

L.N. 84 of 2007**TELECOMMUNICATIONS (METHOD FOR DETERMINING SPECTRUM UTILIZATION FEE) (CODE DIVISION MULTIPLE ACCESS MOBILE TELECOMMUNICATIONS SERVICE) REGULATION**

(Made by the Secretary for Commerce, Industry and Technology under section 32I of the Telecommunications Ordinance (Cap. 106))

1. Commencement

This Regulation shall come into operation on 13 July 2007.

2. Interpretation

In this Regulation, unless the context otherwise requires—

“bid” (出價) includes an intention to bid specified in a written application to the Authority;

“bidder” (競投人) includes a person who has, by a written application to the Authority, expressed an intention to bid;

“eligible bidder” (合資格競投人), in relation to the use of the spectrum, means a bidder that the Authority, under section 7(b)—

(a) has determined to be qualified to participate in an auction to determine the spectrum utilization fee for the use of the spectrum; and

(b) has not determined to be disqualified from participating in the auction;

“relevant period” (有關期間) means a period after which the Authority may not, according to the specified terms, accept bids for the use of the spectrum;

“specified terms” (指明條款) means the terms and conditions specified under section 7(c).

3. Application

This Regulation applies to the spectrum which falls within the frequency bands set out in Part 3 of the Schedule to the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106 sub. leg. Y).

4. Spectrum utilization fee payable if there is auction

(1) Subject to section 5, if, on the expiration of the relevant period, there is more than one eligible bidder for the use of the spectrum, an auction is to be held to determine the spectrum utilization fee for the use of the spectrum.

(2) Only an eligible bidder for the use of the spectrum may participate in the auction.

(3) In the auction, the amount of a bid is to be at least the minimum amount of the spectrum utilization fee specified under section 6.

(4) Subject to subsection (5), the bidder with the highest bid in the auction is the successful bidder for the use of the spectrum, and the amount of that highest bid is the amount of the spectrum utilization fee payable by the bidder for the use of the spectrum.

(5) If, before the licence for the use of the spectrum is granted to the bidder with the highest bid in the auction, the Authority determines, under section 7(b), that the bidder is disqualified from participating in the auction, the auction is taken to have never been held—

(a) to determine that the bidder is the successful bidder for the use of the spectrum; and

(b) to determine the amount of the spectrum utilization fee payable by the bidder for the use of the spectrum.

5. Spectrum utilization fee payable if there is no auction

(1) This section applies if there is not more than one eligible bidder for the use of the spectrum—

(a) on the expiration of the relevant period; or

(b) immediately before the start of an auction to determine the spectrum utilization fee for the use of the spectrum.

(2) No auction is to be held to determine the spectrum utilization fee for the use of the spectrum.

(3) Subject to subsection (4), if there is one eligible bidder for the use of the spectrum, the bidder is the successful bidder for the use of the spectrum, and the minimum amount of the spectrum utilization fee specified under section 6 is the amount of the spectrum utilization fee payable by the bidder for the use of the spectrum.

(4) If, before the licence for the use of the spectrum is granted to the eligible bidder, the Authority determines, under section 7(b), that the bidder would be disqualified from participating in an auction to determine the spectrum utilization fee, subsection (3) is taken to have never operated—

- (a) to determine that the bidder is the successful bidder for the use of the spectrum; and
- (b) to determine the amount of the spectrum utilization fee payable by the bidder for the use of the spectrum.

6. Secretary may specify minimum amount of spectrum utilization fee

The Secretary may, by notice published in the Gazette, specify the minimum amount of the spectrum utilization fee for the purposes of section 4 or 5.

7. Authority may hold etc. auction and specify terms and conditions of auction

The Authority may—

- (a) promote, hold, conduct, suspend, cancel or conclude an auction;
- (b) without limiting the generality of paragraph (a), determine whether a bidder is qualified to participate, or is disqualified from participating, in an auction; and
- (c) by notice published in the Gazette, specify the terms and conditions of an auction (including the terms and conditions relating to the payment of the spectrum utilization fee).

Joseph W. P. WONG
Secretary for Commerce, Industry
and Technology

11 May 2007

Explanatory Note

This Regulation—

- (a) specifies the method for determining the spectrum utilization fee to be paid by the user of the spectrum which falls within the frequency bands set out in Part 3 of the Schedule to the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106 sub. leg. Y);

- (b) empowers the Secretary for Commerce, Industry and Technology to specify the minimum amount of the spectrum utilization fee to be paid by the user of the spectrum; and
- (c) empowers the Telecommunications Authority to hold auctions and specify the terms and conditions of an auction.