

**Response to the Submissions on the Proposed Subsidiary Legislation (L.N. 208 to L.N. 210 of 2004)
for the Implementation of Spectrum Utilization Fee on Mobile Carrier Licences to be Issued
upon Expiry of Existing 2G Licences**

Licensee	Views of mobile services operators in their submissions to the LegCo Secretariat	Administration's response
SmarTone Mobile Communications Limited	<ul style="list-style-type: none"> Supports the proposed legislation, in which SUF applicable to 2G licensees is broadly consistent with the SUF for 3G licensees. This will encourage the efficient use of spectrum. 	<ul style="list-style-type: none"> Noted.
SUNDAY	<ul style="list-style-type: none"> Welcomes the final results of the renewal of GSM and PCS licences. The Government has been widely receptive to the industry concerns and made the right decision in reinforcing a 3G environment with a reasonable transition period to allow incumbent mobile operators to convert 2G customers to 3G services. The proposal on SUF appears to be a reasonable approach striking a good balance among the interests of the Government, consumers and 2G licensees. 	<ul style="list-style-type: none"> Noted.
Hutchison	<ul style="list-style-type: none"> Supports the proposed SUF so long as the 	<ul style="list-style-type: none"> Setting a transmission speed limit would provide disincentives for

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Telecommunications (Hong Kong) Limited	<p>renewed 2G licensees continue to provide existing mobile services at a transmission rate of less than 144 kbps.</p> <ul style="list-style-type: none"> To maintain level playing field after 2G licensees upgrade to 3G services, requests the Government to immediately conduct a review of the minimum SUF level for the remaining licence period of the existing 3G licensees, with a view to revising them down to the level for the 2G licensees. 	<p>2G operators to introduce advanced mobile services, which is against our policy objective of making efficient use of spectrum.</p> <ul style="list-style-type: none"> The existing 3G licences were granted by the Government pursuant to an auction conducted in September 2001. During the auction, the bidders placed bids on the royalty percentage, which in turn determined the level of minimum SUF after the sixth year of their licences. Hence, the level of SUF for 3G licensees was determined as a result of their own business decisions taken after assessing present and future market situation. It would not be appropriate to vary the level of 3G SUF, which was determined by an auction and has subsequently become a licence condition for the 3G licensees. The proposed subsidiary legislation deals with the level of SUF for the 2G licensees when they are granted the new Mobile Carrier Licences upon the expiry of their existing licences. The request of Hutchison, which is about the variation of the level for SUF for 3G licences, is outside the scope of the current discussion.
Hong Kong CSL Limited	<ul style="list-style-type: none"> Does not disagree with the introduction or the proposed level of SUF for the 2G licences. 	<p>(Please refer to the response to Hutchison above.)</p> <ul style="list-style-type: none"> On the EGSM band, it is a statutory requirement under the

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	<ul style="list-style-type: none"> • Believes it is an opportune time to examine whether the SUF for 3G licensees is appropriate in the current operating and regulatory environment. • When the 3G licences were issued in 2001, the market outlook was particularly bullish. But the market has turned out to be much less so. • Suggests that SUF for 3G licensees should be aligned with the proposed SUF level for 2G licensees. • The additional revenue of the Government arising from the SUF for 2G licensees will likely offset the revenue foregone through a reduction of SUF for 3G licensees. • SUF for 2G and 3G licensees should be the same to avoid imbalance between licence holders, especially if spectrum trading in future would be considered by the Government in the spectrum policy review. In addition, the 3G licensees should also be allowed to return 	<p>Telecommunications Ordinance that the Government should carry out a public consultation concerning the allocation and assignment of any frequency band, as well as the designation of frequency bands to be subject to the payment of SUF. Given that the allocation and assignment of the EGSM band was not covered in the two rounds of consultation on licensing of mobile services on expiry of existing licences for 2G mobile services, it is not appropriate to include the above-mentioned EGSM band in the proposed subsidiary legislation.</p> <ul style="list-style-type: none"> • The Government plans to conduct the public consultation on the allocation and assignment of the EGSM band very soon. Subject to the outcome of the consultation, the Government will prepare a new set of subsidiary legislation as and when necessary.

