



**NEW WORLD TELECOMMUNICATIONS LIMITED**

**SUBMISSION TO CONSULTATION PAPER**

**Proposed Spectrum Policy Framework**

31 January 2007

## Submission on Proposed Spectrum Policy Framework

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### **1. Introduction**

- 1.1 New World Telecommunications Limited (“NWT”) welcomes the opportunity to respond to the CITB’s consultation paper on **Proposed Spectrum Policy Framework**.
- 1.2 The review of spectrum policy framework is an important step in OFTA’s regulatory roadmap for technology convergence and the introduction of new technologies such as BWA (broadband wireless access).
- 1.3 Spectrum is, and will become even more, vital to Hong Kong’s economic and social development, in allowing consumer to enjoy more ubiquitous and rapid access to information, entertainment and communications.
- 1.4 NWT provides the following comments on the consultation paper.

### **2. BWA**

- 2.1 CITB and OFTA should acknowledge pent-up demand for BWA spectrum and take steps to open up access to spectrum for BWA deployment as soon as possible.
- 2.2 BWA is urgently required. Due to the withdrawal of mandatory Type II interconnection at Point A in mid-2008, NWT sees a pressing need to develop alternative access for the ‘last mile’ so that fixed carriers may continue to serve existing customers and expand telecommunications services to the public. BWA will provide such an alternative.
- 2.3 NWT believes that there is no excuse for further delay:
  - (a) trials of BWA in Hong Kong have been successful; and
  - (b) overseas jurisdictions are actively deploying BWA.
- 2.4 The lack of availability of spectrum is delaying technological and service progress, which is hampering the industry in making investment decisions going forward.
- 2.5 The issue of BWA spectrum highlights the need for reform of spectrum policy framework and the need for urgent decisions.
- 2.6 Unhappily, the BWA issue has dragged on for over 2 years without direction, as noted below.

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20 December 2004	BWA consultation paper (no. 1) released  Submissions closed 14 March 2005
31 August 2005	BWA consultation paper (no. 2) released  Submissions closed 21 November 2005

- 2.7 Since November 2005, in response to the joint submission made by a grouping of various carriers (fixed, mobile and external fixed satellite carriers) over a 'Policy First' approach, OFTA has placed decisions on BWA on hold pending completion of the consultations on Spectrum Policy Review and Fixed Mobile Convergence under a so-called 'regulatory roadmap'.
- 2.8 NWT looks forward to the early finalisation of decisions on Spectrum Policy Review and Fixed Mobile Convergence and to the release of BWA spectrum as soon as possible in 2007.

### 3. Issues

#### General

*Question: Do you agree that the considerations, i.e. future shape of radiocommunications, international developments, encourage investment, strategic considerations and fair compensation for the community, should be factored in Hong Kong's spectrum policy framework and the supporting spectrum management arrangements? Are there any other factors or considerations that should be taken into account?*

- 3.1 Agree.
- 3.2 NWT notes that Mainland spectrum and market harmonisation and integration issues will take on increasing importance in the future for Hong Kong.

#### (a) Spectrum policy objectives

*Question: Do you agree with the proposed spectrum policy objectives? Are there other spectrum policy objectives that the TA should take into account when making spectrum management decisions?*

- 3.3 Agree. NWT stresses that the implementation of these objectives must be supported by a transparent spectrum release plan that is responsive to the market demand.

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### (b) Guiding principles in spectrum management

**Question:** *Do you agree with the proposed guiding principle in spectrum management, especially that market-based approaches should be considered first for spectrum where there are competing commercial demands?*

- 3.4 Agree. Market-based approaches will help ensure transparency and fairness in the allocation of spectrum and maximise the use of spectrum by ensuring it is allocated to the persons that value it most.

