

LEGISLATIVE COUNCIL BRIEF

**Broadcasting Ordinance (48 of 2000)
Telecommunications Ordinance (Cap. 106)**

**LICENCE FEES FOR TELEVISION PROGRAMME SERVICE LICENCES
AND SOUND BROADCASTING LICENCES**

INTRODUCTION

At the meeting of the Executive Council on 9 January 2001, the Council ADVISED and the Chief Executive ORDERED that:

- A
- (a) the Broadcasting (Licence Fees) Regulation (the Regulation), at Annex A, should be made under section 42 of the Broadcasting Ordinance (BO);
- B & C
- (b) the sound broadcasting licences of Hong Kong Commercial Broadcasting Company Limited (which expires on 25 August 2001) and Metro Broadcast Corporation Limited (which expires on 31 May 2003) issued under the Telecommunications Ordinance should be amended as per Annexes B and C (the Amended Licences) respectively; and
- D
- (c) the renewed sound broadcasting licence of Hong Kong Commercial Broadcasting Company Limited (the Renewed Licence), which will take effect upon the expiry of its licence referred to in (b) above, should be amended as per Annex D.

BACKGROUND AND ARGUMENT

Previous Executive Council Decisions

2. In 1994, the previous Executive Council decided that the policy of charging full-cost recovery licence fees should be introduced for all television and sound broadcasting licensees following the mid-term review of each individual licence. To mitigate the financial impact on the licensees, the previous Executive Council subsequently decided that the annual full-cost licence fees should be phased in over a period of five years. Accordingly, the licensees were required to pay 20% of the full-cost fee in the first year after renewal of their respective licences, 40% in the second year and so on until the full-cost fee would be payable on the fifth year.

3. On 8 December 1998, having considered the policy proposals arising from the 1998 Review of Television Policy, the Executive Council made the policy decision, among others, that all television broadcasting and programme service licensees should be required to pay full-cost recovery licence fees with the abolition of royalties following the enactment of the BO. The Executive Council also decided that the policy decision should be extended to sound broadcasting licensees as well.

4. On 25 January 2000, the Executive Council approved that the Broadcasting Bill should be introduced into the Legislative Council. The BO was enacted by the Legislative Council on 22 June 2000 and came into operation when it was gazetted on 7 July 2000¹.

¹ Except the competition provisions, which will come into effect on a date to be appointed by the Secretary for Information Technology and Broadcasting after the Broadcasting Authority has finalized the competition guidelines following consultation with the industry and the community.

Present Position

5. The policy decision to abolish the charging of royalties on television programme service licensees has taken effect concurrently upon the commencement of the BO. Section 13 of Schedule 4 to the BO provides that a television programme service licensee² shall pay annually to the Director of Accounting Services a licence fee and such other fees as may be prescribed. Section 42(1)(f) of the BO provides that the Chief Executive in Council may by regulation prescribe anything that may be prescribed under the BO. Given that regulation can only be made after the enactment of the principal ordinance, a transitional arrangement is provided for in the BO whereby the Financial Secretary may, by notice in writing served on an existing licensee³, specify the fee to be paid to the Government by the licensee for the year after the commencement of the BO, i.e. from 7 July 2000 to 6 July 2001. As an interim measure, the Financial Secretary has served on the existing licensees written notices specifying the licence fees for this period based on the existing full-cost recovery charging basis for the computation of licence fees. The licence fees paid by the existing licensees after the commencement of the BO are set out in Annex E.

E

6. Under the previous regulatory regime of the Television Ordinance (now repealed), television broadcasting licensees were required to pay a single licence fee which reflects the costs incurred by the Television and Entertainment Licensing Authority (TELA) and the

² This provision does not apply to satellite television uplink and downlink licences and hotel television service licences, which are deemed respectively by the BO to be non-domestic television programme service licences and other licensable television programme service licences granted under the BO. Section 5 of Schedule 8 to the BO provides that these deemed licensees shall continue to comply with the provisions of their respective licences relating to the licence fee and section 13 of Schedule 4 to the BO shall not apply to these deemed licensees until their existing licences expire or when they are surrendered for a licence under the BO, whichever is the earlier.

³ The existing licensees refer to the holders of television broadcasting licences issued under the repealed Television Ordinance. These licences are deemed under the BO to be domestic free television programme service licences (licences of Asia Television Limited (ATV) and Television Broadcasts Limited (TVB)) or domestic pay television programme service licences (licences of Hong Kong Cable Television Limited (HKCTV) and PCCW VOD Limited (PCCW VOD, formerly Cable & Wireless HKT VOD Limited).

Office of the Telecommunications Authority (OFTA) in administering the provisions of the licence. This charging basis, however, is not appropriate for the present regulatory regime under which “carriage” and “provision” of television programme services are licensed separately under the Telecommunications Ordinance (TO) and the BO respectively.

7. Sound broadcasting licences are issued under the TO and subject to the provisions thereunder. The annual licence fees payable by the two existing sound broadcasting licensees, i.e., Hong Kong Commercial Broadcasting Company Limited (Commercial Radio) and Metro Broadcast Corporation Limited (Metro Broadcast), reflecting the five-year phase-in arrangement, as well as the royalty payments, are stipulated in their respective licences. To give effect to the policy decision as mentioned in paragraph 3 above, amendments needed to be made to these two licences.

The New Licence Fees

Television Programme Service Licences

8. With the opening up of the television market under the new regulatory regime, there will be a proliferation of television broadcasters each providing a different number of channels and serving different audience sizes. There is a need to devise a new licence fee structure to reflect the level of costs in administering different categories of licences. Under the new licence fee structure, the licence fees for the “provision” part of television programme services are based on a formula approach taking into account the number of channels/subscribers/hotels as appropriate.

9. The costs incurred by TELA in relation to general licence administration are almost constant for licences under the same category. These include, among others, general administration, preparation and review of codes of practice and guidelines, etc. Such costs would constitute the **fixed fee** of the formulae. On the other hand, the cost of handling complaints is very much affected by the number of complaints, which in turn relates to the number of viewers served and the number of channels. Such costs would form the **variable fee** of the formulae. The formulae for calculating the licence fees payable by television programme service licensees are at Annex F. The detailed cost computations are set out in Annex G.

10. The “carriage” part of television programme service falls within the meaning of carrier licences under the TO. The corresponding licence fees are separately prescribed by regulation made under the TO.

Sound Broadcasting Licences

11. Given that the new regulatory regime is not yet applicable to sound broadcasting services⁴, sound broadcasting licensees will continue to be required to pay a single licence fee which reflects the costs incurred by OFTA and TELA in relation to the licence administration work. Having conducted a costing exercise, we have worked out that the annual licence fee payable by each sound broadcasting licensee is \$3,540,410. The detailed cost computations are set out in Annex G.

G

THE REGULATION

12. **Section 1** stipulates that apart from section 4, which is related to “deemed licences”, the Regulation will come into operation on 23 February 2001, i.e. upon expiry of the negative vetting period. Section 4 shall come into operation on 7 July 2001.

