



Submission of Comment on the Consultation Paper on the Spectrum Utilization Fee for Spectrum Assigned Administratively (“Consultation Paper”) issued on 26 November 2010

Submission by Hong Kong Broadband Network Limited (“HKBN”) to the Office of the Telecommunications Authority (“OFTA”)

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Specific Comment

Background

1. HKBN notes that in this consultation exercise the Telecommunications Authority (“TA”) aims at soliciting views from the public on the principle and imposition of spectrum utilization fee (“SUF”) on administratively assigned frequencies. It is anticipated that the introduction of the proposed arrangement would induce profound influence to the industry on the use of spectrum resources. As an industry player we would like to take this opportunity in providing our comments for your consideration.

Specific Comment to Questions in the Consultation Paper

Question 1: Do you agree that SUF for administrative assigned spectrum should only be applicable to the congested frequency bands based on the criteria of congestion given in paragraph 22?

2. HKBN agrees that only congested frequency bands, instead of any administratively assigned spectrum which carry public interest or under temporary assignment should be applied with SUF. Second, there should be no charge to frequencies which provide Governmental services to the public for the essential functions of government affairs and emergency. With a view to allow technological development, temporary assignment of frequencies on a free-basis through the use of trial permit should be maintained. HKBN agrees that a particular frequency band should be defined as congested, when at least 75% of frequency band is being occupied.

Question 2: Do you agree that SUF levied on the administratively assigned spectrum should be based on the LCA approach?

3. HKBN does not have specific comment regarding the LCA approach but suggests that the final SUF payable should be based on auction. It is clear that the SUF derived through the LCA approach could be served as the reserve price of relevant frequency bands, or an index for reference. Once the reserve price is available, eligible spectrum

users should be allowed to bid for the spectrum in the open market. It should be mindful that at the same time OFTA should strike a proper balance whether new entrants could be fairly competed with incumbent operators who have strong financial ability to outbid new entrants. HKBN believes certain regulations should be imposed to balance the ecology.

4. With the combination of reserve price and regulations to protect new entrants, it appears that auction is one of the appropriate means to determine the final SUF payable for administratively assigned spectrum. All in all, LCA approach could serve as a strong indicator for operators on budgeting. For example, how much they should prepare for the auction in order to obtain the desired spectrum successfully. It is expected that the industry can benefit from auction as genuine demand and value of a spectrum could be unveiled through the process of auction.

Question 3: Do you agree with the approach on setting the SUF for congested frequency bands for fixed links mentioned in the above paragraphs?

Question 4: Do you agree with the approach on setting the SUF for congested frequency bands for ENG/OB links mentioned in the above paragraphs?

Question 5: Do you agree with the approach on setting the SUF for congested frequency bands for satellite uplinks mentioned in the above paragraphs?

5. HKBN has no specific comment on the proposed approach for fixed links, ENG/OB links and satellite uplinks. However, as mentioned in Question 2 above, the proposed LCA approach should only be used to determine the reserve price of relevant frequency bands. The final SUF to be payable should be determined by market force, say through auctions among eligible spectrum users. Otherwise, merely impose SUF through the LCA approach described in paragraphs 29 to 49 cannot fully reflect the true value of relevant frequency bands.

Question 6: Do you agree that SUF should be imposed as annual payment regardless of the valid duration of the licence?

6. The merit of introducing SUF to administratively assigned radio spectrums is to encourage spectrum users to introduce or deploy innovative means to utilize precious radio spectrums. It is not a revenue stream to support the operation of the regulator. As such, HKBN suggests OFTA to adopt a flexible approach on this matter. For example, OFTA may allow spectrum holders with an alternative to pay SUF either on an annual or lump sum basis. The arrangement is similar to the fee structure of vehicle licence fee, where the public can choose to pay on an annual or 4-month basis.
7. HKBN believes the above arrangement would enable innovative operators with limited financial resources to acquire necessary spectrum resources and to compete with incumbent operators who possess significant financial resources. By the same token, incumbent operators with significant financial resources could reduce administrative works by making lump sum SUF payment.

Question 7: Do you agree that fixed links operated by mobile carriers should be assigned under UC licence (instead of WBLRS licence) and thus be charged with the relevant SUF accordingly?

