

LEGISLATIVE COUNCIL BRIEF

Telecommunications Ordinance
(Chapter 106)

TELECOMMUNICATIONS (DESIGNATION OF FREQUENCY BANDS SUBJECT TO PAYMENT OF SPECTRUM UTILIZATION FEE) (AMENDMENT) ORDER 2021

TELECOMMUNICATIONS (METHOD FOR DETERMINING SPECTRUM UTILIZATION FEE) (CODE DIVISION MULTIPLE ACCESS MOBILE TELECOMMUNICATIONS SERVICE) (AMENDMENT) REGULATION 2021

TELECOMMUNICATIONS (DETERMINING SPECTRUM UTILIZATION FEES BY AUCTION) (AMENDMENT) REGULATION 2021

TELECOMMUNICATIONS (METHOD FOR DETERMINING SPECTRUM UTILIZATION FEE) (SPECTRUM FOR AUCTION) (AMENDMENT) REGULATION 2021

TELECOMMUNICATIONS (LEVEL OF SPECTRUM UTILIZATION FEE) (ADMINISTRATIVELY ASSIGNED SPECTRUM) REGULATION

INTRODUCTION

This paper briefs Members on the following subsidiary legislation which will be published in the Gazette on 7 May 2021 –

- _____
- (a) Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) (Amendment) Order 2021 (“106Y Amendment Order”, copy at **Annex A**);

 - (b) Telecommunications (Method for Determining Spectrum Utilization Fee) (Code Division Multiple Access Mobile Telecommunications Service) (Amendment) Regulation 2021 (“106AB Amendment Regulation”, copy at **Annex B**);
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- _____
- (c) Telecommunications (Determining Spectrum Utilization Fees by Auction) (Amendment) Regulation 2021 (“106AC Amendment Regulation”, copy at **Annex C**);
- _____
- (d) Telecommunications (Method for Determining Spectrum Utilization Fee) (Spectrum for Auction) (Amendment) Regulation 2021 (“106AG Amendment Regulation”, copy at **Annex D**); and
- _____
- (e) Telecommunications (Level of Spectrum Utilization Fee) (Administratively Assigned Spectrum) Regulation (“New Regulation”, copy at **Annex E**).

JUSTIFICATIONS

2. Commercial 5G services were launched in Hong Kong in April 2020 and are making good progress. In order to meet the needs of various 5G applications in terms of speed, capacity and coverage, there is a need to release more spectrum in different frequency bands to the market.

3. On 30 March 2021, the Secretary for Commerce and Economic Development (SCED) and the Communications Authority (CA) issued Joint Statements¹, promulgating the arrangements for the assignment of the spectrum in the 600 MHz, 700 MHz and 4.9 GHz bands and the re-assignment of the spectrum in the 850 MHz and 2.5/2.6 GHz bands, and

¹ The four Joint Statements have been uploaded onto the websites of the Commerce and Economic Development Bureau and the CA:

For the 600/700 MHz bands:

www.cedb.gov.hk/ccib/en/consultations-and-publications/consultation-papers/joint_statement_600_700MHz_2021.pdf

www.coms-auth.hk/filemanager/statement/en/upload/558/600_700_mhz_statement.pdf

For the 850 MHz band:

www.cedb.gov.hk/ccib/en/consultations-and-publications/consultation-papers/joint_statement_850MHz_2021.pdf

www.coms-auth.hk/filemanager/statement/en/upload/557/850_mhz_statement.pdf

For the 2.5/2.6 GHz bands:

www.cedb.gov.hk/ccib/en/consultations-and-publications/consultation-papers/joint_statement_2.5_2.6GHz_2021.pdf

www.coms-auth.hk/filemanager/statement/en/upload/556/2_5_2_6_ghz_statement.pdf

For the 4.9 GHz band:

www.cedb.gov.hk/ccib/en/consultations-and-publications/consultation-papers/joint_statement_4.9GHz_2021.pdf

www.coms-auth.hk/filemanager/statement/en/upload/555/4_9_ghz_statement.pdf

that the related spectrum utilizations fees (SUF) will be determined through auction.