13. **Section 3** provides that the licensees of the four categories of television programme service licences are required to pay the relevant licence fees specified respectively in Schedules 1 to 4. **Schedules 1 to 4** specify the fees payable for the four categories of television programme service licences respectively, as mentioned in paragraph 9 above and Annex F.

14. **Section 4** provides that the deemed domestic free and domestic pay television programme service licensees are required to pay the licence fees specified in Schedules 1 and 2 respectively. Under the transitional arrangement provided for in the BO, the deemed licensees have already paid their licence fees for the year after commencement of the BO, i.e. from 7 July 2000 to 6 July 2001 (please see paragraph 5

⁴ We have put forth the policy proposal to provide a technology-neutral regulatory regime for sound broadcasting services in the Consultation Paper on Digital Terrestrial Broadcasting, which was issued on 1 December 2000.

above). This section will therefore commence on 7 July 2001⁵.

LEGISLATIVE TIMETABLE

15. The legislative timetable will be -

| | |
|------------------------------------|-----------------|
| Publication in the Gazette | 12 January 2001 |
| Tabling at the Legislative Council | 17 January 2001 |

AMENDMENTS TO SOUND BROADCASTING LICENCES

16. The existing sound broadcasting licences of Commercial Radio and Metro Broadcast have been amended to require them to pay the new licence fees (as mentioned in paragraph 11 above) at full-cost recovery level (paragraph 11 of the Amended Licences refers). These amendments took effect immediately on the Amendment Date, i.e. 9 January 2001. To avoid double charging, the fees already paid by these licensees for the period from the Amendment Date to 31 May 2001 will then be refunded (paragraph 11 of the Amended Licences refers).

17. The requirement to pay royalty charges is stipulated in the First Schedule of the two existing licences. To give effect to the policy decision that the royalty charges should be abolished (paragraph 3 above refers), the First Schedule of both licences have been amended to the effect that royalty charges are payable on a pro-rata basis in respect of that portion of the licensees' accounting year which has effluxed before the Amendment Date but not thereafter (paragraph 4 of the First Schedule of the Amended Licences refers).

18. On 2 May 2000, the Executive Council decided that the sound broadcasting licence of Commercial Radio should be renewed for a period of three years upon its expiry on 25 August 2001. Corresponding amendments to those mentioned in paragraphs 16 and 17 above have been made to the Renewed Licence as per Annex D.

⁵ The deemed licensees (except PCCW VOD) will be required to pay the licence fees under the TO from the same date as they are also deemed to be licensees under the TO.

BASIC LAW IMPLICATIONS

19. The Department of Justice advises that the Regulation and the amendments are consistent with the Basic Law.

HUMAN RIGHTS IMPLICATIONS

20. The Department of Justice advises that the Regulation and the amendments have no human rights implications.

BINDING EFFECT OF THE LEGISLATION

21. The Regulation will not affect the binding effect of the Broadcasting Ordinance.

FINANCIAL AND STAFFING IMPLICATIONS

22. The new licence fees, with the increased number of licences and subscribers in the opened-up television market, are estimated to give rise to annual revenue of about \$65.5 million.

ECONOMIC IMPLICATIONS

23. The rationalised licence fee scheme for television programme services prescribed by the Regulation will provide predictability to both existing and prospective operators and enhance the transparency of our regulatory regime. The abolition of royalties for sound broadcasting services will lower the costs of the service providers in an increasingly open and competitive multi-media market. These would be conducive to maintaining Hong Kong's position as a regional broadcasting hub.

PUBLIC CONSULTATION

24. We have briefed the Legislative Council Panel on Information Technology and Broadcasting on the new licence fees for television programme service licences. Members of the Panel have no objection to the new licence fees. The Broadcasting Authority has been consulted and is supportive of the new licence fees.

25. We have consulted the licensees affected and they have not expressed objection to the new fees. Commercial Radio and Metro Broadcast are content with the amendments to their respective licences.

PUBLICITY

26. A press release will be issued on 11 January 2001 to announce the decision.

Information Technology and Broadcasting Bureau
Government Secretariat

11 January 2001

BROADCASTING (LICENCE FEES) REGULATION

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BROADCASTING (LICENCE FEES) REGULATION

(Made by the Chief Executive in Council under section 42 of the
Broadcasting Ordinance (48 of 2000))

1. Commencement

(1) Subject to subsection (2), this Regulation shall come into operation on 23 February 2001.

(2) Section 4 shall come into operation on 7 July 2001.

2. Interpretation

In this Regulation –

“deemed domestic free television programme service licence” (當作批給的本地免費電視節目服務牌照) means a commercial television broadcasting licence that is deemed under section 2(1)(a) of Schedule 8 to the Ordinance to be a domestic free television programme service licence;

“deemed domestic pay television programme service licence” (當作批給的本地收費電視節目服務牌照) means a subscription television broadcasting licence or a programme service licence that is deemed under section 2(2)(a) or (3)(a) of Schedule 8 to the Ordinance to be a domestic pay television programme service licence;

“subscriber” (用戶) means a person to whom a licensed service is provided by a licensee on a subscription basis.

3. Annual licence fee

(1) A person who holds a domestic free television programme service licence shall pay an annual licence fee as provided for in Schedule 1.

(2) A person who holds a domestic pay television programme service licence shall pay an annual licence fee as provided for in Schedule 2.

(3) A person who holds a non-domestic television programme service licence shall pay an annual licence fee as provided for in Schedule 3.

(4) A person who holds an other licensable television programme service licence shall pay an annual licence fee as provided for in Schedule 4.

4. Deemed licences

(1) A person who holds a deemed domestic free television programme service licence shall pay an annual licence fee as provided for in Schedule 1.

(2) A person who holds a deemed domestic pay television programme service licence shall pay an annual licence fee as provided for in Schedule 2.

SCHEDULE 1

[ss. 3(1) & 4(1)]

ANNUAL LICENCE FEE FOR DOMESTIC FREE TELEVISION PROGRAMME SERVICE LICENCE OR DEEMED DOMESTIC FREE TELEVISION PROGRAMME SERVICE LICENCE

1. Interpretation

In this Schedule –

“licence” (牌照) means –

- (a) a domestic free television programme service licence; or
- (b) a deemed domestic free television programme service licence;

“specified day” (指明日期) means –

- (a) in relation to a domestic free television programme service licence, the day the licence comes into force; or
- (b) in relation to a deemed domestic free television programme service licence, 7 July 2001.

2. Annual licence fee

(1) Subject to subsection (2), the annual licence fee payable for a licence consists of the following –

- (a) a fixed fee of \$3,811,000; and

- (b) a variable fee calculated by multiplying \$1,566,000 with the number of television programme service channels (if any) provided under the licence –
 - (i) for the first annual licence fee, on the specified day; and
 - (ii) for any subsequent annual licence fee, on each anniversary of the specified day.

(2) If the remaining period of validity of a licence immediately after any anniversary of the specified day is less than 1 year, then the annual licence fee payable for the remaining period shall be calculated on a pro rata basis.

3. **Time of payment**

The annual licence fee shall be payable not later than 14 days after –

- (a) the specified day; and
- (b) each anniversary of the specified day.

