



Licensing Framework

For Deployment of Broadband Wireless Access

SUNDAY's Response

Foreword

1. SUNDAY is an innovative developer and provider of wireless communications and data services in Hong Kong. The company's core strategy is to capitalise on the convergence of wireless and fixed voice and data technologies to develop innovative, relevant and value-driven communications services and solutions. SUNDAY enhances people's lives by delivering voice and data applications and services to meet the lifestyle needs of specific customer segments. Holding a 2G as well as a 3G mobile licence, SUNDAY is committed to deploying advanced technology to meet the rapidly developing market demand for enhanced multimedia services. SUNDAY welcomes new communication technology that will bring more value to customers and the community.
2. SUNDAY congratulates OFTA's efforts in putting together its preliminary views and proposals in relation to the licensing framework for deployment of Broadband Wireless Access ("BWA") by way of the Consultation Paper. It is SUNDAY's

pleasure to present this submission for the Telecommunications Authority's ("TA") consideration.

Key Message

3. Over the decades, technology has been changing the telecommunications landscape in many notable ways. The ever-growing demands for speedy communication and data download by Internet users appear to be the key driver for PC connectivity moving from narrowband to broadband. The formation of WiMAX Forum has further contributed to the increasing interest in wireless broadband development during the past two years or so. While BWA implies business opportunities and new market segments to industry players, OFTA's proposal that BWA licensees will be confined exclusively to fixed network operators for specific use is definitely inappropriate and will give rise to much controversy.

4. As far as SUNDAY is concerned, the proposal significantly departs from OFTA's well established telecommunications policies and principles underlying fair competition, technology neutrality and minimum intervention. In view of the controversy and complexities involved, the licensing framework of BWA warrants further deliberation by the TA and comprehensive debate within the industry before it is ultimately put in place.

5. BWA is not a standalone issue, it is inter-related to Spectrum Policy and Fixed-Mobile Convergence Policy. For the sake of integrity and completeness, BWA

licensing framework should not be concluded in isolation of revising Spectrum Policy and completing Fixed-Mobile Convergence Policy. Particularly, the inevitable “full mobility” of BWA is a subject that is a very significant component of Fixed-Mobile Convergence policy. Taking this opportunity, SUNDAY urges the TA to expedite the Spectrum Policy review and Fixed-Mobile Convergence policy formulation.

Fair Competition

6. Under paragraph 9 of the Consultation Paper, the TA proposes that BWA is a “viable solution for the last mile access” and accordingly, the TA further proposes that spectrum will be allocated to eligible fixed network operators as a remedy to resolve Type II interconnection. In addition to the above-mentioned technical advantage, the direct implication to the successful BWA licensees is that BWA will save hundreds of thousands of interconnection charges every month. SUNDAY supports this proposal so far as it recognizes changing technology developments but submits that the proposed arrangement obviously contradicts the fair competition principle. OFTA’s proposal would unfairly prevent mobile network operators from using the spectrum for providing similar technical arrangements such as “backbone” facilities within their mobile networks. Given that spectrum is a public resource, SUNDAY strongly argues that spectrum resource should be made available openly, fairly and proportionately to all industry players on an equal footing. The opportunity to save costs through the deployment of wireless

broadband technology should not be regarded as the exclusive privilege of fixed network operators. The IDA of Singapore appears to be more balanced and fair in this respect. In their proposal (see para. 1.2 of IDA's consultation paper dated 2 April 2004), the IDA is prepared to permit existing 3G operators to deploy wireless broadband technologies in their 3G spectrum bands in addition to their 3G systems. The TA is urged to consider the IDA's proposal in this respect.

7. From a technological perspective, it has been recognized by many overseas industry associations that it will be hard for BWA technology such as WiMAX to stand alone without a reliable 3G network. In foreseeable future, wireless LAN and WiMAX will ultimately complement rather than compete with 3G mobile technology. The correlation between BWA and 3G mobile technology should not be ignored by the TA in formulating the regulatory framework of BWA. Along this line, fair competition means that each licensee, whether fixed or mobile, should be given equal opportunity to deploy BWA technology in order to continue to deploy the many new services most possible by advancing technology.