4. In addition, the CA plans to provide more spectrum in the 26 GHz and 28 GHz bands to the market in 2021 for the provision of large-scale public mobile services. In view of the ample supply of spectrum in the bands, the CA will assign the spectrum administratively².

5. Sections 32H(2) and 32I(1) of the Telecommunications Ordinance (Cap. 106) (TO) empower the CA to allocate radio frequencies and to designate the spectrum which shall be subject to the payment of the SUF; while section 32I(2) of the TO empowers SCED to prescribe the method for determining the SUF and its levels.

LEGISLATIVE AMENDMENTS

6. The legislative amendments, which are all technical in nature, involve five pieces of subsidiary legislation under the TO to effect the decisions on the assignment/re-assignment of the spectrum mentioned above. The details are as follows:

A. The 106Y Amendment Order (Annex A)

7. The 106Y Amendment Order amends the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106 sub. leg. Y) to designate the frequency bands under the current assignment exercise as the frequency bands the use of which should be subject to payment of SUF.

B. The 106AB Amendment Regulation and 106AC Amendment Regulation (Annexes B and C)

8. For the re-assigned spectrum, the Telecommunications (Method for Determining Spectrum Utilization Fee) (Code Division Multiple Access Mobile Telecommunications Service) Regulation (Cap. 106 sub. leg. AB) and the Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation (Cap. 106 sub. leg. AC) stipulate the method for determining SUF. The 106AB Amendment Regulation and 106AC Amendment Regulation amend these two pieces of subsidiary legislation and specify the completion date of the relevant assignments.

² In April 2019, the CA assigned a total of 1 200 MHz frequency spectrum in the 26 GHz and 28 GHz bands to three operators following an administratively-assigned approach.

C. The 106AG Amendment Regulation (*Annex D*)

9. The Telecommunications (Method for Determining Spectrum Utilization Fee) (Spectrum for Auction) Regulation (Cap. 106 sub. leg. AG) stipulates that the SUF for using the spectrum set out in the Schedule is to be determined by auction, and the 106AG Amendment Regulation adds the frequency bands available in this auction to the Schedule and revises the provision in relation to the payment of SUF; and

D. The New Regulation (*Annex E*)

10. The New Regulation specifies the level of SUF of the administratively assigned spectrum and provides for the payment of SUF. In accordance with the mechanism, spectrum assignees will need to pay SUF for the use of the spectrum concerned only if 75% or more of the spectrum is occupied. Depending on the market response, we will separately announce the commencement date of this subsidiary legislation by notice in the gazette when activation of the charging mechanism is required.

LEGISLATIVE TIMETABLE

11. The legislative timetable will be –

| | |
|--|--|
| Publication in the Gazette | 7 May 2021 |
| Tabling at the Legislative Council | 12 May 2021 |
| Commencement of the subsidiary legislation | 2 July 2021 ³ and the date specified by SCED ⁴ |

IMPLICATIONS OF THE SUBSIDIARY LEGISLATION

12. On financial implication, the subsidiary legislation stipulates that

³ For the 106Y Amendment Order, the 106AB Amendment Regulation, the 106AC Amendment Regulation and the 106AG Amendment Regulation

⁴ For the New Regulation

assignees are subject to the payment of SUF for the assignment/re-assignment of relevant spectrum, and sets out the method for determining the SUF of the relevant spectrum. The SUF paid by spectrum assignees will be credited to the general revenue. As to economic implication, while the legislative amendments do not bring about much direct revenue, the provision of more spectrum to operators would promote competition in the market and encourage operators to enhance spectral efficiency and provide innovative 5G services to various trades and industries. This is conducive to the long-term development of the telecommunications sector and the overall economy.

13. The subsidiary legislation is in conformity with the Basic Law, including the provisions concerning human rights. It does not affect the current binding effect of the TO. It has no civil service, productivity, family, gender or environmental implications. Apart from the economic implications mentioned in paragraph 12 above, the legislative amendment has no implication on sustainable development.