SCHEDULE 2

[ss. 3(2) & 4(2)]

ANNUAL LICENCE FEE FOR DOMESTIC PAY TELEVISION PROGRAMME SERVICE LICENCE OR DEEMED DOMESTIC PAY TELEVISION PROGRAMME SERVICE LICENCE

1. **Interpretation**

In this Schedule –

“licence” (牌照) means –

- (a) a domestic pay television programme service licence; or
- (b) a deemed domestic pay television programme service licence;

“specified day” (指明日期) means –

- (a) in relation to a domestic pay television programme service licence, the day the licence comes into force; or

- (b) in relation to a deemed domestic pay television programme service licence, 7 July 2001.

2. **Annual licence fee**

(1) Subject to subsection (2), the annual licence fee payable for a licence consists of the following –

- (a) a fixed fee of \$1,371,000; and
- (b) a variable fee calculated by multiplying \$4 with the number of subscribers (if any) to the television programme service provided under the licence –
 - (i) for the first annual licence fee, on the specified day; and
 - (ii) for any subsequent annual licence fee, on each anniversary of the specified day.

(2) If the remaining period of validity of a licence immediately after any anniversary of the specified day is less than 1 year, then the annual licence fee payable for the remaining period shall be calculated on a pro rata basis.

3. **Time of payment**

(1) The fee mentioned in section 2(1)(a) shall be payable not later than 14 days after –

- (a) the specified day; and
- (b) each anniversary of the specified day.

(2) The fee mentioned in section 2(1)(b) shall be payable not later than 60 days after –

- (a) the specified day; and
- (b) each anniversary of the specified day.

ANNUAL LICENCE FEES FOR TYPE A AND TYPE B
NON-DOMESTIC TELEVISION PROGRAMME SERVICE
LICENCES

1. **Interpretation**

In this Schedule –

“type A non-domestic television programme service” (甲類非本地電視節目服務) means a non-domestic television programme service other than a type B non-domestic television programme service;

“type B non-domestic television programme service” (乙類非本地電視節目服務) means a non-domestic television programme service mentioned in paragraph (a)(i)(B) of the definition of “non-domestic television programme service” in section 2(1) of the Ordinance.

2. **Annual licence fee: type A non-domestic television programme service licence**

The annual licence fee payable for a type A non-domestic television programme service licence is \$56,600.

3. **Annual licence fee: type B non-domestic television programme service licence**

The annual licence fee payable for a type B non-domestic television programme service licence consists of the following –

- (a) a fixed fee of \$69,600; and
- (b) a variable fee calculated by multiplying \$4 with the number of subscribers (if any) to the television programme service provided under the licence –
 - (i) for the first annual licence fee, on the day the licence comes into force; and

- (ii) for any subsequent annual licence fee, on each anniversary of the day the licence comes into force.

4. Time of payment: type A non-domestic television programme service licence

The annual licence fee for a type A non-domestic television programme service licence shall be payable not later than 14 days after –

- (a) the day the licence comes into force; and
- (b) each anniversary of the day the licence comes into force.

5. Time of payment: type B non-domestic television programme service licence

(1) The fee mentioned in section 3(a) shall be payable not later than 14 days after –

- (a) the day the licence comes into force; and
- (b) each anniversary of the day the licence comes into force.

(2) The fee mentioned in section 3(b) shall be payable not later than 60 days after –

- (a) the day the licence comes into force; and
- (b) each anniversary of the day the licence comes into force.

SCHEDULE 4

[s. 3(4)]

**ANNUAL LICENCE FEES FOR TYPE A AND TYPE B
OTHER LICENSABLE TELEVISION PROGRAMME
SERVICE LICENCES**

1. Interpretation

In this Schedule –

“hotel” (酒店), for the purpose of a type B other licensable television programme service licence, means a hotel containing 1 or more hotel rooms to which a television programme service is provided under the licence;

“type A other licensable television programme service” (甲類其他須領牌電視節目服務) means an other licensable television programme service other than a type B other licensable television programme service;

“type B other licensable television programme service” (乙類其他須領牌電視節目服務) means an other licensable television programme service mentioned in paragraph (b)(ii) of the definition of “other licensable television programme service” in section 2(1) of the Ordinance.

2. **Annual licence fee: type A other licensable television programme service licence**

The annual licence fee payable for a type A other licensable television programme service licence consists of the following –

- (a) a fixed fee of \$224,000; and
- (b) a variable fee calculated by multiplying \$4 with the number of subscribers (if any) to the television programme service provided under the licence –
 - (i) for the first annual licence fee, on the day the licence comes into force; and
 - (ii) for any subsequent annual licence fee, on each anniversary of the day the licence comes into force.

3. **Annual licence fee: type B other licensable television programme service licence**

The annual licence fee payable for a type B other licensable television programme service licence consists of the following –

- (a) a fixed fee of \$15,200; and
- (b) a variable fee calculated by multiplying \$5,400 with the number of hotels (if any) –
 - (i) for the first annual licence fee, on the day the licence comes into force; and
 - (ii) for any subsequent annual licence fee, on each anniversary of the day the licence comes into force.

4. Time of payment: type A other licensable television programme service licence

(1) The fee mentioned in section 2(a) shall be payable not later than 14 days after –

- (a) the day the licence comes into force; and
- (b) each anniversary of the day the licence comes into force.

(2) The fee mentioned in section 2(b) shall be payable not later than 60 days after –

- (a) the day the licence comes into force; and
- (b) each anniversary of the day the licence comes into force.

5. Time of payment: type B other licensable television programme service licence

(1) The fee mentioned in section 3(a) shall be payable not later than 14 days after –

- (a) the day the licence comes into force; and
- (b) each anniversary of the day the licence comes into force.

(2) The fee mentioned in section 3(b) shall be payable not later than 60 days after –

- (a) the day the licence comes into force; and
- (b) each anniversary of the day the licence comes into force.

Clerk to the Executive Council

COUNCIL CHAMBER

2001

Explanatory Note

The object of this Regulation is to prescribe the annual licence fees payable for the following television programme service licences granted under the Broadcasting Ordinance (48 of 2000) –

- (a) domestic free television programme service licence;
- (b) deemed domestic free television programme service licence;
- (c) domestic pay television programme service licence;
- (d) deemed domestic pay television programme service licence;
- (e) type A non-domestic television programme service licence;
- (f) type B non-domestic television programme service licence;
- (g) type A other licensable television programme service licence; and
- (h) type B other licensable television programme service licence.

Annex B

TELECOMMUNICATION ORDINANCE

(CAP 106)

SOUND BROADCASTING LICENCE

HONG KONG COMMERCIAL BROADCASTING

COMPANY LIMITED

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FIRST SCHEDULE : ROYALTY

SECOND SCHEDULE : TECHNICAL

1. Grant of licence

In exercise of the powers conferred by sections 13C, 13D and 13E of the Telecommunication Ordinance (Cap. 106), the Governor in Council hereby:-

- (a) grants a broadcasting licence to Hong Kong Commercial Broadcasting Company Limited ("the Licensee"), a company formed and registered in Hong Kong under the Companies Ordinance (Cap. 32), whose registered office is situate at No. 3 Broadcast Drive, Kowloon, Hong Kong; and
- (b) renews that licence on the date determined by him by order ("the Renewal date")

on the following terms and conditions.

