

Radio Spectrum Policy Framework (April 2007)

1. Introduction

- 1.1 A 3-month public consultation has been conducted by the Commerce, Industry and Technology Bureau on the proposed spectrum policy framework. This document sets out for general information of the public the current policy thinking and key issues identified by the Government in relation to the management of radio spectrum in Hong Kong as a result of the public consultation.
- 1.2 This document is a living document and will be reviewed, revised, modified and updated from time to time by the Government as it thinks fit having regard to all relevant circumstances including but not limited to the latest technological, market and societal developments in Hong Kong and internationally, as well as further deliberations in key issues related to spectrum policy and management.
- 1.3 Readers of this document should seek independent professional advice in relation to the contents of, and any matters arising from, this document. Nothing in this document shall be construed or be relied upon by any person against the Government (including but not limited to all public officers) and the Telecommunications Authority (TA). All rights, powers, remedies and interests of the Government (including but not limited to all public officers) and the TA are hereby expressly reserved.

2. Spectrum Policy Objectives

- 2.1 Without prejudice to section 32G(1) of the Telecommunications Ordinance (Cap. 106) (TO), Hong Kong's spectrum policy and management aims to –
 - (a) facilitate the most economically and socially efficient use of spectrum with a view to attaining maximum benefit for the community;
 - (b) achieve technically efficient use of spectrum to facilitate the introduction of advanced and innovative communications services and strengthen Hong Kong's position as a telecommunications and broadcasting hub;
 - (c) fulfil Hong Kong's regional and international obligations relating to the use of spectrum;

- (d) strengthen Hong Kong's strategic position as a world city and the gateway between the Mainland of China and the world by facilitating the provision of key services in Hong Kong which are deployed, or will be deployed, globally or in the Mainland of China; and
- (e) ensure that necessary spectrum is reserved for services to be provided by or on behalf of the Government ("Government services").

3. Guiding Principle in Spectrum Management

- 3.1 The policy inclination is that a market-based approach¹ in spectrum management will be used for spectrum wherever TA considers that there are likely to be competing demands from providers of non-Government services, unless there are overriding public policy reasons to do otherwise.
- 3.2 If the market-based approach for managing spectrum with competing demands from providers of non-Government services will not be used, the relevant public policy reasons will be published.

4. Spectrum Rights

- 4.1 TA is empowered to vary or withdraw any spectrum assigned by reasonable notice under sections 32H(3) and (4) of the TO. Without affecting the generality of the powers which TA has, the policy inclination is that the said statutory power will be exercised only in exceptional circumstances before the expiry of a spectrum assignment under the TO, including where the public interest or international obligations of the Government so require, there is a serious breach of spectrum assignment conditions or serious interference between legitimate spectrum users has to be resolved or minimised.
- 4.2 There is no legitimate expectation that there will be any right of renewal or right of first refusal of any licence or spectrum assignment upon the expiry of a licence or spectrum assignment under the TO. The decision whether a new spectrum assignment, with the same or varied radio frequencies, should be given to the spectrum assignee would be made and notified to the spectrum assignee within a reasonable time before the expiry of its spectrum assignment or after receipt of its application by TA as it is

¹ "Market-based approach" for spectrum management means methods relying on market forces to ensure the efficient use of spectrum as a public resource.

applicable in the circumstances, after taking into account the spectrum policy objectives set out in paragraph 2 of this document as well as all other relevant factors, including but not limited to any other public interest considerations.

- 4.3 If a spectrum assignment is to be varied or withdrawn before the assignment expires, the spectrum assignee to be affected will be notified before the variation or withdrawal is to take place in accordance with sections 32H(3) and (4) of the TO. For this purpose, the TA may state minimum notice periods for different types of spectrum assignments. In the case of spectrum assignment to a carrier licensee for the provision of mobile or wireless carrier services, a notice period of not less than three years before the date of variation or withdrawal would be given insofar as it is practicable in the circumstances. If a spectrum assignment is to be renewed with different radio frequencies assigned, or not renewed upon the expiry of an assignment, notification would be given as mentioned in paragraph 4.2 above. If the circumstances permit, the minimum notice periods to be stated by TA would also apply in relation to these changes or non-renewal.
- 4.4 Before the conduct of a spectrum reforming exercise, an appraisal of the impacts of different options, including an option of “do nothing”, will be undertaken by TA before a decision is taken. The same minimum notice periods described in paragraph 4.3 above will be given to the affected spectrum assignees insofar as it is practicable in the circumstances.

5. Supply of Spectrum

- 5.1 A spectrum release plan (about the potential supply of spectrum from the TA through an open, competitive bidding or tendering process in the following three years) taking into account all relevant considerations, including spectrum policy objectives set out in paragraph 2 of this document, availability of spectrum for assignment primarily for non-government use, international spectrum allocation guidance, regional spectrum allocation decisions, technology and equipment availability, proposals from the industry, will be published annually. Such plans will be updated every year on a rolling basis or as required taking into account the latest developments. Pursuant to section 32I(1) of the TO, TA will designate by order the frequency bands in which the use of spectrum is subject to the payment of spectrum utilization fee by the users of the spectrum. Pursuant to section 32I(2) of the TO, Secretary for Commerce Industry and Technology (SCIT) will prescribe the method for determining the spectrum utilization fee payable for the use of such spectrum.

- 5.2 Information on unassigned spectrum for which supply exceeds demand, and can readily be made available for assignment upon application will be published and updated regularly by the TA.
- 5.3 The policy inclination is to introduce spectrum trading in Hong Kong in the long term, subject to a feasibility study and resolution of various implementation issues.
- 5.4 The policy inclination is not to introduce spectrum liberalization in the short-term. Developments in and effectiveness of spectrum liberalisation in jurisdictions with comparable circumstances to Hong Kong will be closely monitored for re-consideration in future whether spectrum liberalisation should be introduced in Hong Kong.

6. Spectrum for Government Services

- 6.1 Spectrum to be used by or on behalf of government will continue to be managed administratively. The market-based approach will not be applied.
- 6.2 The efficiency of the use of those spectrum will be reviewed by TA every three years.

7. Spectrum Pricing

- 7.1 In principle, Spectrum Utilisation Fee (SUF) will be applicable to all non-government use of spectrum.
- 7.2 For spectrum not released through auction or other market mechanisms prescribed by SCIT, SUF will be set by the SCIT under section 32I(2) of the TO. Without affecting any of the powers of SCIT, such SUF may be set to reflect the opportunity costs of the spectrum. Where a frequency band is assigned to a spectrum assignee wholly or significantly to support public interest purposes agreed by or at the request of the Government, SUF may be adjusted in the sole discretion of SCIT to reflect the nature of such use.

8. Transitional Arrangements

- 8.1 TA needs time to align the existing spectrum management arrangements with the content of this document. In the interim, the TA would continue to discharge his spectrum management responsibilities under the TO with a mix of the existing command

and control approach² and the market-based approach as appropriate in his reasonable opinion.

**Communications and Technology Branch
Commerce, Industry and Technology Bureau**

² “Command and control approach” for spectrum management is one where

- (a) the Government, or its agency, makes (or accepts from an international body) the allocation of a frequency band for a particular purpose;
- (b) spectrum within the band is assigned to a licensee or licensees via an administrative process;
- (c) a charge may be levied on licensees, normally to cover administrative costs; and
- (d) the licence usually authorizes the licensee to utilize spectrum-using equipment specified as to location, power and other variables, the restrictions being designed to avoid interference with other licensees in adjoining geographical areas or frequency bands.