHz paired with 2110.3 – 2125.1 MHz spectrum⁴ upon expiry of the existing assignment. The divested spectrum will be made available for assignment through auction. For the 3G Spectrum in the frequency range of 1935.1 – 1949.9 MHz paired with 2125.1 – 2139.9 MHz, the merged entity will be offered a right of first refusal to be re-assigned with the spectrum⁵.

5. Taking into account the spectrum divestment as directed by the CA, the band plan of the Relevant 3G Spectrum is revised as follows. The concerned incumbent 3G operators will be offered a right of first refusal to be re-assigned frequency slots S4, S5, S6, S7, S8, S11 and S12 in the band plan (i.e. the frequency bands set out in the Schedule of the New Regulation, Annex A) (“RFR Spectrum”). Frequency slots S1, S2, S3, S9 and S10 in the band plan (i.e. the frequency bands set out in the Schedule of the amended Cap. 106AC, Annex B), together with any RFR Spectrum in respect of which the incumbent 3G operators do not exercise the right of first refusal, will be re-assigned by way of auction (“Re-auctioned Spectrum”).

Revised Band Plan for Re-assignment of the Frequency Spectrum in the 1.9 - 2.2 GHz Band



⁴ In deciding on the exact frequency ranges to be divested, the CA has had due regard to its statutory role of promoting efficient allocation and use of the radio spectrum as a scarce public resource. Therefore, the merged entity was directed to divest a total of 2 x 14.8 MHz of contiguous 3G Spectrum, i.e. frequency slots S1, S2 and S3 shown in the revised band plan.

⁵ As a result of the spectrum divestment as directed by the CA, spectrum in the frequency ranges of 1935.1 – 1940.0 MHz paired with 2125.1 – 2130.0 MHz (frequency slot S4 in the revised band plan) that was originally designated to be re-assigned through auction is now intended to be re-assigned to the merged entity through right of first refusal.

6. Legislative amendments are required to put in place the method for determining the SUF of the Relevant 3G Spectrum for the next assignment term, i.e. from 22 October 2016 to 21 October 2031.

THE NEW REGULATION

7. The New Regulation specifies the method for determining the SUF to be paid for using the RFR Spectrum for the next assignment term. The SUF per kHz of the RFR Spectrum is set at \$66,000, or the average of the SUF of the Re-auctioned Spectrum as determined by auction, whichever is the higher, subject to a cap at \$86,000 per kHz.

THE 106AC AMENDMENT REGULATION

8. The 106AC Amendment Regulation amends Cap. 106AC to apply the method prescribed in Cap. 106AC to the determination of the SUF of the Re-auctioned Spectrum for the new assignment term. Cap. 106AC is the piece of subsidiary legislation governing spectrum auctions held in the past few years and the industry is familiar with the corresponding arrangements.

THE 106X AMENDMENT REGULATION

9. The Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation (Cap. 106X) is a bespoke regulation designed to specify the method for determining the SUF of the Relevant 3G Spectrum for the existing assignment term, i.e. from 22 October 2001 to 21 October 2016. The determination of SUF of the Relevant 3G Spectrum for the new assignment term will be governed by the New Regulation and Cap. 106AC as amended by the 106AC Amendment Regulation. The 106X Amendment Regulation amends Cap. 106X to make it clear that Cap. 106X only applies in relation to the use of the Relevant 3G Spectrum for the existing assignment period.

LEGISLATIVE TIMETABLE

10. The legislative timetable will be –

Publication in the Gazette	16 May 2014
Tabling at the Legislative Council	21 May 2014
Commencement of the legislative amendments	11 July 2014

IMPLICATIONS OF THE LEGISLATIVE AMENDMENTS

11. On financial implication, the legislative amendments set out the method for determining the SUF of the Relevant 3G Spectrum for the new assignment term. The SUF paid by the users of the spectrum will be paid into the general revenue. As to economic implications, while the legislative amendments themselves have minimal economic implication, the re-assignment arrangement of the Relevant 3G Spectrum upon expiry would promote competition, and thus encourage operators to enhance spectral efficiency and provide innovative services. These are conducive to the long-term development of the telecommunications sector.