2. Interpretation

2.1 For the purposes of this licence:-

"amendment date"
means 9 January 2001.

"auditor"

means a professional accountant registered and holding a practising certificate under the Professional Accountants Ordinance (Cap. 50).

"broadcasting"

means transmitting sound (otherwise than as part of a television broadcast) for general reception by means of radio waves.

"Broadcasting Authority"

means the Broadcasting Authority established by section 3 of the Broadcasting Authority Ordinance (Cap. 391).

"clock-hour"

means a period of 60 minutes beginning on any hour.

"day"

means a period of 24 hours beginning at midnight.

"director"

includes any person occupying in relation to a company the position of a director (by whatever name called) and any person in accordance with whose directions or instructions (not being advice given in an independent professional capacity) the directors of that company are accustomed to act.

"ordinarily resident in Hong Kong"

bears the meaning ascribed in Part III(A) of the Telecommunication Ordinance.

"subsidiary company"

bears the meaning ascribed in section 2 of the Companies Ordinance.

"Telecommunications Authority"

means the Authority appointed under section 5 of the Telecommunication Ordinance.

- 2.2 Save where the contrary intention appears expressly or by necessary implication in this licence words and expressions referring to one gender include the others and references to the singular include the plural and vice versa.
- 2.3 The interpretation of this licence shall not be varied, limited or extended by any Index or headings annexed to or contained in this licence.
- 2.4 All references herein to an Ordinance, subsidiary legislation, regulation, direction, Code of Practice or any provision thereof include those in force from time to time and those enacted or made (as the case may be) in place or substitution in whole or in part of any other Ordinance, subsidiary legislation, regulation, direction, Code of Practice or provision thereof.
- 2.5 Subject to any express terms or conditions herein, where this licence requires any act, conduct, matter, issue or thing of the Licensee to be approved, the approval shall not be validly given unless given in writing under the hand of or on behalf of the person giving it.
- 2.6 This licence shall include the 2 Schedules hereto which shall form and be read as an integral part.

3. Authorisation

This licence authorises the Licensee:-

- (a) to establish and maintain a broadcasting service; and
- (b) to establish and maintain such associated telecommunication apparatus and services incidental to the operation of a broadcasting service as may be authorised by the Telecommunications Authority; and
- (c) to carry on such types of business which are in the opinion of the Broadcasting Authority directly connected or associated with the foregoing.

4. Licence granted subject to

This licence is granted subject to the provisions of the Telecommunication Ordinance, the Broadcasting Authority Ordinance and all subsidiary legislation, regulations, directions and Codes of Practice made thereunder and the Licensee shall comply with all applicable provisions thereof.

5. Indemnity

The Licensee shall indemnify the Hong Kong Government against any losses, claims, charges, expenses, actions or demands which it may incur or which may be made against it, as the case may be, as a result of or in relation to any breach or alleged breach of or failure or alleged failure to observe or perform the said terms and conditions subject to which this licence is granted.

6. Period

6.1 This licence shall be valid for a period of twelve years from 26 August 1989 to 25 August 2001, both dates inclusive.

6.2 This licence shall be treated for all purposes as one single continuous licence notwithstanding the amendments to its provisions and conditions from time to time including renewal pursuant to section 13E(2)(a) of the Telecommunication Ordinance, and all references in this licence to "the validity of this licence", "the Renewal date" and "this licence" shall be given effect to accordingly.

7. Notice of intent

The Licensee shall indicate in writing its interest (if any) in applying for a further licence to establish and maintain a broadcasting service not less than 18 months before this licence may otherwise expire on 25 August 2001.

8. Principles of Broadcasting

8.1 The Licensee shall accept that the radio frequency spectrum is not the property of the Licensee but of the community and being a natural and limited asset the Licensee shall make proper use of it in the best interests of the whole community and the Licensee shall accept that regulation of that use of the radio frequency spectrum is the purpose of this licence and is necessary and justified because radio programmes go freely into homes and may be readily understood by children and adults.

8.2 The Licensee shall:-

(a) entertain, inform and educate; and

(b) ensure that its programming is balanced in content and provides an adequate

and comprehensive service which is responsive to the diverse needs and aspirations of the community; and

- (c) apply up-to-date technology to perfect the sounds that it broadcasts.

9. Reservation

9.1 There is hereby reserved the power to impose during the validity of this licence such further terms and conditions as the Governor in Council may in the public interest specify from time to time and for that purpose the Governor in Council may revoke, vary, limit or extend the terms and conditions of this licence.

9.2 For the purposes of subparagraph 1, the Governor in Council shall afford the Licensee a period of at least 14 days but not exceeding one month from the date of a notice in writing to the Licensee to the effect that the Governor in Council is considering an amendment and the nature thereof in order to make representations in writing to the Governor in Council as to why the proposed amendment should not be made or should be modified or qualified and the nature thereof.

9.3 In the period referred to in subparagraph 2 and thereafter, the Governor in Council may consult with and receive written recommendations from such persons as he sees fit and the Licensee shall be afforded a period of at least 7 days but not exceeding 14 days to make representations in writing to the Governor in Council on those recommendations.

10. The Broadcasting Authority

Subject to the express terms and provisions of the Telecommunication Ordinance, the Broadcasting Authority Ordinance and this licence, the Broadcasting Authority shall in its absolute discretion determine, approve, disapprove, hold an opinion or decide any matter, issue or thing which it is requested, permitted or required to determine, approve, disapprove, hold an opinion regarding or decide under this licence.

11. Licence fee

11.1 Subject to subparagraph 4 and the right of the Governor in Council to revise and review at any time the level of licence fee on the basis of recovery of the reasonable administrative costs of the Hong Kong Government in administering this licence or otherwise ("full costs recovery basis"), the Licensee shall pay to the Hong Kong Government a licence fee for the first year beginning with the Relevant Date and for each subsequent year beginning on the anniversary of the Relevant Date specified as follows:-

- (a) First Year¹ - \$3,383,000 x 0.2

¹ A part of \$1,000 is to be refunded to the Licensee on a pro rata basis for the period from the Relevant Date to 25 August 1997 (both dates inclusive) without interest.

