

Licensing of Spectrum in the 850 MHz Band to Enable the Provision of CDMA2000 Service

Statement of the Telecommunications Authority

27 April 2007

EXECUTIVE SUMMARY

Introduction

The 3-year extension period of the existing licence for CDMA services will expire on 20 November 2008. On 27 October 2006, the TA issued a consultation paper to solicit views on the need and the way forward to release spectrum to enable the continuity of the CDMA services in Hong Kong after the expiry of the existing licence. Having duly considered all the views and comments received, the TA sets out in this Statement how he will deal with the relevant issues.

Spectrum Policy Framework

2. In addressing the relevant issues in releasing spectrum for the CDMA services, the TA has given due regard to the relevant policy objectives of the Spectrum Policy Framework announced by the Government on 24 April 2007.

Issue of a Single New Licence in the 850 MHz Band

3. The TA will make available spectrum of width 7.5 MHz x 2 in the 850MHz band for a single licence for the provision of CDMA2000 services after 20 November 2008. The TA is of the view that with a spectrum width of 7.5 MHz x 2, the new licensee should have adequate amount of spectrum for it to provide a full range of services in the territory at this juncture.

Payment of Spectrum Utilisation Fee and Auction Arrangement

4. The use of the relevant frequency blocks would be subject to a one-off lump sum payment of Spectrum Utilisation Fee (“SUF”), the amount of which is to be determined through an open auction.

5. As required by law, subsidiary legislation needs to be introduced for the imposition of SUF in the spectrum concerned and for prescribing the level of or method for determining SUF, which may include the minimum fee.

6. The auction is expected to be held in October 2007 after the passage of all the relevant subsidiary legislation such that the successful bidder will have sufficient time to roll out its network. Before the auction rules are finalised, OFTA will commission an independent consultant to provide advice and recommendations on the auction design. All the concerns related to auction rules/arrangements raised by the respondents will be fully addressed in the auction design. The auction details and the reserve price will be published nearer the time when the auction is conducted.

Eligibility of Incumbent Carriers or Their Related Parties

7. Since it is not likely that an incumbent operator will be in a more advantageous position as compared with others in the auction, or competition will be significantly lessened because it has acquired additional spectrum in this exercise, the TA remains of the view that the incumbent 2G and 3G licensees and their related parties will be permitted to take part in the auction and there should not be any bidding restriction in the form of a spectrum cap i.e. there is no upper limit on the total amount of spectrum that can be held by a licensee and its related companies.

Applicable Regulatory Framework and Licence Conditions

8. While the TA proposed in the consultation that Open Network Access (“ONA”) requirements be removed as there is already sufficient competition in the market, the TA accepts that more time should be allowed for the industry to consider the relevant issues in detail before drawing any

conclusion as to whether or not the ONA requirements under all the existing 2G and 3G licences should be withdrawn. He therefore decides that the ONA requirements for all the existing 2G and 3G licensees should be retained for the time being. As regards the application of the ONA requirements in the proposed CDMA2000 licence, the TA considers that the telecommunications market in Hong Kong has developed to such a stage that *ex ante* regulation (i.e. regulation before the event) should be withdrawn unless market failure exists or is expected to exist after withdrawal of the regulation. There are now multiple wireless platforms in Hong Kong. The rationale for using regulation to mandate ONA has become increasingly questionable. The TA hence decides not to impose the ONA requirements as an *ex ante* obligation under the new CDMA2000 licence.

9. Regarding the other licence obligations, the TA, with due considerations given to the views and comments of the respondents, decides to impose the following special licence conditions on the CDMA2000 licensee:-

- Network and Service Coverage obligation
- Performance Bond - The exact amount and other pertinent details of the performance bond will be announced nearer the time of auction
- Denial of Service to Suspected Stolen Handsets

The TA, on the other hand, will not impose the Domestic Roaming Requirements on the licensee.

Way Forward

10. The TA will make an order under section 32I(2) of the Telecommunications Ordinance designating the 850 MHz band to be subject to SUF and will recommend to the Secretary for Commerce, Industry and Technology the enactment of the necessary regulation under section 32I(2) to determine the SUF by auction. Upon completion of the relevant subsidiary legislations under the Telecommunications Ordinance by the Legislative Council, the TA will publish a comprehensive bidding document including auction rules and the licence conditions which will be

imposed under the new licence and conduct the spectrum auction, tentatively in October 2007.

Office of the Telecommunications Authority
27 April 2007