

REACH LTD.

**COMMENTS ON THE
COMMERCE, INDUSTRY AND TECHNOLOGY BUREAU'S
CONSULTATION PAPER ON
PROPOSED SPECTRUM POLICY FRAMEWORK
OF 25 OCTOBER 2006**

31 JANUARY 2007

Reach Ltd.
Comments on the
Commerce, Industry and Technology Bureau's
Consultation Paper on
Proposed Spectrum Policy Framework
of 25 October 2006
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INTRODUCTION

- 1.1 Reach Ltd. (“**REACH**”) provides this submission in response to the Commerce, Industry and Technology Bureau’s (“**CITB**”) Consultation Paper on “*Proposed Spectrum Policy Framework*”, dated 25 October 2006 (“**Consultation Paper**”).
- 1.2 We would first like to express our appreciation to CITB for issuing the Consultation Paper outlining its proposals for the spectrum policy framework going forward and providing REACH with the opportunity to comment on this matter, which is of considerable interest to fixed satellite service (“**FSS**”) operators.
- 1.3 REACH’s comments are made on behalf of its subsidiary, Reach Networks Hong Kong Limited (“**Reach Networks**”). Reach Networks holds, jointly and severally with Reach Cable Networks Limited (“**RCNL**”) and Reach Global Services Limited (“**RGSL**”)¹, a Fixed Carrier (“**FC**”) Licence in Hong Kong under which it supplies a broad range of telecommunications products and services to other operators.

¹ Reach Networks, RCNL, and RGSL are 100% owned by REACH.

1.4 Aside from an overarching interest in the further development of policies affecting Hong Kong’s telecommunications market, as a provider of wholesale international satellite capacity REACH has a particular interest in the proposed spectrum policy framework. REACH’s interest in the Consultation Paper flows from REACH’s position as having established Asia’s largest commercial teleports, with more than 20 operating antennas at its teleport sites in Hong Kong and a further 15 antennas at its teleport sites in Perth and Sydney, Australia. These teleport facilities are strategically positioned at REACH’s major Asia-Pacific network nodes to leverage REACH’s extensive investment in cable capacity around the globe, and provide a full range of teleport services in the Asia-Pacific Region.

2 COMMENTS

2.1 *General*

2.1.1 REACH’s principal activity in Hong Kong is that of an international carrier providing global connectivity services to other carriers and service providers. Therefore, REACH provides its comments herein largely from the perspective of a provider of wholesale satellite capacity and services. As such, and as not all of CITB’s spectrum policy proposals in the Consultation Paper are pertinent to the provision of wholesale satellite capacity and services, REACH has addressed only those issues relevant to such wholesale operators.

2.2 *“Policy First”*

2.2.1 Before moving to specific questions raised in the Consultation Paper, REACH would first like to confirm its understanding that CITB has accepted the comments of its consultant in the consultancy report on spectrum policy review (“**Consultancy Report**”)² that because of their high resilience to rain degradation – an essential requisite for fixed satellite broadcast operations in the region - the C-band frequencies will continue to be assigned for FSS. Further, that because of unresolvable interference issues, these frequencies will not be

² “*Spectrum Policy Review, Final Report to CITB – Public Version*”, Ovum, Indepen, Aegis, dated 18 June 2006.

permitted for Broadband Wireless Access (“BWA”) use as had been previously been a preliminary proposal of the Telecommunications Authority (“TA”)³.

2.2.2 With confirmation that REACH’s understanding is correct, we believe that the decision to now retain C-band frequencies for FSS clearly demonstrates the need for, and benefit of, conducting this CITB spectrum policy review (“SPR”) in advance of reaching final conclusions on matters subsidiary to the SPR - and for which policy should first be determined before drafting and implementation of detailed regulations in respect of such matters can commence. REACH considers that a “Policy First” approach should also be adopted for any other SPR related matters that are currently under regulatory review but where policy decision outcomes from the SPR will be fundamental in determining the objectives that regulation will seek to achieve.

2.3 ***“Do you agree that the above 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?”***

2.3.1 While REACH is in broad agreement that these matters should be considered in developing Hong Kong’s spectrum policy framework, REACH is concerned that the scope some of the considerations identified may not be sufficiently wide, and that potential conflicts (and priorities concerning resolution of these conflicts) may not have been fully considered. Our concerns relate largely to the level and breadth of discussion in the Consultation Paper in respect of these considerations.

2.3.2 For example, discussion of strategic considerations appears limited to economic integration with the Mainland of China. While relationships with the Mainland of China are without doubt extremely important, there is little or no mention of strategies to assist in the promotion

³ “Licensing Framework for Deployment of Broadband Wireless Access, Analysis of Comments Received, Preliminary Conclusions and Further Consultation” OFTA, dated 31 August 2005.

of Hong Kong more widely in the region even though one of the proposed spectrum policy objectives for Hong Kong is to “...*strengthen Hong Kong’s position as a telecommunications and broadcasting hub*”⁴. The Hong Kong FSS and satellite broadcast industries face very strong regional competition from, among others, Singapore. Having, as REACH believes, just removed one threat and uncertainty for the Hong Kong FSS and satellite broadcasting industries by clarifying that C-band frequencies will continue to be assigned to FSS (which goes some way in restoring confidence for satellite associated infrastructure investment decisions), a new and just as serious threat has been introduced by removing any certainty of spectrum renewal at the end of a licensed period. For licensees with large infrastructure intensive operations – infrastructure that often has an economic life well in excess of 10 years - this creates a very significant issue for new investment decisions that will potentially straddle the remaining period of their licences.