- (b) Second Year - $\$3,383,000 \times (1+\text{GCED at the first anniversary}) \times 0.4$
- (c) Third Year - $\$3,383,000 \times (1+\text{GCED at the first anniversary}) \times (1+\text{GCED at the second anniversary}) \times 0.6$
- (d) Fourth Year - $\$3,383,000 \times (1+\text{GCED at the first anniversary}) \times (1+\text{GCED at the second anniversary}) \times (1+\text{GCED at the third anniversary}) \times 0.8$
- (e) Fifth Year - $\$3,383,000 \times (1+\text{GCED at the first anniversary}) \times (1+\text{GCED at the second anniversary}) \times (1+\text{GCED at the third anniversary}) \times (1+\text{GCED at the fourth anniversary}) \times (\text{number of days from the fourth anniversary to 25 August 2001 (both dates inclusive)}) \div 365 \text{ days}$

For the purpose of this subparagraph, GCED at any anniversary of the Relevant Date means the forecast movement of Government Consumption Expenditure Deflator for the year of publication, published by the Hong Kong Government in the most recent edition of "Economic Prospects" or any similar Hong Kong Government publications containing the forecast movement of the Government Consumption Expenditure Deflator. For the avoidance of doubt, the formula for calculating GCED for any year of publication (Year N) will be as follows:-

"GCED" for Year N =

$$\frac{(\text{Forecast Government Consumption Expenditure for Year N})/(\text{Preliminary Estimates for Year (N-1)})}{(1+\text{Forecast Growth Rate of Government Consumption Expenditure in Real terms for Year N})} - 1$$

11.2 ~~The first payment of the pro-rata licence fee shall be made within 14 days of the Relevant Date and thereafter payments of the licence fee shall be made on or before the anniversary of the Relevant Date payable under subparagraph 4 shall be made to the Hong Kong Government within 14 days of the amendment date.~~

11.3 For the purposes of this paragraph,

"Relevant date" means the date of the Governor in Council's determination of the level of licence fee assessed on the full costs recovery basis in respect of any other sound broadcasting licensee, unless the Governor in Council determines otherwise.

11.4 Effective from the amendment date and subject to the right of the Chief Executive in Council to revise and review at any time the level of licence fee on the basis of recovery of the reasonable administrative costs of the Hong Kong Government in administering this licence or otherwise, the licence fee for this licence for the first year beginning with the amendment date shall be HK\$3,540,410 and the Licensee shall pay to the Hong Kong Government HK\$2,221,300 being the pro-rata licence fee payable for the period from the amendment date to the end of this licence (both dates inclusive).

11.5 Subject to payment of the licence fee in accordance with subparagraphs 2 and 4, the Licensee shall be entitled to a refund without any interest of the licence fee already paid under subparagraph 1 for the period from the amendment date to 31 May 2001 (both dates inclusive).

12. Non-assignment

12.1 The Licensee shall not without the approval of the Governor in Council assign, share, franchise or permit another the use of, in whole or in part, the rights, powers and privileges granted hereunder or purport to do the same.

12.2 The Licensee shall not delegate any of its duties or responsibilities granted hereunder other than those commonly carried out by independent professional advisers or auditors.

13. Revocation

13.1 Where the Governor in Council considers that there may be cause for revoking this licence he may direct the Broadcasting Authority to conduct an inquiry and submit recommendations concerning the revocation of this licence, and, after considering such recommendations and such other information, matter and advice as he may see fit, may revoke this licence.

13.2 Revocation of this licence under subparagraph 1 shall take effect subject to the notice required to be given under subparagraph 5.

13.3 Notwithstanding subparagraphs 1 and 2, the Governor in Council may at any time revoke this licence:-

(a) for failure by the Licensee to pay, within one month after payment thereof has been demanded, any royalty owing by him or to pay any financial penalty imposed on him under the Broadcasting Authority Ordinance;

(b) if having regard to such of the following as is or are appropriate in the particular case, namely, the number of times this licence has been suspended, the number of financial penalties imposed on the Licensee under the Broadcasting Authority Ordinance since the grant of this licence, the number of occasions on which, since such grant, the requirements of the Telecommunication Ordinance have, in relation to the Licensee, been contravened, any failure by the Licensee, whether by act or omission, to comply with a term or condition attached to this licence, or any such failure to comply with any direction or order applicable to the Licensee and given or made by the Broadcasting Authority either under the Broadcasting Authority Ordinance or under a provision of a Code of Practice, he is satisfied that this licence should be revoked;

(c) if the Licensee:-

- (i) goes into compulsory liquidation or into voluntary liquidation other than for the purpose of amalgamation or reconstruction; or
- (ii) makes any assignment to, or composition with, its creditors;

and such revocation shall take effect forthwith or on such day as the Governor in Council specifies.

- 13.4 In determining whether to revoke this licence, the Governor in Council may have regard to the matters to which the Broadcasting Authority had regard under paragraph 14.2.
- 13.5 Where it is decided to revoke this licence pursuant to subparagraph 1, the Governor in Council shall cause notice in writing of the decision to be given to the Licensee, and the decision shall come into effect on the day specified therein which shall be a day not earlier than the 60th day after the date of the notice.
- 13.6 Where it is necessary for the due compliance with this paragraph the Governor in Council may extend the term of this licence.

14. Suspension of licence

- 14.1 Subject to the provisions of this paragraph, the Broadcasting Authority may suspend this licence for such period, being a period not exceeding 30 days, as specified in the suspension.
- 14.2 This licence shall only be suspended under this paragraph where, if having regard to such of the following as is or are appropriate in the particular case, namely, the number of financial penalties imposed on the Licensee under the Broadcasting Authority Ordinance since the grant of this licence, the number of occasions on which, since such grant, the requirements of the Telecommunication Ordinance have, in relation to the Licensee, been contravened, any failure by the Licensee, whether by act or omission, to comply with a term or condition attached to this licence, or any such failure to comply with any direction or order applicable to the Licensee and given or made by the Broadcasting Authority either under the Broadcasting Authority Ordinance or under a provision of a Code of Practice, the Broadcasting Authority is satisfied that this licence should be suspended.
- 14.3 The Broadcasting Authority shall not suspend this licence unless and until it has given to the Licensee notice in writing stating that that Authority has under consideration the suspension of this licence and the grounds upon which and any other reason why such suspension is being considered and the Broadcasting Authority has considered any representation or objection made to it as regards the proposed suspension.
- 14.4 The notice referred to in subparagraph 3 shall, in addition to stating the matters required by that subparagraph, state that representations and objections as regards the proposed suspension may be made to the Broadcasting Authority (either orally or in writing or both) during such period (being a period of not less than 28 days beginning

on the date of receipt by the Licensee of the notice) as shall be specified in the notice.

14.5 Where this licence is suspended under this paragraph the suspension shall not come into force before:-

- (a) in case an appeal is not taken under section 26 of the Broadcasting Authority Ordinance, the expiration of the period during which such an appeal may be taken; or
- (b) in case such an appeal is taken, the appeal is either withdrawn or determined.

15. Restriction on business

The only business that may be carried on by the Licensee is:-

- (a) to establish and maintain a broadcasting service;
- (b) to establish and maintain such associated telecommunication apparatus and services incidental to the operation of a broadcasting service as may be authorised by the Telecommunications Authority; and
- (c) to carry on such types of business which are in the opinion of the Broadcasting Authority directly connected or associated with the foregoing.

16. Prohibition on holding certain shares etc.

16.1 The Licensee shall not hold or acquire, either directly or indirectly, an interest in any person unless:-

- (a) the holding or acquisition has been approved by the Broadcasting Authority; and
- (b) the said person carried on (to the exclusion of all others) the types of business mentioned in paragraph 15; and
- (c) in the case of a holding or acquisition of shares in a company, not less than 51% of the issued voting shares are registered in and only in the name of the Licensee or a subsidiary company of the Licensee and where control and management of the said company are under the control of the Licensee.

16.2 For the purpose of subparagraph 1, the reference to an interest in any person means any shareholding, interest under a trust or financial interest as a creditor or assignee of a debt (whether secured, guaranteed or otherwise) unless the debt arose directly out of the day-to-day activities of the Licensee in earning profits from the provision of broadcasting services or such associated telecommunication apparatus or services incidental to the operation of a broadcasting service as may be authorised by the Telecommunications Authority.