PUBLIC CONSULTATION

14. Between July and November 2020, SCED and the CA jointly conducted public consultations in relation to frequency allocation, assignment/re-assignment arrangements and the related SUF for the spectrum in the 600 MHz, 700 MHz, 850 MHz, 2.5/2.6 GHz, and 4.9 GHz bands. Public consultations in relation to the 26 GHz and 28 GHz bands were conducted in 2018. Respondents in general supported the proposed assignment/ re-assignment of spectrum for public mobile use.

15. We briefed the Legislative Council Panel on Information Technology and Broadcasting on 19 April 2021⁵. The Panel supported the proposal.

PUBLICITY

16. With the enactment of the above subsidiary legislation, the CA aims to auction the spectrum in the 600 MHz, 700 MHz, 850 MHz, 2.5/2.6 GHz, and 4.9 GHz bands all together in a single auction in the fourth quarter of 2021.

⁵ The relevant panel paper is available at:
<https://www.legco.gov.hk/yr20-21/english/panels/itb/papers/itb20210419cb1-779-5-e.pdf>

17. Before the auction takes place, SCED and the CA will, respectively, specify by notices published in the Gazette the minimum fees of the respective spectrum (i.e. the auction reserve prices), and the terms and conditions of the auction, including the application periods for the auction, the criteria for qualifying a bidder to participate or disqualifying a bidder from participating in the auction, etc. Information memoranda which provide key information of the auction and press release will also be published by the CA to invite interested parties to participate in the auction.

ENQUIRIES

18. For enquiries, please contact Mr Keith Giang, Principal Assistant Secretary for Commerce and Economic Development (Communications & Creative Industries) at 2810 2708.

Commerce and Economic Development Bureau
(Communications and Creative Industries Branch)
Office of the Communications Authority

5 May 2021

Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) (Amendment) Order 2021

(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 2 July 2021.

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 8—

Add

“Part 9

MHz

617–652

663–678

686–698

703–738

MHz

758–793

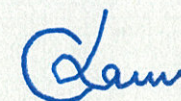
4800–4840

4920–4960

Part 10

MHz

24250–28350”.



Communications Authority

4 May 2021

Explanatory Note

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

**Telecommunications (Method for Determining
Spectrum Utilization Fee) (Code Division Multiple
Access Mobile Telecommunications Service)
(Amendment) Regulation 2021**

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

1. Commencement

This Regulation comes into operation on 2 July 2021.

**2. Telecommunications (Method for Determining Spectrum
Utilization Fee) (Code Division Multiple Access Mobile
Telecommunications Service) Regulation amended**

The Telecommunications (Method for Determining Spectrum
Utilization Fee) (Code Division Multiple Access Mobile
Telecommunications Service) Regulation (Cap. 106 sub. leg. AB) is
amended as set out in section 3.

3. Section 3 amended (application)

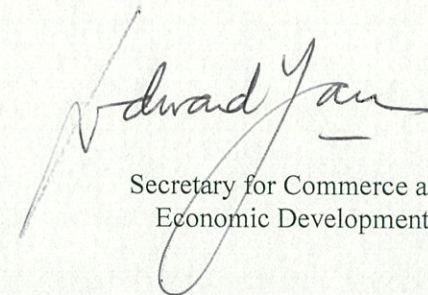
Section 3—

Repeal

“applies to”

Substitute

“applies in relation to the use, on or before 19 November 2021,
of”.


Secretary for Commerce and
Economic Development

4 May 2021

Explanatory Note

The Telecommunications (Method for Determining Spectrum Utilization Fee) (Code Division Multiple Access Mobile Telecommunications Service) Regulation (Cap. 106 sub. leg. AB) (*principal Regulation*) provides for the methods for determining the spectrum utilization fee for the use of the spectrum that 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).

2. This Regulation amends the principal Regulation so that the principal Regulation applies in relation to the use of such a spectrum on or before a certain date.

Telecommunications (Determining Spectrum Utilization Fees by Auction) (Amendment) Regulation 2021

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

1. Commencement

This Regulation comes into operation on 2 July 2021.

2. Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation amended

The Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation (Cap. 106 sub. leg. AC) is amended as set out in sections 3, 4 and 5.