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	<p>spectrum to the Government if they so wish.</p> <ul style="list-style-type: none"> • Suggests to include the EGSM band in Part 2 of the Order. 	
New World PCS Limited	<ul style="list-style-type: none"> • Imposition of SUF will pose a huge financial burden on the 2G licensees, which may have two possible consequences. First, retail charge for 2G service will likely increase. Second, the 2G service may extinguish in Hong Kong as the same level of SUF is imposed on the less-technologically-advanced 2G service. Both may harm consumers. • The assumption that there will be 2G and 3G convergence is doubtful because 3G is a more advanced technology and there is no cogent evidence that 3G infrastructure equipment for 2G spectrum would be available. • The SUF for 3G service was determined during bullish market. • NWPCS therefore proposes that 	<ul style="list-style-type: none"> • The Government has conducted two rounds of public consultation on the licensing of mobile services on expiry of existing licences for 2G mobile services. The consultation covers, among other things, the introduction of SUF. Having considered the views of all the stakeholders, the Government comes to the conclusion that it is in the public interest to require the 2G licensees to pay SUF as they too, like the 3G licensees, make use of spectrum for business, which is a scarce public resource. • Our recommendation is supported by the Consumer Council. In its submission to the first consultation paper, the Consumer Council indicates that it will be unfair to the existing 3G licensees if the incumbent 2G licensees were not required to pay SUF for their new licences since they could also provide 3G services. The Consumer Council further indicates that levying a SUF on both 2G and 3G services would ultimately ensure a level playing field and therefore not impose a bias towards any one particular technology. Operators would not be discouraged from adopting advanced mobile services, which will serve the long-term interests of

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	<ul style="list-style-type: none"> ■ SUF at the same level as 3G licence should only be imposed on 2G licensees if 2G licensees deploy 3G service on the assigned spectrum; and ■ SUF for 2G licensees should be reviewed again in 2010. The factors for review should include the availability of infrastructure equipment, the nature of mobile services offered by and the profit level of the 2G licensees. 	<p>consumers. The Consumer Council also supports the option of applying a specified cut-off date when 3G services are expected to be provided. This should encourage new licensees to better utilize the spectrum in migrating to 3G services.</p> <ul style="list-style-type: none"> • The Government recognizes that the levy of SUF may result in additional cost to the licensees. Therefore, the Government proposes to allow a 5-year transition period for the licensees to factor SUF into their cost structures and to upgrade their networks for the provision of advanced mobile service to increase their revenue streams. During the 5-year transition period, only a nominal SUF that is one-tenth of the full fee will be levied. The impact on the consumers should therefore be minimal and gradual. • On 2G and 3G convergence, the industry has expressed divergent views. While some respondents (including NW PCS) expressed doubts, others believe that the differences in capability between 2G and 3G spectrum are likely to converge in future due to network upgrading to 2.5G or 2.75G services and the future availability of 3G equipment operating in 2G frequencies. Some equipment vendors also advise that the development of 3G equipment for 2G frequencies is technically feasible and its availability will only depend on market demand. Riding on this global trend of 2G and 3G convergence, it will be beneficial to the general public if the 2G

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		<p>licensees are encouraged to make the best use of the assigned spectrum with the most efficient technology available for the provision of more advanced mobile services.</p> <ul style="list-style-type: none"> In setting the proposed level and payment method of SUF, the Government has considered the views of stakeholders, technology trends and the prevailing market conditions. The Government has commissioned a consultant to give advice on the setting of SUF for 2G spectrum. The consultant advises that there should be no immediate liquidity concerns among mobile operators directly as a result of the proposed SUF. Besides, the proposal to set the minimum SUF payment proportional to the assigned bandwidth will encourage licensees to optimize the use of the assigned spectrum. Under-utilised or surplus spectrum can be returned to OFTA according to their business needs. In summary, the Government is satisfied that the 2G SUF structure has already provided for changes in market conditions since 2001 and is flexible enough to cater for any market upturn or downturn in future.
China Resources Peoples Telephone Company Limited	<ul style="list-style-type: none"> SUF will be an extraordinary additional financial burden to 2G mobile operators. SUF will force the mobile operators to pass the 	(Please see the response to New World PCS Limited above.)

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	relevant charge onto consumers and this may cause widespread resentment and complaints from the public.	