17. Station identification

- 17.1 On and after the Renewal date, the Licensee shall, when broadcasting any programmes, including any test or experimental transmissions, transmit a station identification signal as frequently as practicable.
- 17.2 Without prejudice to subparagraph 1, the Licensee shall transmit its station identification signal at least once during each clock-hour of the transmission of its broadcast programmes, unless to do so would cause unreasonable interruption of its broadcast programmes.
- 17.3 The Licensee shall give the Telecommunications Authority not less than 14 days' notice in writing of any proposed change to its station identification signal and shall comply with any direction of that Authority in relation to the signal.
- 17.4 For the purposes of this licence, "station identification signal" means any aural transmission exclusively for the purpose of identifying the broadcasting service as that of the Licensee and, without prejudice to the generality of the foregoing, not for the promotion of the Licensee's station or programme services.

18. Copyright

The Licensee shall not do any act or permit any act to be done which is an infringement of any copyright which may exist in any published programme or other printed or recorded matter or which is or may be protected under the provision of any enactment for the time being in force or under any other law enforceable in Hong Kong.

19. Language of books etc

All the books and accounts of the Licensee shall be written in the English or Chinese language.

20. Number of services, language and hours of service

- 20.1 The Licensee shall broadcast one service in which at least eighty per cent of the time during which broadcasting takes place in any one day shall be conducted in the English language ("the English language service") and two services in which at least eighty per cent of the time during which broadcasting takes place in any one day shall be conducted in a Chinese dialect ("the Chinese language services").
- 20.2 The Licensee shall broadcast for at least 10 hours each day in respect of each of the English language service and the Chinese language services.

21. Residential requirement of directors

21.1 The Chairman and the managing director (and any person occupying these positions by whatever name called) and the majority of the directors of the Licensee shall each be ordinarily resident in Hong Kong and have been so resident for one continuous period of at least seven years.

21.2 The control of the Licensee shall be bona fide exercised within Hong Kong.

22. Licensee to formulate general guidelines

The Licensee shall formulate written guidelines for all employees and agents concerned with the content of programmes and advertising stating the Licensee's principles regarding its responsibilities to the public, with particular reference to its obligations under the Codes of Practice relating to Programme and Advertising Standards and the Licensee shall make these employees and agents aware, and refresh their memory at regular intervals, of the guidelines and the Codes of Practice.

23. (Withdrawn from the Renewal date)

24. Discipline and training

The Licensee shall ensure good discipline and training among its staff as regards adherence to the Codes of Practice relating to Programme, Advertising and Technical Standards.

25. Comments and Complaints

25.1 The Licensee shall receive and consider any comment and complaint from or on behalf of any person who believes himself to have been treated unjustly or unfairly in any programme, material or item broadcast by the Licensee or who comments or complaints in substance or in form with respect to the whole or part of the content, production, transmission coverage, technical requirements or time of broadcasting of such programme, material or item or of any matter relating thereto, or with respect to the management of the Licensee.

25.2 The Licensee shall implement a procedure for dealing with comments and complaints as required from time to time by the Broadcasting Authority.

25.3 The Licensee shall keep a complete and up-to-date record in writing of comments and complaints and submit it to the Broadcasting Authority on a regular basis and on demand.

25.4 The Licensee shall keep a written record of programmes broadcast showing the date and time of broadcasting and shall retain the written scripts (if any) and recordings of all broadcasts for such a period as specified by the Broadcasting Authority and shall submit them to the Broadcasting Authority for examination on demand.

26. (Withdrawn from the Renewal date)

27. (Withdrawn from the Renewal date)

28. News programmes

28.1 Subject to such alternative arrangements as may be approved from time to time by the Broadcasting Authority, the Licensee shall broadcast on each of the English language service and the Chinese language services on each day:-

- (a) a minimum of two programmes consisting of comprehensive news bulletins of not less than 10 minutes each between the hours of 12:00 noon and 12:00 midnight; and
- (b) half-hourly news and weather reports between the hours of 6:00 a.m. and 12:00 midnight and hourly news and weather reports for the remaining hours of broadcasting unless to do so would cause unreasonable interruption of its broadcast programmes.

28.2 In broadcasting any news programmes, reports or items, the Licensee shall ensure that international and local affairs are treated impartially and broadcast accurately.

29. Weather programmes

29.1 Subject to subparagraph 2, the Licensee may broadcast any weather programme or announcement produced from sources approved by the Broadcasting Authority.

29.2 The Licensee shall, if it is directed to do so by the Broadcasting Authority, broadcast any weather programme or announcement supplied to it by the Hong Kong Government in place of or in addition to any other such programme or announcement produced by the Licensee or any other person.

30. Current affairs programmes

30.1 On and after the Renewal date the Licensee shall broadcast a minimum of two 15-minute current affairs programmes each week on each of the English language service and the Chinese language services between the hours of 8:00 a.m. and midnight.

30.2 Upon application in writing by the Licensee the Broadcasting Authority may approve arrangements for broadcasting current affairs programmes alternative to those in subparagraph 1.

31. Programmes for young persons and senior citizens

On and after the Renewal date and subject to any directions issued by the Broadcasting Authority, the Licensee shall broadcast on either of the Chinese language services:-

- (a) a minimum of one half-hour programme each week between the hours of 8:00 a.m. and midnight which is intended and suitable for the education and proper development of young people in Hong Kong aged 16 years to 24 years (inclusive); and
- (b) a minimum of one half-hour programme each week between the hours of 8:00 a.m. and midnight which is intended and suitable for the particular requirements of senior citizens in Hong Kong over the age of 60 years in relation (but not necessarily limited) to their health, financial position or recreation.

31A. Arts and culture programmes

On and after the Renewal date and subject to any directions issued by the Broadcasting Authority, the Licensee shall broadcast on each of the Chinese language services between 8:00 a.m. and midnight a minimum of 30 minutes of programming each week intended and suitable for promoting the development and appreciation of the literary, performing and visual arts and other topics or activities of cultural value.

32. Announcement in the Public Interest

The Licensee shall broadcast on each of the English language service and the Chinese language services for periods not exceeding in total one minute in each clock-hour such announcements in the public interest as the Broadcasting Authority may determine.

32A. Publicity Material of the Broadcasting Authority

- (a) On and after the Renewal date, the Licensee shall broadcast on each of the English language service and the Chinese language services such publicity material as the Broadcasting Authority may direct in order to promote knowledge and understanding of the activities and functions of that Authority and the Broadcasting Authority Complaints Committee appointed under section 10 of the Broadcasting Authority Ordinance; and
- (b) the publicity material referred to in subparagraph (a) may be directed to be broadcast twice daily for not more than one minute on each of the English language service and the Chinese language services between the hours of 6:00 p.m. and 11:00 p.m. subject to a maximum limit of 5 minutes in aggregate each week on each of the English language service and the Chinese language services.

33. Advertising

The Licensee shall monitor and ensure strict compliance with the Codes of Practice relating to Advertising Standards issued by the Broadcasting Authority.

