

LEGISLATIVE COUNCIL BRIEF

Telecommunications Ordinance
(Chapter 106)

**TELECOMMUNICATIONS (DESIGNATION OF FREQUENCY
BANDS SUBJECT TO PAYMENT OF SPECTRUM
UTILIZATION FEE) (AMENDMENT) ORDER 2017**

**TELECOMMUNICATIONS (LEVEL OF SPECTRUM
UTILIZATION FEE) (FIXED AND OTHER LINKS)
REGULATION**

INTRODUCTION

In exercise of the powers conferred by section 32I(1) and (2) of the Telecommunications Ordinance (Cap. 106) (“TO”), the Communications Authority (“CA”) and the Secretary for Commerce and Economic Development (“SCED”) have made the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) (Amendment) Order 2017 (“Amendment Order”), at A **Annex A**, and the Telecommunications (Level of Spectrum Utilization Fee) (Fixed and Other Links) Regulation (“New Regulation”), at B **Annex B**, respectively to effect the charging scheme for spectrum utilisation fee (“SUF”) for spectrum assigned administratively (“Charging Scheme”).

JUSTIFICATIONS

2. Under the existing arrangements, for spectrum where the CA considers that there are not likely to be competing demands from providers of non-Government services when it is made available for assignment, such spectrum will be assigned to the non-government users

administratively upon application¹. At present, no SUF is applicable to the above non-government use of spectrum that is assigned administratively.

3. Since commercial users of spectrum assigned administratively are not required to pay for the use of the scarce public resource of spectrum, there have been queries of whether such users have the incentive to use spectrum efficiently. In frequency bands that are congested and anticipated to be more so in future, the present arrangement will diminish the CA's ability to assign spectrum to potential users which require the same frequencies to provide services. By introducing the Charging Scheme, spectrum users will be encouraged to make more efficient use of spectrum and return excess spectrum to the CA so that it may subsequently assign the spectrum to other users which are in need of such spectrum to support their operation.

4. We consulted the Legislative Council Panel on Information Technology and Broadcasting ("Panel") on our plan to implement the Charging Scheme in May 2017 vide LC Paper No. CB(4)950/16-17(03). Members had no objection to the Government's proposal to implement the Charging Scheme. Accordingly, we propose to table the Amendment Order and the New Regulation at the Legislative Council to implement the Charging Scheme.

5. Specifically, under the Charging Scheme, frequency bands that are 75% or more occupied and are anticipated to become more congested in the future are designated as "congested" frequency bands subject to payment of SUF. The list of such frequency bands and the corresponding levels of SUF are as follow –

Designated Frequency Bands (MHz)	Levels of SUF (per link, in HK\$/MHz/annum)	
	Exclusive Use	Non-Exclusive Use
2055 – 2095	21,600	10,800
5875 – 6425	No exclusive use	432

¹ Examples of spectrum assigned administratively include fixed links, electronic news gathering/outside broadcast links and satellite uplinks.

Designated Frequency Bands (MHz)	Levels of SUF (per link, in HK\$/MHz/annum)	
	Exclusive Use	Non-Exclusive Use
6425 – 7100	21,600	3,600
7421 – 7900	(for frequencies assigned under carrier and SPETS ² licences)	(for frequencies assigned under carrier and SPETS licences)
8275 – 8500		
10700 – 11700		
	or	or
	36,000	6,000
	(for frequencies assigned under WBLRS ³ licences)	(for frequencies assigned under WBLRS licences)

6. 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 the 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 AMENDMENT ORDER AND THE NEW REGULATION

7. The Amendment Order amends the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106 sub. leg. Y) to designate frequency bands as identified in paragraph 5 above as the ones that should be subject to payment of SUF.

8. The New Regulation specifies the levels of SUF for the frequency bands as set out in paragraph 5 above, and the related payment arrangements.

² SPETS licence stands for Self-Provided External Telecommunications System licence.

³ WBLRS licence stands for Wide Band Link and Relay Station licence.

LEGISLATIVE TIMETABLE

9. The legislative timetable will be –

Publication in the Gazette	13 October 2017
Tabling at the Legislative Council	18 October 2017
Commencement of the legislative amendments	1 January 2018

IMPLICATIONS OF THE LEGISLATIVE AMENDMENTS

10. On financial implications, according to our record on the spectrum assigned administratively as at 1 October 2017, the amount of SUF payable by the spectrum users will be around \$14 million per annum when the Charging Scheme is fully implemented⁴. The SUF collected will be paid into the General Revenue in accordance with section 32I(8) of the TO. As to economic implications, the Charging Scheme will help promote a more efficient use of administratively assigned spectrum, which is conducive to the long-term development of the telecommunications sector.

