

L.N. 108 of 2008**TELECOMMUNICATIONS (DETERMINING SPECTRUM
UTILIZATION FEES BY AUCTION) REGULATION****CONTENTS**

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TELECOMMUNICATIONS (DETERMINING SPECTRUM UTILIZATION FEES BY AUCTION) REGULATION

(Made by the Secretary for Commerce and Economic Development under section 32I of the Telecommunications Ordinance (Cap. 106))

1. Commencement

This Regulation shall come into operation on 4 July 2008.

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 written application to the Authority, expressed an intention to bid;

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

(a) has been determined under section 11(b) to be qualified to participate in an auction to be held under section 5; and

(b) has not been determined under section 11(b) 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 written applications for the use of spectrum;

“specified terms” (指明條款) means the terms and conditions specified under section 11(c);

“spectrum cap” (頻譜上限) means the maximum amount of spectrum specified by the Authority in the specified terms that may be assigned to a person or a group of persons who are connected bidders within the meaning of the specified terms.

3. Method for determining spectrum utilization fee

(1) The spectrum utilization fees for the spectrum which falls within the frequency bands set out in Part 4 of the Schedule to the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106 sub. leg. Y) shall be determined by an auction or a series of auctions to be held in accordance with this Regulation and the specified terms.

(2) An auction or a series of auctions to determine the spectrum utilization fee for the use of spectrum may be held in relation to different frequency bands mentioned in subsection (1), and the provisions of this Regulation shall have effect accordingly.

4. Division of frequency bands

(1) The Authority may further divide the frequency bands for the purpose of an auction held under section 3(1).

(2) Any division of frequency bands under subsection (1) shall be specified in the specified terms.

5. Spectrum utilization fee payable if there is more than one eligible bidder

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

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

(3) In an auction, the amount of a bid shall not be less than the minimum amount of the spectrum utilization fee specified under section 10.

(4) Subject to subsection (5), section 7 and section 9, the bidder who makes the highest bid for a particular frequency band in an auction is the successful bidder for the use of that frequency band, and the amount of that highest bid is the amount of the spectrum utilization fee payable by the bidder for the use of that frequency band.

(5) If, before a particular frequency band is assigned to the bidder with the highest bid for that frequency band in an auction, the Authority determines, under section 11(b), that the bidder is disqualified from participating in the auction, the bidder shall cease to be the successful bidder for the use of that frequency band and that highest bid shall not be taken as the spectrum utilization fee payable for the use of that frequency band.

6. Spectrum utilization fee payable if there is only one eligible bidder

(1) This section applies if there is only one eligible bidder—

(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 spectrum.

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

(3) Subject to subsection (4), the only eligible bidder is the successful bidder for the use of the frequency band it selects, and the minimum amount of the spectrum utilization fee specified under section 10 is the amount of the spectrum utilization fee payable by the bidder for the use of that frequency band.

(4) If, before that frequency band is assigned to the only eligible bidder, the Authority determines, under section 11(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 in relation to that frequency band.

7. Power to remove connected bidders

Where 2 or more successful bidders are connected bidders (as defined in the specified terms) and the total amount of spectrum for which such bidders are successful bidders exceeds the spectrum cap, the Authority may, in accordance with the specified terms—

- (a) require such bidders to make necessary arrangement so that such bidders cease to be connected within the meaning of the specified terms;
- (b) require such bidders to reach an agreement as to which of the bids of such bidders shall be withdrawn so that the total amount of spectrum assigned to the bidder or bidders who made the remaining bids, as may be appropriate, does not exceed the spectrum cap;
- (c) determine by drawing lot or by any other method of random selection as to which of such bidders shall be the remaining successful bidder or the remaining successful bidders, as may be appropriate, to the effect that the total amount of spectrum assigned to such remaining successful bidder or bidders does not exceed the spectrum cap;
- (d) conduct an auction for such bidders in which—
 - (i) the amount of a bid shall not be less than the minimum amount of the spectrum utilization fee specified under section 10;
 - (ii) subject to section 9, the bidder whose bid produces the highest spectrum utilization fee by virtue of section 8 shall be the remaining successful bidder whilst the other bidder or bidders shall cease to be a successful bidder or successful bidders, as may be appropriate; or
- (e) determine, by means of any combination of 2 or more of any of the means specified in paragraph (a), (b), (c), or (d), whether in whole or in part, as to which of such bidders shall be the

remaining successful bidder or the remaining successful bidders, as may be appropriate, so that the total amount of spectrum assigned to such remaining successful bidder or bidders does not exceed the spectrum cap.

8. Spectrum utilization fee includes bids in auction under section 7(d)

The amount of a bid made by a bidder in an auction held under section 7(d) shall be added to, and form part of, the spectrum utilization fee payable by the bidder on the use of the frequency band concerned.

9. Resolution of tied bids

When two or more bids offered in an auction held under section 5(4) or 7(d) are of the same amount, the Authority may determine, in accordance with the specified terms, which of the bids concerned shall prevail over other bid or bids, as may be appropriate.

10. Secretary may specify minimum amount of spectrum utilization fee

The Secretary may specify the minimum amount of the spectrum utilization fee for the purposes of sections 5(3), 6(3) and 7(d)—

- (a) by notice published in the Gazette or in any other manner; and
- (b) by means of—
 - (i) a minimum fixed fee;
 - (ii) a minimum fee determined by reference to a formula or percentage or the occurrence of an event or series of events;
 - (iii) a series of 2 or more minimum fees in relation to the same spectrum utilization fee where the relevant minimum fee is determined by reference to the occurrence of an event or series of events;
 - (iv) a minimum fee the determination of which varies upon the occurrence of an event or series of events;
 - (v) a minimum fee determined by reference to another minimum fee, or by reference to the means of determining another minimum fee, whether or not the other minimum fee is or will become payable;
 - (vi) a minimum fee the determination of which varies, or is calculated by reference to, the period of validity of a licence or any part thereof; or

- (vii) any combination of 2 or more of any of the means specified in subparagraph (i), (ii), (iii), (iv), (v) or (vi), whether in whole or in part.

11. 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 or a series of auctions to determine the spectrum utilization fee for the use of spectrum;
- (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).

Frederick S. MA
Secretary for Commerce and
Economic Development

9 May 2008

Explanatory Note

This Regulation—

- (a) specifies auction as 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 4 of the Schedule to the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106 sub. leg. Y) (such frequency bands are spectrum that may be assigned by the Telecommunications Authority to carrier licensees for the provision of Broadband Wireless Access (BWA) services);
- (b) empowers the Secretary for Commerce and Economic Development 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, etc. an auction and specify the terms and conditions of an auction.