34. Restriction of advertising

In each period of 24 hours beginning at 6 o'clock in the morning the Licensee shall limit the broadcast of advertising material to a total not exceeding 12% of the time during which broadcasting takes place within the said period of 24 hours.

35. Tobacco and alcohol advertising/sponsorship

35.1 (Withdrawn from the Renewal date).

35.2 Commencing on 1 December 1990, the Licensee shall be prohibited from broadcasting any advertisement for tobacco products or from inviting, offering or accepting sponsorship or commercial promotion of such products.

35.3 The Licensee shall not between the hours of 4 p.m. and 8:30 p.m. broadcast any advertisement for alcoholic beverages or invite, offer or accept sponsorship or commercial promotion of such beverages in respect of any programme, material or item broadcast between those hours.

36. Advertising charges to be published

The Licensee shall publish, in such manner as the Broadcasting Authority may direct, the charges and consideration for broadcasting advertising material.

37. Programme development and capital investment

37.1 On and after the Renewal date and unless otherwise approved by the Broadcasting Authority, the Licensee shall implement the six-year plan contained in the Licensee's submission to the Broadcasting Authority and dated 28 February 1995 in so far as the same relates to the programme development and capital investment of the Licensee in the years 1995-2001.

37.2 The Licensee shall comply at all times with the statements (including statements of intention) and representations made by or on its behalf in or with reference to the said plan. The Broadcasting Authority may approve any deviation from the said plan.

38. Notices or directions given to the Licensee

On and after the Renewal date:

- 38.1 where any consent, notice, direction, authorisation or approval of or from the Broadcasting Authority or Telecommunications Authority is required under this licence for the doing of any matter or thing by or on behalf of the Licensee, or a notice or notification is required to be given by or on behalf of the Licensee to the Broadcasting Authority or the Telecommunications Authority, that consent, notice, direction, authorisation, approval or notification is valid only if given in writing and signed by a person with authority to do so and, subject to subparagraph 2, given before the doing of the said matter or thing in question.
- 38.2 The Broadcasting Authority and the Telecommunications Authority may generally or specifically in relation to a particular matter or thing referred to in subparagraph 1 by notice in writing to the Licensee waive the requirement for its or his (as the case may be) consent, notice, direction, authorisation or approval to be given before the doing of the matter or thing in question, provided that no such waiver shall estop the Broadcasting Authority or the Telecommunications Authority from withdrawing the waiver, with prospective effect, in whole or in part, or from requiring that the consent, notice, direction, authorisation or approval, (as the case may be), be required timeously in relation to other matters or things.
- 38.3 Without any limitation whatsoever on the rights and powers conferred by Part VI (Powers) of the Interpretation and General Clauses Ordinance (Cap. 1), where the Broadcasting Authority or the Telecommunications Authority gives any consent, notice, direction, authorisation or approval under this licence to the Licensee, the same may be:
- (a) withdrawn, modified or replaced from time to time by the Broadcasting Authority or the Telecommunications Authority, as the case may be, in the same circumstances, and with the same effect, as if the withdrawal, modification or replacement were the giving of a consent, notice, direction, approval or authorisation under this licence and the Licensee shall comply therewith;
 - (b) given once or from time to time; and
 - (c) made subject to such conditions as the Broadcasting Authority or Telecommunications Authority, as the case may be, may impose.
- 38.4 All references in this licence to the doing of any matter or thing by the Broadcasting Authority or the Telecommunications Authority include any delegate thereof, or other agents, authorised in that regard by or under any law or Ordinance.
- 38.5 Any communication in writing moving from the Broadcasting Authority or the Telecommunications Authority to the Licensee under this licence may be validly served or given either by delivering it to a responsible officer or employee of the Licensee at the registered office of the Licensee or its last known place of business in Hong Kong or by forwarding it by registered post to its registered office or last known place of business in Hong Kong.

39. Purpose of lands, buildings, etc.

39.1 Where:-

- (a) notice of non-renewal of this licence is given under section 13E of the Telecommunication Ordinance; or
- (b) this licence is or has been, or is to be, revoked or surrendered;

the Governor in Council may direct the Financial Secretary Incorporated to acquire by purchase any lands (which for the purposes of this paragraph shall include any licence or option over land), installations, plant and equipment in or over which the Licensee has a right, title or interest and used by the Licensee for the purposes of this licence.

39.2 Not less than 4 months and not more than 8 months after the giving of notice of non-renewal of this licence under section 13E of the Telecommunication Ordinance or, where this licence is or has been, or is to be, revoked or surrendered, at any time within 12 months after the giving of the direction under subparagraph 1, The Financial Secretary Incorporated may acquire by purchase such parts of the lands, installations, plant and equipment in which the Licensee has a right, title or interest and used by the Licensee for the purposes of this licence as may be specified by the Financial Secretary Incorporated.

39.3 The consideration to be paid to the Licensee for the right, title or interest in or over the said land, installations, plant and equipment shall be a sum equal to the open market value thereof at the date of non-renewal, revocation or surrender (as the case may be) of this licence as between a willing buyer and a willing seller but without regard to:-

- (a) loss of profit,
- (b) goodwill,
- (c) the right of pre-emption,
- (d) the cost of raising capital,
- (e) all the property being placed on the market at one and the same time.

39.4 In the event of the price offered by the Financial Secretary Incorporated being refused, the price shall be determined by arbitration in accordance with the Arbitration Ordinance (Cap 341) and for the purpose of giving effect to the foregoing, The Financial Secretary Incorporated and the Licensee shall be regarded as having concluded an arbitration agreement (within the meaning of that Ordinance) whose provisions shall be taken to include a provision that the aforesaid price shall, in the absence of agreement, be determined by a single arbitrator.

39.5 Where land or any interest in land is purchased under this paragraph on the direction of the Governor in Council, The Financial Secretary Incorporated shall, within 1 month after the purchase, register in the Land Office by memorial a declaration that it has been so purchased.

39.6 All property purchased under this paragraph on the direction of the Governor in Council shall, as the case may be, vest in the Financial Secretary Incorporated:-

- (a) upon the expiry of this licence after notice of a decision not to renew;
 - (b) where this licence is revoked or surrendered, when the revocation or surrender (as the case may be) takes effect or when a price is offered by The Financial Secretary Incorporated, whichever is the later, and thereupon all rights in such property on the part of the Licensee shall cease and determine.
- 39.7 Nothing in this paragraph shall confer on the Licensee any right to require The Financial Secretary Incorporated to purchase any part of its lands, installations, plant or equipment.
- 39.8 The Licensee shall notify the Hong Kong Government:-
- (a) of all land in respect of which the Licensee has a right, title or interest (as the case may be) as at the date of the grant of this licence within 14 days thereafter and within 14 days after the date of each binding agreement entered into by or on behalf of the Licensee to acquire such a right, title or interest; and
 - (b) of all land and interests in land which it uses for the purposes of this licence within 14 days after the commencement of the use.
40. Licensee to submit audited accounts
- 40.1 The Licensee shall submit to the Financial Secretary, not later than 6 months after the end of its accounting year, audited accounts prepared by the auditor of the Licensee in such manner and containing such details as may be approved and required by the Financial Secretary.
- 40.2 Where a company is a subsidiary company of the Licensee, the Licensee shall, not later than 6 months after the end of an accounting year of the company, submit, or cause to be submitted, to the Financial Secretary a copy of the company's audited accounts by the auditor of the Licensee for that year.
41. Licensee to submit returns
- 41.1 The Licensee shall submit to the Broadcasting Authority not later than the end of the month of April in each year a return in a form specified by it showing the names of each director, ordinarily resident in Hong Kong and has been so ordinarily resident for a continuous period of at least seven years and such details and evidence in support thereof as the Broadcasting Authority may reasonably require.
- 41.2 Without prejudice to subparagraph 1, the Licensee shall submit to the Broadcasting Authority in a form specified by it a return showing:-
- (a) particulars of every change of or addition to the persons who are directors; and
 - (b) whether following the said change or addition each of the directors is ordinarily resident in Hong Kong and has been so for a continuous period of at

least seven years; and

- (c) such details and evidence in support of the foregoing as the Broadcasting Authority may reasonably require.