11. The legislative amendments are in conformity with the Basic Law, including the provisions concerning human rights. They have no civil service, environmental, competition, productivity, family and gender implications, and no sustainability implications other than those set out in paragraph 10 above. They do not affect the binding effect of the TO.

PUBLIC CONSULTATION

12. The SCED and the former Telecommunications Authority launched a public consultation exercise in November 2010 and issued a joint statement promulgating their respective decisions in September 2011 after due consideration of the views received⁵. We informed spectrum users of the implementation of the Charging Scheme

⁴ If spectrum users make more efficient use of spectrum and return excess spectrum to the CA per the objective of the Charging Scheme, the amount of SUF payable will be lower.

⁵ The Joint Statement is available at: http://www.cedb.gov.hk/ccib/eng/paper/pdf/SUF_Statement.pdf.

in April 2017 and explained the rationale of the Charging Scheme. We also briefed the Panel on the subject in December 2010 and again in May 2017. As mentioned in paragraph 4 above, members had no objection to the Government's proposal to implement the Charging Scheme.

PUBLICITY

13. A spokesman will be available for answering media enquiries.

ENQUIRIES

14. For enquiries, please contact Mr Patrick Lee, Principal Assistant Secretary for Commerce and Economic Development (Communications and Creative Industries) at 2810 2713.

Commerce and Economic Development Bureau
11 October 2017

Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) (Amendment) Order 2017

MHz

8275–8500

10700–11700”.

(Made by the Communications Authority under section 32I(1) of the Telecommunications Ordinance (Cap. 106) after carrying out the consultation required under section 32G(2) of the Ordinance)

1. Commencement

This Order comes into operation on 1 January 2018.

2. Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order amended

The Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106 sub. leg. Y) is amended as set out in section 3.

3. Schedule amended

The Schedule, after Part 6—

Add

“Part 7

MHz

2055–2095

5875–6425

6425–7100

7421–7900



Communications Authority

4 October 2017

Explanatory Note

This Order designates additional frequency bands in which the use of spectrum is subject to the payment of spectrum utilization fee.

Telecommunications (Level of Spectrum Utilization Fee) (Fixed and Other Links) Regulation

(Made by the Secretary for Commerce and Economic Development under section 321(2) of the Telecommunications Ordinance (Cap. 106))

1. Commencement

This Regulation comes into operation on 1 January 2018.

2. Interpretation

In this Regulation—

designated frequency band (指定頻帶) means any of the frequency bands set out in Part 7 of the Schedule to the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106 sub. leg. Y);

earth station (地球站) has the meaning given by section 2(1) of the Telecommunications (Carrier Licences) Regulation (Cap. 106 sub. leg. V);

electronic news gathering or outside broadcast link (電子新聞採訪或外勤廣播鏈路) means a radio transmission path that is established through the use of terrestrial portable or transportable radio equipment for electronic news gathering or outside broadcast services;

fixed carrier licence (固定傳送者牌照) has the meaning given by section 2(1) of the Telecommunications (Carrier Licences) Regulation (Cap. 106 sub. leg. V);

fixed link (固定鏈路) means a radio transmission path that is established between fixed locations for radiocommunications purposes;

licence (牌照) means a specified carrier licence or a specified non-carrier licence;

licensed spectrum user (持牌頻譜使用者) means a person who is authorized to use the radio spectrum in a designated frequency band for a specified service under a licence;

satellite uplink (衛星上傳鏈路) means a radio transmission path that is established between an earth station and a space station of a satellite system in an earth-to-space direction;

self-provided external telecommunications system licence (自設對外電訊系統牌照) means a licence issued under section 7(5) of the Telecommunications Ordinance (Cap. 106) for establishing and maintaining the licensee's own circuits for its own communications with places outside Hong Kong;

space station (空間電台) has the meaning given by section 2(1) of the Telecommunications (Carrier Licences) Regulation (Cap. 106 sub. leg. V);

space station carrier licence (空間電台傳送者牌照) has the meaning given by section 2(1) of the Telecommunications (Carrier Licences) Regulation (Cap. 106 sub. leg. V);

specified carrier licence (指明傳送者牌照) means—

- (a) a fixed carrier licence;
- (b) a space station carrier licence; or
- (c) a unified carrier licence;

specified non-carrier licence (指明非傳送者牌照) means—

- (a) a self-provided external telecommunications system licence; or
- (b) a wide band link and relay station licence;

specified service (指明服務) means—

- (a) establishing and maintaining a fixed link;

- (b) establishing and maintaining an electronic news gathering or outside broadcast link; or
- (c) establishing and maintaining a satellite uplink;

unified carrier licence (綜合傳送者牌照) has the meaning given by section 2(1) of the Telecommunications (Carrier Licences) Regulation (Cap. 106 sub. leg. V);

wide band link and relay station licence (闊頻帶鏈路中繼電台牌照) means a licence issued under section 7(5) of the Telecommunications Ordinance (Cap. 106) to a public telecommunications service or utility service provider for establishing and maintaining fixed links within Hong Kong.