12. The legislative amendments are in conformity with the Basic Law, including the provisions concerning human rights. They have no civil service, environmental, family, productivity, or sustainability implications. They do not affect the binding effect of the Telecommunications Ordinance.

PUBLIC CONSULTATION

13. Two rounds of public consultation which together lasted seven months had been conducted to devise the re-assignment arrangements for the Relevant 3G Spectrum and the methodology for setting the concerned SUF. The consultation was kicked off in March 2012, with the issue of the first consultation paper to solicit the views and comments of the telecommunications industry and other affected persons on the re-assignment arrangements. Having carefully considered the views and comments received in the first round consultation, the second consultation paper was issued in December 2012 to seek further views on

the proposed hybrid approach for spectrum re-assignment and the methods for setting the concerned SUF. In the course of the second consultation, we briefed the Legislative Council Panel on Information Technology and Broadcasting (“Panel”) on the subject on 4 February 2013. The Panel also invited representatives of the telecommunications industry and other interested parties to express their views at the public hearing held on 27 March 2013. We also briefed the Panel on 13 January 2014 on the CA’s decision and SCED’s consideration as announced on 15 November 2013 on the approach to be adopted to re-assign the Relevant 3G Spectrum and the setting of the concerned SUF respectively.

PUBLICITY

14. The present target is to hold the auction of the Re-auctioned Spectrum in the fourth quarter of 2014. Before the auction takes place, 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. An information memorandum which provides key information of the auction and a press release will also be published to invite interested parties to participate in the auction.

ENQUIRY

15. 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
15 May 2014

Telecommunications (Method for Determining Spectrum Utilization Fee) (Administratively Assigned Spectrum in the 1.9–2.2 GHz Band) Regulation

(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 11 July 2014.

2. Determining spectrum utilization fee payable by existing assignee for use of spectrum in Schedule if existing assignee accepts Authority's offer

- (1) If the Authority makes an offer to an existing assignee to assign to the existing assignee any spectrum that falls within the frequency bands set out in the Schedule for use by the existing assignee for the period beginning on 22 October 2016 and ending on 21 October 2031, and the existing assignee accepts the offer, the spectrum utilization fee payable by the existing assignee for every 1 kHz of the spectrum assigned is, subject to subsection (2), the higher of—
 - (a) \$66,000; or
 - (b) the average spectrum utilization fee obtained for 1 kHz of the spectrum auctioned under section 3(1AAB) and the spectrum (if any) auctioned under section 3(1AAC) of the Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation (Cap. 106 sub. leg. AC).
- (2) If the spectrum utilization fee determined under subsection (1) is higher than \$86,000 for 1 kHz, the spectrum utilization fee

payable by the existing assignee for every 1 kHz of the spectrum assigned is \$86,000.

(3) In this section—

existing assignee (現有受配人) means a person who has been assigned the use of any spectrum that falls within the frequency bands set out in Part 1 of the Schedule to the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106 sub. leg. Y) for a period of 15 years beginning on 22 October 2001.

3. Payment of spectrum utilization fee

The spectrum utilization fee determined under this Regulation is to be paid in a lump sum and payable at the time and in the manner required by the Authority.

Schedule

[s. 2]

Frequency Bands

MHz	MHz
1935.1–1940.0	2125.1–2130.0
1940.0–1944.9	2130.0–2134.9
1944.9–1949.9	2134.9–2139.9
1950.1–1955.1	2140.1–2145.1
1955.1–1960.0	2145.1–2150.0
1969.8–1974.7	2159.8–2164.7
1974.7–1979.7	2164.7–2169.7

Secretary for Commerce and
Economic Development

2014

Explanatory Note

If a person who has been assigned the use of any spectrum that falls within the frequency bands set out in Part 1 of the Schedule to the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106 sub. leg. Y) for a period of 15 years beginning on 22 October 2001 accepts an offer from the Communications Authority to be assigned any spectrum that falls within the frequency bands set out in the Schedule to this Regulation (*the new spectrum*) for another period of 15 years beginning on 22 October 2016 (*the new period*), the spectrum utilization fee payable for the use of the new spectrum during the new period is to be determined according to this Regulation.