- 2.3.3 When considering fair compensation for the community, consideration should be given to how much the community desires services that might be introduced as well as to what value the community may put on services it will or might lose as a result of a change in spectrum assignment.

2.4. ***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?***

- 2.4.1 REACH is in broad agreement with the proposed spectrum policy objectives. However, as commented above, proportionate attention should be paid to promoting Hong Kong in competition and the development of relationships with other areas in the region along with the Mainland of China, the provision of reasonable certainty of continued spectrum availability for assigned uses where significant investment decisions are involved, and consideration of how the community views and values existing services along with potential price increases against the revenues that might be generated from the broader application of spectrum auctioning.

⁴ See paragraph 31 (a) of the Consultation Paper.

2.5 *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?*

2.5.1 The Consultation Paper expands upon this proposal with a qualification that that the proposal is subject to “...*overriding public policy reasons to do otherwise*”⁵. REACH appreciates that the Consultation Paper proposes that guidelines be issued to provide industry with transparency of public policy reasons. We request that the industry be provided the opportunity to comment in the drafting of these guidelines so that there is a clear industry understanding of the policy reasons and also that industry may provide inputs to these guidelines.

2.5.2 One of REACH’s concerns is that, viewed in isolation, while an individual service or frequency band may not be perceived as having a public interest value, there may be more far-reaching implications that should be considered. That is, where a licensee with significant fixed investment provides a range of services, the loss of its ability to offer one of those services (or, of greater concern, the piecemeal loss of a number of services) will narrow the range of remaining services over which it can recover its fixed and overhead costs. The impact of this is likely to be an increase in the prices of its remaining services – some of which may well be of public interest.

2.5.3 Additionally, broadcasters and other users of satellite facilities will generally look for a location that can offer a full range of services when considering where to base their regional hubs. Again, the lack of availability of certain services because of spectrum re-assignment or high cost at one potential hub may well be the deciding factor in an operator’s decision where to locate its regional hub – particularly where there is strong competition from other regional hubs.

⁵ See paragraph 36 of the Consultation Paper.

2.6 *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?*

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?

2.6.1 REACH has addressed these two Consultation Paper questions together. We note that the Consultation Paper makes reference to the economic life of radiocommunications equipment and receivers being at least 5 to 10 years, and that lack of predictability concerning spectrum assignment either during or at the end of a licence period could deter investment by spectrum assignees. REACH would strongly agree with this statement and comment further that the effective period of economic life of equipment is highly probable to exceed these periods as operators will normally buy new equipment for expansion or upgrading of systems and networks throughout the period of their licence. Obviously, the life of equipment purchased during the latter part of a licence period may extend well beyond the licence period itself. As pointed out in the Consultation Paper if there is an absence of certainty of spectrum assignment either during the licence period or at its end, then this will almost certainly deter investment in any new equipment with an economic life extending beyond the foreseeable future.

2.6.2 In REACH's case, we have made very extensive long-term investment in our teleports in Hong Kong – which, over the years, have advanced and supported telecommunications and broadcasting in, to, and from Hong Kong, and which have been fundamental in the development of Hong Kong as a leading regional telecommunications hub. REACH has and

continues to make investment in its teleport facilities in the reasonable expectation that its existing and necessary spectrum rights will be assigned to it upon renewal of its Fixed Carrier licence - that it may continue to operate FSS and contribute to Hong Kong well into the future. Given size and fixed nature of our teleports and the magnitude of investment necessary to further and maintain them, certainty of spectrum allocation both during and beyond the period of our current licence is considered essential in order for REACH to be able to continue to invest in its teleports in an effective and efficient manner.

2.7 *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?*

2.7.1 Without prejudice to REACH's comments above about varying or withdrawing spectrum assignment, if CITB should ultimately decide to consider spectrum refarming of some degree, we consider that the TA should undertake detailed impact appraisals. It seems to REACH that some of the factors that the TA should consider in any impact review are very similar to those we have outlined in our comments above: promotion and facilitation of robust regional competitiveness; promotion and encouragement of investment; assessment of the wider economic implications of service exits; and, evaluation of community values.

2.8 *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?*

2.8.1 Again without prejudice to REACH's spectrum assignment comments, if a 3-year rolling spectrum release plan were to be developed, REACH considers that any such plan should not mean that spectrum assignments for previously agreed periods – including expectations of continued spectrum assignment upon renewal of a relevant licence – should be reviewed on a rolling basis. Such a proposal would have a highly destabilising effect on licensees, their operations, and their investment decisions if they were initially to be advised that there was certainty of their spectrum assignment, only for this “certainty” to be reviewed each time any three year plan is rolled over.