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Subcommittee on Telecommunications
(Designation of Frequency Bands subject to Payment of Spectrum
Utilization Fee) (Amendment) Order 2017 and
Telecommunications (Level of Spectrum Utilization Fee)
(Fixed and Other Links) Regulation

Background brief

Purpose

This paper provides background information on the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) (Amendment) Order 2017 (L.N. 169), and the Telecommunications (Level of Spectrum Utilization Fee) (Fixed and Other Links) Regulation (L.N. 168) made under the Telecommunications Ordinance (Cap. 106), and summarizes the views and concerns expressed by members of the Panel on Information Technology and Broadcasting ("the Panel") on related issues.

Background

2. The Radio Spectrum Policy Framework promulgated in 2007 provides that, in principle, spectrum utilization fee ("SUF") will be applicable to all non-government use of spectrum. Accordingly, mobile network operators ("MNOs") using spectrum with competing demands to provide public mobile services pay an SUF, the level of which is determined by auction or benchmarking for using the relevant spectrum.

3. For spectrum where the Communications Authority ("CA") considers that there are not likely to be competing demands when it is made available for assignment, such spectrum will be assigned to licensees administratively upon application. Frequency bands in these spectrum may be used for various purposes such as fixed links, electronic news gathering/outside broadcast ("ENG/OB") links and certain satellite uplinks. Major users of fixed links are public utilities, MNOs and fixed network operators, while major users of the

ENG/OB links and satellite uplinks are television broadcasters and external fixed network operators respectively. Users of these non-government use of spectrum that are assigned administratively do not have to pay SUF.

4. The Administration informed the Panel at its meeting held on 8 May 2017 that there had been queries of whether such users had the incentive to use spectrum efficiently. By introducing a charging scheme, the Administration explained that spectrum users would be encouraged to make more efficient use of spectrum and would return excess spectrum to CA so that it might subsequently assign the spectrum to other users who were in need of such spectrum to support their operation.

5. The Administration has recommended that frequency bands that are 75% or more occupied and are anticipated to become more congested in the future are subject to payment of SUF. Six frequency bands would be subject to the charging scheme. There will be a transitional period of five years before the charging scheme is fully in force. No SUF would be levied in the first two years after the implementation of the charging scheme. After the two-year grace period, SUF would be imposed using a three-year phased-in approach, with 30% of SUF imposed at the beginning of the third year, 70% at the beginning of the fourth year, and the full payable amount for the fifth year and beyond.

The legislative amendments

6. L.N. 169 is made by CA under section 32I(1) of Cap. 106 after carrying out the consultation required under section 32G(2) of Cap. 106. It adds a new Part 7 to the Schedule to the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106Y) in order to designate six additional frequency bands ("six frequency bands") in which the use of spectrum is subject to the payment of SUF by the users of the spectrum.

7. L.N. 168 is made by the Secretary for Commerce and Economic Development under section 32I(2) of Cap. 106. It, among others, prescribes the levels of SUF payable for using any of the six frequency bands (set out in the new Part 7 of the Schedule to Cap. 106Y, as added by L.N. 169) assigned under a licence relating to an electronic news gathering or outside broadcast link, a fixed link, or a satellite uplink. The relevant prescribed fees are set out in the Schedule to L.N. 168. Further, L.N. 168 provides for the following transitional arrangements relating to the payment of the spectrum utilization fee between 2018 and 2021:

- (a) no spectrum utilization fee is payable for the 24 months beginning on 1 January 2018;
 - (b) for the 12 months beginning on 1 January 2020, the spectrum utilization fee payable is reduced by 70%; and
 - (c) for the 12 months beginning on 1 January 2021, the spectrum utilization fee payable is reduced by 30%.
8. L.N. 168 and L.N. 169 would come into operation on 1 January 2018.

Major views and concerns expressed by members

9. The Panel was briefed on the proposed SUF charging scheme for spectrum assigned administratively at its meeting held on 8 May 2017. Members generally had no objection to the proposal.

10. Some members sought clarification from the Administration whether other frequency bands might fall within the charging scheme when they became congested in future, and whether any of the frequency bands affected might be taken off the charging scheme if they became non-congested in future. The Administration explained that the designated frequency bands that were subject to the charging scheme would be reviewed every five years, and might be adjusted according to the occupancy rates at that time.

11. Some Panel members queried how the introduction of the charging scheme would lead to more efficient use of the spectrum. They argued that if the amount of SUF payable was small compared with users' operating cost, users might not have the incentives to optimize the use of spectrum or to return the excess spectrum to the Administration for reassignment. On the other hand, if the level of SUF charged was high, the additional cost might pass on to consumers.

12. The Administration explained that the additional operating cost incurred by spectrum users following the implementation of the charging scheme was expected to be small compared with their total operating cost. Besides, there would be a five-year transition period before the Charging Scheme was fully implemented. The impact of the charging scheme on users would likely be small. The Administration also informed the Panel that it would be a commercial decision for spectrum users as to whether or not they would avoid paying SUF by using spectrum of less congested frequency bands, or by making use of alternative technologies such as optical fibre or other network services available in the market, having taking account factors such as cost and

reliability.

13. While raising no objection, some members held the view that the proposed charging scheme might not be effective in achieving the objective of improving utilization of spectrum as the Administration envisaged.

Latest development

14. At the House Committee meeting on 20 October 2017, Members agreed to form a Subcommittee to study L.N. 168 and L.N. 169.

Relevant papers

15. A list of relevant papers which are available on the LegCo Website (<http://www.legco.gov.hk>) is in the **Appendix**.

Council Business Division 4
Legislative Council Secretariat
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Appendix

List of relevant papers

Issued by	Meeting date/ Issue date	Paper
Panel on Information Technology and Broadcasting	8 May 2017 (agenda item III)	Administration paper's on implementation of the Spectrum Utilization Fee Charging Scheme for Spectrum Assigned Administratively LC Paper No. CB(4)950/16-17(03)
Council Meeting	18 October 2017	Legislative Council Brief File Ref: CCIB/B 480-20-10-3/1
Council Meeting	5 July 2017	Report of the Panel on Information Technology and Broadcasting for submission to the Legislative Council LC Paper No. CB(4)1330/16-17
House Committee	20 October 2017	Legal Service Division Report on Subsidiary Legislation and Non-legislative Instrument Gazetted on 13 October 2017 LC Paper No. LS3/17-18