3. Section 3 amended (method for determining spectrum utilization fee)

(1) Section 3(1)—

Repeal

“The spectrum utilization fees for”

Substitute

“Subject to subsections (1AAG) and (1AAH), the spectrum utilization fee for the use of”.

(2) Section 3(1AA)—

Repeal

“fees for”

Substitute

“fee for the use of”.

(3) After section 3(1AAF)—

Add

“(1AAG) If the spectrum falls within the frequency bands set out in Schedule 4, subsection (1) only applies in relation to the use of the spectrum on or before 30 March 2024.

(1AAH) If the spectrum falls within the frequency band 678–686 MHz, subsection (1) only applies in relation to the use of the spectrum on or before 2 July 2021.”.

4. Section 6 amended (spectrum utilization fee payable if there is only one eligible bidder)

Section 6(4), Chinese text—

Repeal

“參予”

Substitute

“參與”.

5. Schedule 4 added

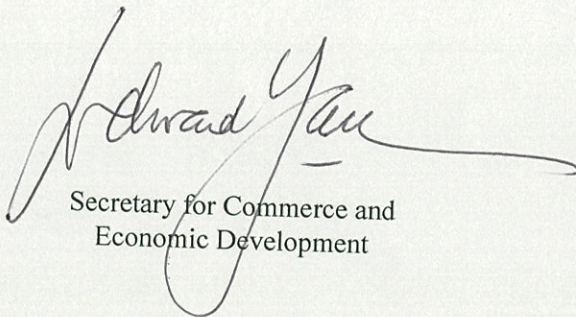
After Schedule 3—

Add

“Schedule 4

Frequency Bands

MHz
2500–2515
2540–2570
2620–2635
2660–2690”.



Secretary for Commerce and
Economic Development

4 May 2021

Explanatory Note

- Section 3(1) of the Telecommunications (Determining Spectrum Utilization Fees by Auction) Regulation (Cap. 106 sub. leg. AC) (*principal Regulation*) provides for the method for determining the spectrum utilization fees for the use of the spectrum that falls within certain frequency bands.
2. This Regulation amends the principal Regulation so that for certain spectrum that falls within those frequency bands, section 3(1) of the principal Regulation only applies in relation to the use of the spectrum on or before a certain date.
 3. This Regulation also makes a minor amendment to the Chinese text of the principal Regulation.

Telecommunications (Method for Determining Spectrum Utilization Fee) (Spectrum for Auction) (Amendment) Regulation 2021

**Repeal the Schedule
Substitute**

“Schedule

[ss. 3, 4 & 9]

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

Frequency Bands

- 1. **Commencement**
This Regulation comes into operation on 2 July 2021.
- 2. **Telecommunications (Method for Determining Spectrum Utilization Fee) (Spectrum for Auction) Regulation amended**
The Telecommunications (Method for Determining Spectrum Utilization Fee) (Spectrum for Auction) Regulation (Cap. 106 sub. leg. AG) is amended as set out in sections 3 and 4.
- 3. **Section 9 amended (payment of spectrum utilization fee)**
Section 9(2)(b)—
Repeal
“2.5%.”
Substitute
“—
(i) for a spectrum that falls within a frequency band set out in Part 1 of the Schedule—2.5%; or
(ii) for a spectrum that falls within a frequency band set out in Part 2 of the Schedule—2%.”
- 4. **Schedule substituted**
The Schedule—

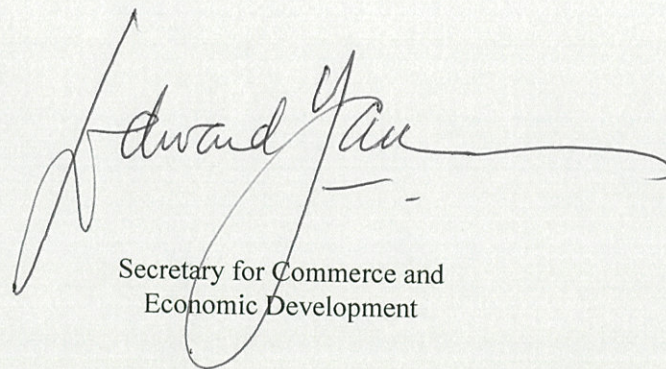
Part 1

- MHz
- 3300–3400
- 3400–3600
- 4840–4920

Part 2

- MHz
- 617–652
- 663–698
- 703–738
- 758–793
- 825–832.5
- 870–877.5

MHz
2500–2515
2540–2570
2620–2635
2660–2690
4800–4840
4920–4960”.