Telecommunications (Determining Spectrum Utilization Fees by Auction) (Amendment) Regulation 2014

(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 11 July 2014.

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 sections 3 and 4.

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

(1) After section 3(1AA)—

Add

“(1AAB) The spectrum utilization fee for the use of the spectrum that falls within the frequency bands set out in the Schedule for the period beginning on 22 October 2016 and ending on 21 October 2031 must be determined by an auction or a series of auctions to be held in accordance with this Regulation and the specified terms.

(1AAC) The spectrum utilization fee for the use of the remaining spectrum for the period beginning on 22 October 2016 and ending on 21 October 2031 must be determined by an auction or a series of auctions to be held in

accordance with this Regulation and the specified terms.”.

(2) After section 3(2)—

Add

“(3) In this section—

existing assignee (現有受配人) means a person who has been assigned the use of any spectrum that falls within the frequency bands set out in Part 1 of the Schedule to the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106 sub. leg. Y) for a period of 15 years beginning on 22 October 2001;

remaining spectrum (剩餘頻譜) means any spectrum that—

- (a) falls within the frequency bands set out in the Schedule to the Telecommunications (Method for Determining Spectrum Utilization Fee) (Administratively Assigned Spectrum in the 1.9–2.2 GHz Band) Regulation; and
- (b) is not assigned to any existing assignee because the Authority’s offer to assign the spectrum as described in section 2 of that Regulation has not been accepted.”.

4. Schedule added

After section 11—

Add

“Schedule [s. 3]

Explanatory Note

Frequency Bands

This Regulation amends the Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation (Cap. 106 sub. leg. AC) (*Cap. 106AC*). The purpose of the amendment is to provide that auction is the method to use in determining the spectrum utilization fee for—

MHz	MHz
1920.3–1925.3	2110.3–2115.3
1925.3–1930.2	2115.3–2120.2
1930.2–1935.1	2120.2–2125.1
1960.0–1964.9	2150.0–2154.9
1964.9–1969.8	2154.9–2159.8”.

- (a) the spectrum that falls within the frequency bands set out in the Schedule to be added to Cap. 106AC by this Regulation; and
- (b) any spectrum that falls within the frequency bands set out in the Schedule to the Telecommunications (Method for Determining Spectrum Utilization Fee) (Administratively Assigned Spectrum in the 1.9–2.2 GHz Band) Regulation and that, when offered by the Communications Authority to an existing assignee (as defined under section 3(3) of Cap. 106AC as amended by this Regulation), has not been taken up.

Secretary for Commerce and
Economic Development

2014

Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) (Amendment) Regulation 2014

(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 11 July 2014.

2. Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation amended

The Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation (Cap. 106 sub. leg. X) is amended as set out in section 3.

3. Section 3 amended (application)

(1) Section 3—

Renumber the section as section 3(1).

(2) After section 3(1)—

Add

“(2) This Regulation only applies in relation to the use of the spectrum referred to in subsection (1) for the period beginning on 22 October 2001 and ending on 21 October 2016.”.

Secretary for Commerce and
Economic Development

2014

Explanatory Note

The Telecommunications (Method for Determining Spectrum Utilization Fees) (Third Generation Mobile Services) Regulation (Cap. 106 sub. leg. X) (*Cap. 106X*) is a bespoke regulation designed to specify the method for determining the spectrum utilization fees to be paid by users of the spectrum (*relevant spectrum*) that falls within the frequency bands set out in Part 1 of the Schedule to the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106 sub. leg. Y) when the relevant spectrum was assigned in 2001 for a period of 15 years.

2. A new regulation, namely the Telecommunications (Method for Determining Spectrum Utilization Fee) (Administratively Assigned Spectrum in the 1.9–2.2 GHz Band) Regulation, will be introduced to set out the new method for determining the spectrum utilization fee to be paid for the use of a certain part of the relevant spectrum when the existing assignment period expires. This Regulation amends Cap. 106X to make it clear that Cap. 106X only applies in relation to the use of the relevant spectrum for the existing assignment period.