

L.N. 74 of 2019

Telecommunications (Method for Determining Spectrum Utilization Fee) (Spectrum for Auction) Regulation

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Telecommunications (Method for Determining Spectrum Utilization Fee) (Spectrum for Auction) Regulation

(Made by the Secretary for Commerce and Economic Development under section 32I of the Telecommunications Ordinance (Cap. 106))

1. Commencement

This Regulation comes into operation on 12 July 2019.

2. Interpretation

In this Regulation—

application period (申請限期) means a period after which the Authority may not, in accordance with the specified terms, accept written applications for participating in an auction;

auction (拍賣) means an auction or a series of auctions referred to in section 3;

bidder (競投人) includes a person who has, by written application to the Authority, expressed an intention to participate in an auction;

eligible bidder (合資格競投人) means a bidder that—

(a) has been determined by the Authority in accordance with the specified terms to be qualified to participate in an auction; and

(b) has not been determined by the Authority in accordance with the specified terms to be disqualified from participating in the auction;

frequency band (頻帶) includes a division of a frequency band referred to in section 4;

specified terms (指明條款) means the terms and conditions of an auction specified under section 11(b);

spectrum (頻譜) means the spectrum referred to in section 3.

3. Determining spectrum utilization fee by auction

- (1) The spectrum utilization fee for using the spectrum that falls within a frequency band set out in the Schedule is to be determined by an auction or a series of auctions held in accordance with this Regulation and the specified terms.
- (2) This section is subject to sections 4, 5, 6, 7, 8 and 9.

4. Division of frequency band

- (1) For determining the spectrum utilization fee, the Authority may further divide a frequency band set out in the Schedule for an auction.
- (2) A division of a frequency band under subsection (1) is to be specified in the specified terms.

5. Spectrum utilization fee payable if there is more than one eligible bidder

- (1) If, on the expiry of the application period for participating in an auction, there is more than one eligible bidder, the auction is to be held for determining the spectrum utilization fee for using the spectrum concerned.
- (2) The amount of the spectrum utilization fee is the amount payable by the successful bidder as determined by the outcome of the auction.
- (3) However, the amount payable must not be less than the minimum amount of the spectrum utilization fee specified under section 10 for the spectrum concerned.

6. Spectrum utilization fee payable if there is only 1 eligible bidder

- (1) If—
 - (a) on the expiry of the application period for participating in an auction; or
 - (b) immediately before the start of the auction, there is only 1 eligible bidder, the auction is not to be held for determining the spectrum utilization fee for using the spectrum concerned.
- (2) The amount of the spectrum utilization fee is the minimum amount of the spectrum utilization fee specified under section 10 for the spectrum concerned.

7. Spectrum utilization fee payable if connected bidders are involved

- (1) This section applies if—
 - (a) 2 or more successful bidders in an auction are connected bidders;
 - (b) the total amount of the spectrum successfully bidden by those bidders exceeds the spectrum cap; and
 - (c) the Authority conducts another auction for those bidders in accordance with the specified terms.
- (2) The amount of a bid made by the successful bidder in the other auction is to be added to, and form part of, the spectrum utilization fee payable by that bidder for using the spectrum concerned.
- (3) The amount of a bid in the other auction must not be less than the minimum amount of the spectrum utilization fee specified under section 10 for the spectrum concerned.
- (4) In this section—

connected bidder (有關連的競投人) has the same meaning as in the specified terms;

spectrum cap (頻譜上限) means the maximum amount of the spectrum specified by the Authority in the specified terms that may be assigned to a group of persons who are connected bidders.

8. Spectrum utilization fee not payable for use of spectrum relating to space object

(1) If a user of the spectrum that falls within the frequency band 3400–3600 MHz is authorized by the Authority to use the spectrum for the sole purpose of telemetry, tracking, control, monitoring and testing functions related to the use, maintenance, operation and control of space objects, the user is not liable to pay any spectrum utilization fee for using the spectrum solely for that purpose.

(2) In this section—

space object (空間物體) has the meaning given by section 2(1) of the Outer Space Ordinance (Cap. 523).

9. Payment of spectrum utilization fee

(1) The spectrum utilization fee determined under this Regulation must be paid—

(a) in a lump sum; or

(b) annually in 15 instalments in accordance with subsection (2).

(2) For subsection (1)(b), the spectrum utilization fee for each instalment is as follows—

(a) for the first instalment—an amount equal to the lump sum referred to in subsection (1)(a) divided by 15;

- (b) for each subsequent instalment—an amount equal to the spectrum utilization fee payable in the immediately preceding instalment increased by 2.5%.
- (3) The spectrum utilization fee is payable at the time and in the way required by the Authority.

10. Secretary may specify minimum amount of spectrum utilization fee

The Secretary may specify the minimum amount of the spectrum utilization fee for the purposes of sections 5(3), 6(2) and 7(3)—

- (a) by notice published in the Gazette or in any other manner; and
- (b) by means of—
 - (i) a minimum fixed fee;
 - (ii) a minimum fee determined by reference to a formula or percentage or the occurrence of an event or a series of events;
 - (iii) a series of 2 or more minimum fees in relation to the same spectrum utilization fee where the relevant minimum fee is determined by reference to the occurrence of an event or a series of events;
 - (iv) a minimum fee the determination of which varies on the occurrence of an event or a series of events;
 - (v) a minimum fee determined by reference to another minimum fee, or by reference to the means of determining another minimum fee, whether or not the other minimum fee is or will become payable;

- (vi) a minimum fee the determination of which varies with, or is calculated by reference to, the period of validity of a licence or a part of the period; or
- (vii) a combination of 2 or more of any of the means specified in subparagraph (i), (ii), (iii), (iv), (v) or (vi), whether in whole or in part.

11. Authority may hold auction etc. and specify terms and conditions of auction

The Authority may—

- (a) promote, hold, conduct, suspend, cancel or conclude an auction; and
 - (b) by notice published in the Gazette, specify the terms and conditions of an auction (including the terms and conditions relating to the payment of the spectrum utilization fee).
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Schedule

[ss. 3 & 4]

Frequency Bands

MHz

3300–3400

3400–3600

4840–4920

Edward YAU
Secretary for Commerce and
Economic Development

14 May 2019

Explanatory Note

This Regulation—

- (a) provides for the determination by auction, and the payment, of spectrum utilization fees for using the spectrum that falls within the frequency bands set out in the Schedule to the Regulation;
- (b) exempts from payment of the spectrum utilization fee for using the spectrum that falls within a particular frequency band for the sole purpose of certain functions related to the use, maintenance, operation and control of space objects;
- (c) empowers the Secretary for Commerce and Economic Development to specify the minimum amount of the spectrum utilization fee to be determined under the Regulation; and
- (d) empowers the Communications Authority to arrange for an auction and specify the terms and conditions of an auction.