Spectrum Utilization Fee

8. Value of spectrum is always a critical issue as it has implication on the Government treasury, customer interest and licensees' profitability. In recognition of the scarcity of spectrum, SUNDAY concurs that spectrum is best allocated and assigned by way of an auction exercise. Drawing on our experience in the 3G spectrum utilization fee, SUNDAY strongly advocates that the price of spectrum must be reasonable and

commercially realistic to enable the licensees to develop sustainable business case during the course of the tenure. Furthermore, the assumption that the value of spectrum will increase on an incremental scale throughout the licence period, as in 3G's case, should be critically evaluated and reviewed at this juncture. The total industry wide revenues derived from telecommunications services are diminishing every year. To impose a high and increasing "tax" on consumers through BWA licence fees would not be in the industry's best interest.

9. In the past several years, Hong Kong witnessed and suffered from the global economic downturn and the situation was significantly aggravated with the outbreak of SARS. Coupled with the highly saturated telecom markets (both fixed and mobile) and the increasingly aggressive head-on competition, the TA is well aware that operating a profitable and sustainable telecom business nowadays has become uphill battle. The incremental scale, applied to 3G spectrum utilization fee, has totally ignored the unpredictable changing economic factors that have impacted the open market value of spectrum as well as the business prospects of the 3G licensees since the 3G licences were issued. If the value of 3G spectrum was re-assessed today with reference to the prevailing economic factors and business environments, it would certainly be considered to have a lower figure vis-à-vis 5 years ago. In all circumstances, SUNDAY advocates reasonable spectrum utilization fee and opposes to the incremental scale. Reasonable spectrum utilization fee also means that there must be a fair and open mechanism written into

the telecom licence to allow review and adjustment of spectrum utilization fee according to the changing economic factors throughout the tenure.

Limited Mobility vs Mobility

10. In the Consultation Paper the TA's preliminary view is to allow broadband wireless spectrum to be used for limited mobility only, i.e. no cell handoff capability. Nevertheless, the TA also acknowledges that BWA spectrum has the potential and capability to support mobile services in the near future. (para. 33) and as a result, is prepared to allow BWA licensees to apply the spectrum for full mobility upon levying additional spectrum fee. Such an equivocal and swaying approach is neither fair nor reasonable. Particularly, assuming only fixed network operators are eligible to apply for BWA licences, the proposed option of full mobility would entitle fixed network operators to unfair advantage to the exclusion of other industry players. On the other hand, SUNDAY argues that restricting BWA to "limited mobility" is also inconsistent with the technology trend and OFTA's technology neutrality policy.

11. A more reasonable approach is to recognize that BWA technology is capable of performing full mobility and should be classified as a mobile service. Accordingly, it should not be monopolized by and exclusive to fixed network operators. In fact, BWA is most appropriately defined as first step towards fixed-mobile convergence. In the absence of substantive policy dealing with fixed-mobile convergence, it is

expected that significant regulatory uncertainty will arise in future and the industry players and customers will ultimately suffer as a result.

12. SUNDAY believes the TA is well aware of the technological trend that portable computers deploying WiMAX standard offering full mobility with wide area coverage will soon be launched in 2006. In other words, using the BWA spectrum only for “limited mobility” as proposed by OFTA appears to be out of line with the foreseeable technological advancement. This proposal also significantly departs from OFTA’s established principles on efficient use of radio spectrum thus leading to waste of public resource. Given the potential of full mobility, SUNDAY tends to suggest that BWA licence is virtually a mobile licence which all mobile and fixed networks operators should be eligible to apply for.

Conclusion

13. It seems that both the regulator and the industry are facing a number of uncertainty and controversy surrounding BWA. On one hand, there remains a distance before the technical standards can be fully agreed upon and settled by the industry players. On the other hand, the regulatory regime here has not been updated and improved fast enough to cope with the arrival of new technologies. SUNDAY also worries that regulatory uncertainty may hinder the future development of BWA. With these observations, SUNDAY tends to conclude that BWA licences should be issued only after the broader policies and principles on Fixed-Mobile Convergence, Spectrum Policy and Interconnection Regime have been formulated and/or revised by the TA

in consultation with the industry. This submission focuses mainly on SUNDAY's legitimate concerns on BWA. SUNDAY welcomes the opportunity to be further consulted on the subject in detail in due course.

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