8. Spectrum is precious public resource which can bring benefit to the public if it is used wisely and appropriately. By the same token, it could also cause harmful interference to the public and/or other legitimate users if it is not regulated properly. Fixed links is one of the many frequency bands that assigned to mobile carriers for backhaul transmission. As it is a kind of radio spectrum, it should be licensed under proper licensing vehicle.
9. As mentioned in the Consultation Paper, fixed links may be assigned to mobile carriers through the WBLRS licence or the UC licence. However, fixed carriers who operate their fixed links are licensed under the UC licence. Since mobile and fixed carriers are using the fixed links for similar purposes, it is therefore inappropriate to adopt

different approach between these two groups of licensees. In particular, the level of fees for radio spectrum for similar purposes under the WBLRS licence and the UC licence are different.

10. Further, Fixed-Mobile Convergence already implemented in Hong Kong for years, it is therefore necessary for the TA to eliminate any asymmetric regulations between fixed and mobile carriers. As a loophole is now unveiled, it is necessary to align relevant arrangement. To the view of HKBN, as long as the treatment between mobile and fixed carriers is identical it is indifferent as to whether the fixed link is licensed under the WBLRS or the UC licence.

Question 8: Do you agree that SUF should be applied to all users of the designated congested frequency bands irrespective of the time when the licence of the user is due for renewal?

11. HKBN agrees the application of SUF only on designated congested frequency bands is a good starting point to impose SUF on administratively assigned frequencies. By referring to the Consultation paper transitional arrangement will be provided to concerned users to adjust its business model. In particular, some SSC licences have licence periods of up to 20 years it appears to be impractical to maintain status quo for further 20 years before the kick-off of the proposed arrangement. HKBN echoes with OFTA's view that it would be unfair to apply SUF only on licence to be expired while other licensees with longer period of validity would be allowed to "escape" from the SUF arrangement.
12. Besides, HKBN suggests OFTA should carry out regular "health check" to ensure frequency bands assigned under the SUF arrangement are being utilized under an effective and efficient manner. If there is any solid evidence of frequency hoarding practice, the TA should issue warning or withdraw relevant frequency bands for reassignment. Such an arrangement could serve as an effective gateway to avoid incumbent players with strong financial capacity to keep frequency bands in stock merely due to its ability to pay SUF. HKBN believes there should be provisions to ensure

competition will not be stifled due to frequency hoarding by incumbent players.

Question 9: Do you agree with the transitional arrangements for implementing the SUF charging scheme (i.e. the grace period, the phase-in introduction of the SUF and the one-off grant arrangement) as proposed in paragraph 57 above?

13. HKBN expects that any changes on prevailing arrangement would cause certain impact to parties with vested interests, under the current situation it would be premature to conclude whether the change is positive or negative. To the view of HKBN, change is unavoidable if the outcome is to the interest of the society. Given that the purpose of transition period is to allow parties with vested interests to review and adjust its business model. In order to cater the nature and characteristics of different frequency bands, HKBN believes it is worth to review whether the same transitional arrangement should be applied across all frequency bands.
14. With a view to tackle the needs of different user groups in different frequency bands, HKBN proposes different transitional arrangements should be applied to different frequency bands. Taking an example, for a congested frequency band but it comes with varieties of alternative means to provide the service and relevant overhead cost to switch to the new solution is comparatively low, it would be unreasonable to apply the same transitional arrangement on frequency bands with less alternative means and require comparatively higher overhead cost to switch to the new means.

Question 10: Do you agree that SUF charging scheme should be reviewed every five years?

15. A transparent and fair regulatory regime is one of the major factors sustaining local and foreign investment in Hong Kong's telecommunications market. For the operation of a business, it is normal that enterprise will have a full scale business model taking into account set of facts or circumstances which may cause impact to its operation in the foreseeable future. It depends on the nature of

business, for the telecommunications sector which involves significant capital investment and time for network roll-out, the business model could last for 10 to 15 years. In fact, the validity period of a licence provided the foundation to operators in crafting its business model.

16. HKBN agrees technology is changing rapidly and a regular review on related regulations/guidance could help to reflect more accurately the necessity and the value of related spectrum resources. However, the TA should be mindful that any changes on SUF charging scheme would cause domino-effect on parties with vested interests. In other words, operators holding spectrum resources will be posted in a very uncertain situation. This arrangement could hinder investment in Hong Kong's telecommunications market and the result may not be beneficial to the society as a whole.
17. In regards of the above, frequency spectrum assigned to an operator under relevant licence should be protected. But, with a view to keep the industry update on International development, the TA is advised to conduct review on regular interval, such that stakeholders can plan ahead its strategy prior to the expiry of its licence. This arrangement appears to be comparatively just and fair to operators.