3. Application

This Regulation does not apply to—

- (a) a person who is not a licensed spectrum user; or
- (b) a consular post within the meaning of the Consular Relations Ordinance (Cap. 557).

4. Spectrum utilization fee

- (1) Subject to subsections (4) and (5) and section 5, a spectrum utilization fee as set out in the Schedule is payable for every MHz of spectrum assigned under a licence in relation to—
 - (a) an electronic news gathering or outside broadcast link;
 - (b) a fixed link; or
 - (c) a satellite uplink.
- (2) For a specified carrier licence—
 - (a) if the licence is issued before, and is in force on, 1 January 2020, the spectrum utilization fee is payable—
 - (i) on 1 January 2020; and

- (ii) after that, on each anniversary of the date of issue of the licence while it remains in force; or
- (b) if the licence is issued on or after 1 January 2020, the spectrum utilization fee is payable—
 - (i) on the date of issue of the licence; and
 - (ii) after that, on each anniversary of the date of issue of the licence while it remains in force.
- (3) For a specified non-carrier licence—
 - (a) if the licence is issued—
 - (i) before, and is in force on, 1 January 2020, the spectrum utilization fee for the remaining period of validity of the licence is payable on 1 January 2020; or
 - (ii) on or after 1 January 2020, the spectrum utilization fee for the full period of validity of the licence is payable on the date of issue of the licence; and
 - (b) if the licence is renewed on or after 1 January 2020, the spectrum utilization fee for the full period of validity of the licence is payable on the date of renewal of the licence.
- (4) If any of the following periods is less than 12 months, the spectrum utilization fee payable for the period is calculated on a pro rata basis—
 - (a) the period beginning on 1 January 2020 up to but excluding the immediately following anniversary of the date of issue of the licence while it remains in force;
 - (b) the period beginning on any payment date up to and including the expiry date of the licence.

- (5) If any of the following periods is longer than 12 months, the spectrum utilization fee payable for the period is calculated on a pro rata basis—
- (a) in relation to a specified non-carrier licence that is issued before, and is in force on, 1 January 2020—the period beginning on 1 January 2020 up to and including the expiry date of the licence;
 - (b) in relation to a specified non-carrier licence that is issued on or after 1 January 2020—the period of validity of the licence.
- (6) In calculating the spectrum utilization fee, a fraction of 1 MHz is treated as a whole MHz.

5. Transitional

- (1) No spectrum utilization fee is payable for the 24 months beginning on 1 January 2018.
- (2) For the 12 months beginning on 1 January 2020, the spectrum utilization fee payable is reduced by 70%.
- (3) For the 12 months beginning on 1 January 2021, the spectrum utilization fee payable is reduced by 30%.

Schedule

[s. 4]

Spectrum Utilization Fee

- 1. The spectrum utilization fee payable per MHz of spectrum per electronic news gathering or outside broadcast link, fixed link or satellite uplink is as follows—
 - (a) if the spectrum is assigned exclusively to a licensed spectrum user—
 - (i) for a wide band link and relay station licence—\$36,000 for every 12 months; or
 - (ii) for any other licence—\$21,600 for every 12 months; or
 - (b) if any part of the spectrum is assigned to a licensed spectrum user on a non-exclusive or shared basis—
 - (i) for the designated frequency band of 2055–2095 MHz—\$10,800 for every 12 months;
 - (ii) for the designated frequency band of 5875–6425 MHz—\$432 for every 12 months; and
 - (iii) for each of the designated frequency bands of 6425–7100 MHz, 7421–7900 MHz, 8275–8500 MHz and 10700–11700 MHz—
 - (A) for a wide band link and relay station licence—\$6,000 for every 12 months; or
 - (B) for any other licence—\$3,600 for every 12 months.



Secretary for Commerce and
Economic Development

4 October 2017

Explanatory Note

This Regulation prescribes the level of spectrum utilization fee payable for using the radio spectrum in any of the frequency bands set out in Part 7 of the Schedule to the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106 sub. leg. Y).

2. The Regulation also provides for the exemption of certain persons from payment of the fee, and the reduction or waiver of the fee in certain circumstances.