### (c) Spectrum rights

#### *Spectrum Rights Before Expiry of Assignment*

**Question:** *Do you agree with the proposal to prescribe the circumstances under which spectrum assignment may be varied or withdrawn before the assignment expires? Are there other circumstances for variation or withdrawal of spectrum assignment before expiry that should be taken into account? What are your suggestions on the appropriate minimum notice periods?*

- 3.5 Agree, provided that variation or withdrawal before licence expiry should occur only in exceptional circumstances as a last-resort measure. There should be a presumption in favour of non-intervention. The regulator should generally put its trust in market forces to establish optimal outcomes, and thus avoid interfering unless overwhelmingly necessary.
- 3.6 Variation or withdrawal before expiry would be highly intrusive into the market and totally disruptive to the licensee concerned. An impact study should be undertaken and due consideration must be given to the commercial and network plans and investments of the licensee concerned. Transparency and fairness is essential, so substantial advance notice of variation or withdrawal must be given where substantial investment in infrastructure has been made.

#### *Spectrum Rights at the End of Assignment*

**Question:** *Do you agree with the proposal of status quo for spectrum right after the expiry of a spectrum assignment, i.e. no legitimate expectation for renewal? What is your suggestion of the minimum notice period for the intention to change or not to renew the spectrum assignment of a licence where substantial investment in the underlying infrastructure is required?*

- 3.7 Agree, provided that change or non-renewal of licences should occur only in exceptional circumstances as a last-resort measure. Again, there should be a presumption in favour of non-intervention. The regulator should generally put its trust in market forces to establish optimal outcomes, and thus avoid interfering unless overwhelmingly necessary.

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- 3.8 Change or non-renewal after expiry would be highly disruptive of the commercial and network plans and investments of the licensee concerned. An impact study should be undertaken and due consideration must be given to the commercial and network plans and investments of the licensee concerned. Transparency and fairness is essential, so substantial advance notice of change or non-renewal must be given where substantial investment in infrastructure has been made.

### *Spectrum Refarming*

**Question:** Do you agree that the TA should be required undertake impact appraisals before initiating spectrum refarming exercises? What other arrangements should be put in place for spectrum refarming exercises?

- 3.9 Agree. Refarming of spectrum may be one of the important factors behind any disruptive decision by the TA to vary or withdraw spectrum. Accordingly, the TA must study the expected impact and demonstrate overwhelmingly the case in favour of refarming.

### *Spectrum Rights for Non-licensees*

**Question:** For non-licensees under the TO, do you have demand for spectrum rights? If so, what kind of spectrum rights would you seek? For licensees under the TO, what are your views on our proposal not to cover spectrum rights for non-licensees in the spectrum policy framework?

- 3.10 No comment.

(d) Supply of spectrum (including spectrum trading and liberalisation)

### *Spectrum Release Plan*

**Question:** Do you support the proposal to publish 3-year rolling spectrum release plans for spectrum to be released to the market through open, competitive bidding processes? What types of information would you propose to include in the plans?

- 3.11 Strongly agree.
- 3.12 The current situation of *ad hoc* spectrum release is highly unsatisfactory, as it lacks transparency and accentuates regulatory risk for the industry. A prime example is the hesitation of the government over proposed allocation of BWA spectrum which has dragged on for over 2 years. In the BWA issue, the government has failed to inform the public as to the why, what, when and how of spectrum allocation. This has been damaging to the market by delaying market demand. In the meantime, other jurisdictions are marching ahead seamlessly to newer broadband wireless technologies.