Secretary for Commerce and
Economic Development

4 May 2021

Explanatory Note

This Regulation amends the Telecommunications (Method for Determining Spectrum Utilization Fee) (Spectrum for Auction) Regulation (Cap. 106 sub. leg. AG) (*principal Regulation*)—

- (a) to add certain frequency bands to the Schedule to the principal Regulation; and
- (b) to provide for the payment of spectrum utilization fee for using a spectrum that falls within those frequency bands.

Telecommunications (Level of Spectrum Utilization Fee) (Administratively Assigned Spectrum) Regulation

(Made by the Secretary for Commerce and Economic Development under section 32I(2) of the Telecommunications Ordinance (Cap. 106))

1. Commencement

This Regulation comes into operation on a day to be appointed by the Secretary for Commerce and Economic Development by notice published in the Gazette.

2. Interpretation

In this Regulation—

commencement date (生效日期) means the date on which this Regulation comes into operation;

licence (牌照) means a licence issued under section 7(5) of the Ordinance;

licensed spectrum user (持牌頻譜使用者) means a person who is authorized under a licence to use the radio spectrum in a frequency band set out in Part 10 of the Schedule to the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106 sub. leg. Y).

3. Spectrum utilization fee

- (1) Subject to subsection (2), the spectrum utilization fee payable for every MHz of a spectrum assigned under a licence is set out in the Schedule.

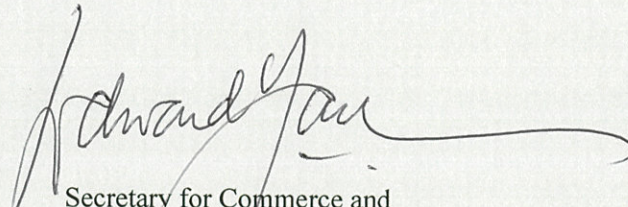
- (2) If any of the following periods is less than 12 months, the spectrum utilization fee payable for the period is to be calculated on a pro rata basis—
 - (a) the period beginning on the commencement date and ending on the day immediately before the next anniversary of the date of issue or renewal (as appropriate) of the licence while it remains valid;
 - (b) the period beginning on a date on which the spectrum utilization fee is payable under subsection (4) or (5) and ending on the expiry date of the licence.
- (3) In calculating the spectrum utilization fee, a fraction of 1 MHz is treated as a whole MHz.
- (4) If the licence is issued or renewed before, and is valid on, the commencement date, the spectrum utilization fee is payable—
 - (a) on the commencement date; and
 - (b) after that, on each anniversary of the date of issue or renewal (as appropriate) of the licence while it remains valid.
- (5) If the licence is issued or renewed on or after the commencement date, the spectrum utilization fee is payable—
 - (a) on the date of issue or renewal (as appropriate) of the licence; and
 - (b) after that, on each anniversary of the date of issue or renewal (as appropriate) of the licence while it remains valid.

Schedule

[s. 3]

Spectrum Utilization Fee

1. The spectrum utilization fee payable for every MHz of a spectrum assigned under a licence is as follows—
 - (a) if the spectrum is assigned exclusively to a licensed spectrum user—\$21,600 for every 12 months; or
 - (b) if the spectrum is assigned to a licensed spectrum user on a non-exclusive or shared basis—
 - (i) for providing a public telecommunications service—\$1,080 for every 12 months; or
 - (ii) for private use—\$21.6 for every 12 months.



Secretary for Commerce and
Economic Development

4 May 2021

Explanatory Note

This Regulation prescribes the levels, and provides for the payment, of spectrum utilization fee payable for using the radio spectrum in a frequency band set out in Part 10 of the Schedule to the Telecommunications (Designation of Frequency Bands subject to Payment of Spectrum Utilization Fee) Order (Cap. 106 sub. leg. Y).