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- 3.13 The proposal for a 3-year rolling spectrum plan would provide the necessary transparency and invaluable guidance to the industry in making investment decisions on acquisition of spectrum and network rollout.
- 3.14 The preparation of the spectrum plan should aim towards making as much spectrum available as feasible to the market, including:
- (a) analysing existing utilisation of allocated spectrum;
  - (b) identifying vacant spectrum and also allocated spectrum pending licence expiry;
  - (c) developing management strategies for maximising usability of both allocated spectrum and vacant (and to-be-vacant) spectrum (i.e. refarming decisions);
  - (d) assessing potential market demand;
  - (e) considering public policy factors (including Mainland harmonisation); and
  - (f) issuing the spectrum plan on rolling 3 year basis to notify the available spectrum.
- 3.15 Spectrum register: NWT also sees the need for a publicly viewable spectrum register. At present, there is no transparency as to who has been allocated spectrum, what frequencies are held and the term of the licence. It is in the public interest that all such kind of information be publicly available.
- 3.16 Knowing the identity of other spectrum holders will become important. Transparency will be needed as the government moves away from command-and-control regulation to market-driven regulation. For example:
- (a) *Interference management* - Market-driven regulation will place the burden of non-interference obligations on the licensee. Instead of regulator imposed guard bands, licensees may have to self-manage interference through block edge mask and to deal commercially with other spectrum holders in contiguous bands to manage interference issues. .
  - (b) *Trading* - A market exists for scarce spectrum and prospective buyers need to be able to locate prospective holders/sellers of spectrum in order for a trading market to function. (Even in a regime where there is no formal spectrum trading, trading can practically occur by means of transfer of ownership of the spectrum holder itself)
- 3.17 BWA release: NWT wishes for the government to make BWA spectrum available as soon as possible to meet market demand and to ensure that Hong Kong matches world standards in telecommunications services.

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### *Secondary Trading of Spectrum*

**Question:** *Do you agree that the introduction of secondary trading of spectrum in Hong Kong can improve the efficient use of spectrum? How should potential anti-competitive behaviour in the spectrum market be addressed? How should gains in spectrum trading be treated? What are your views on other implementation issues identified by the consultant?*

- 3.18 Agree. NWT notes that secondary trading is well established and advanced in leading jurisdictions such as Australia and to varying degrees in the USA and UK, so this is a mainstream trend which should be considered seriously by Hong Kong. Appropriate application and enforcement of anti-competition rules is needed to prevent hoarding as suggested by the consultant.

### *Spectrum Liberalisation*

**Question:** *Do you agree that we should further monitor developments in other jurisdictions regarding spectrum liberalisation before considering whether we should introduce it to Hong Kong?*

- 3.19 Agree. Nevertheless, NWT notes that spectrum liberalisation is well established and advanced in leading jurisdictions such as Australia and to varying degrees in the USA and UK, so this is a mainstream trend which should be considered seriously by Hong Kong.
- 3.20 Ultra-Wide Band (UWB): NWT requests the Government to clarify its policy position regarding the emerging technology of Ultra-Wide Broadband (UWB). UWB potentially allows high-speed transmission over existing spectrum but at very low power levels, without interference to spectrum being used conventionally at conventional power levels. The ability of UWB to opportunistically use existing spectrum arguably has significant policy implications.
- 3.21 NWT notes that under the current spectrum licensing regime, the permitted service and technology usage are specified in the spectrum licence. Therefore, the permitted service and technology usage specified in the spectrum licence defines the scope of the spectrum licence holder's rights of exclusivity with respect to a frequency band. In such context, NWT enquires whether it is the Government's view that it can legally allocate spectrum for UWB which underlays spectrum held and used conventionally by existing spectrum licence holders, without infringing on those spectrum licence holders' exclusivity rights.

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(e) Spectrum for government services

**Question:** *Do you agree that the command and control approach for spectrum management should continue to be applied to spectrum for government services?*

- 3.22 Agree, subject to OFTA closely monitoring and reviewing government usage to ensure that spectrum is being put to use efficiently.
- 3.23 The Government should consider the merits of introducing SUF (spectrum utilisation fee) (or AIP (administrative incentive pricing)) for Government users of spectrum as done in the UK, in order to better reflect opportunity cost.

(f) Spectrum pricing

**Question:** *Do you agree that SUF should be applicable to commercial use of spectrum irrespective of whether there is competing commercial demand? Do you agree that SUF for spectrum not released through auction should be set to reflect the opportunity costs of the spectrum?*

- 3.24 Agree. Opportunity costs should be factored into the price set for spectrum, to facilitate the efficient usage on quasi-market basis.

New World Telecommunications Limited  
31 January 2007