41.3 The Licensee shall submit to the Broadcasting Authority on demand such other information as it may consider that it reasonably requires for the purposes of exercising its functions under the Broadcasting Authority Ordinance.

42. Non-compliance due to acts of God

42.1 Subject to subparagraph 2, the Licensee shall be exonerated from observing or performing the terms and conditions of this licence if and so long as the failure to observe or perform those terms and conditions shall be directly attributable to any act of God, any riot, civil commotion or disturbance, the restraint of any ruler, any strike, combination of workmen or lockout, any fire, explosion, typhoon, storm, floodings, landslide, subsidence of ground or other catastrophe, any war, blockade or embargo, any breakdown of plant, machinery or equipment not due to the negligence or want of reasonable maintenance on the part of the Licensee, its servants or agents, any commandeering or requisitioning of the Licensee's installations, equipment or facilities or any other interference or circumstance wholly beyond the control of the Licensee.

42.2 The Licensee shall, with all due diligence and speed, repair, rebuild, restore, reinstate and take all such actions as may be required to repair, rebuild, restore and reinstate in all respects the broadcasting service in accordance with the terms and conditions of this licence and resume observing and performing those terms and conditions.

43. Liability of Licensee for contraventions

The Licensee shall be liable for the contravention of:-

- (a) any applicable provision of the Telecommunication Ordinance, the Broadcasting Authority Ordinance, any other relevant Ordinance, subsidiary legislation, regulation, direction, Code of Practice or any provision thereof; and
- (b) (subject to paragraph 42), any term or condition of this licence;

where the contravention is due to the act or omission of the directors, officers, employees or agents of the Licensee acting for or on behalf of the Licensee.

44. Savings of rights granted

44.1 Notwithstanding anything contained in this licence, the Licensee shall not in any way whatsoever abrogate or interfere with any of the exclusive telecommunication services or off-air broadcasts authorised under the Telecommunication Ordinance or

Television Ordinance.

- 44.2 Nothing in this licence shall prejudice or affect the right of the Hong Kong Government to establish, extend, maintain or work any telecommunication, broadcasting or communication services or systems or to receive or distribute broadcast matter or to enter into agreements or grant licences for the establishment, extension, maintenance or working of any such services or systems.

45. Statements made on application binding on the Licensee

The Licensee shall comply at all times with the statements and representations made by or on its behalf in the application for the licence submitted by it except in so far as such statements and representations are no longer applicable due to amendment of the laws of Hong Kong relating to the establishment and operation of broadcasting services.

46. Free Competition

- 46.1 On and after the Renewal date, the Licensee shall not, whether pursuant to an option or right conferred before or after that date, or otherwise, enter into any agreement or arrangement, or offer any inducement (whether financial or otherwise) to any person, or enforce by way of legal proceedings, arbitration, forfeiture of liquidated damages, adjustment or rebate or charges or otherwise any term or condition, or solicit or permit another to do so, or take or receive the benefit of any such term or condition, which will, or is calculated to, restrict, impede or restrain competition by any person other than the Licensee in relation to the establishment, provision or operation of any service or network for telecommunication in Hong Kong, or broadcasting in Hong Kong in relation to a subscription television broadcasting licensee, commercial television broadcasting licensee, satellite uplink licensee or sound broadcasting licensee.
- 46.2 The Licensee shall not contravene subparagraph 1 if it satisfies the Broadcasting Authority that any aforesaid restriction, impediment or restraint is one that is and remains fair and reasonable in reference to the interests of the public in Hong Kong including without limitation the preservation of the freedom from restriction, impediment or restraint of competition protected by that subparagraph and having regard to the interests of licensees referred to therein and of the Licensee.
- 46.3 Subject to the Proviso, subparagraph 1 shall not apply in respect of any aforesaid restriction, impediment or restraint upon:
- (a) broadcasting any programme material acquired or produced by or for the Licensee and broadcast by it under this licence;
 - (b) any person from:
 - (i) disclosing or using any proprietary right vested in the Licensee or other person (including without limitation the disclosure of any information

in respect of which there is such a proprietary right);

- (ii) using or exploiting his artistic talent or ability;
- (c) any employee or former employee of the Licensee who has or had access to information in which the Licensee has a proprietary right from engaging in any business, or being employed by any person, in competition with the Licensee during the period of his employment and for a reasonable period not exceeding six months from the date of termination of his employment,

provided that the said restriction, impediment or restraint is not void or unenforceable under any law or Ordinance or would not be void or unenforceable if the proper law governing the restriction, impediment or restraint were that of Hong Kong.

46.4 For the purposes of this paragraph, without prejudice to the other rights, power and duties of the Broadcasting Authority, that Authority may consult with and seek the views of any person.

47. Publication of Licence

On and after the Renewal date the Licensee shall make available for inspection by members of the public, free of charge, a true copy of this licence (other than the plan referred to in paragraph 37) at:

- (a) its registered office and principal place of business; and
- (b) the head office of the Television and Entertainment Licensing Authority.

FIRST SCHEDULE

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1. Royalty

- 1.1 The Licensee shall, as regards each of its accounting years, pay to the Hong Kong Government a royalty determined by reference to the amounts which, having regard to this paragraph, are the appropriate amounts for fees or other charges in respect of advertising, whether in the form of display or other advertisements, advertising magazine programmes, sponsored or promoted programmes or in any other form of broadcast by the Licensee, and as regards a particular such year the amount of such royalty shall be determined in accordance with the following rates -

| <u>Appropriate Amounts</u> | <u>Rate</u> |
|----------------------------|-------------|
| On the first \$20m | 1% |
| On the next \$20m | 2% |
| On the next \$20m | 3% |
| On the next \$20m | 4% |
| On the excess over \$80m | 5% |

Provided that the amount of the royalty payable hereunder as regards any such accounting year shall not exceed an amount which is equal to 4 per cent of such appropriate amounts for that year.

- 1.2 The appropriate amounts referred to in subparagraph 1 shall be the amounts which in the circumstances of a particular case would reasonably be expected to be agreed to between the parties concerned were they negotiating in the open market and at arm's length.
- 1.3 (a) The royalty payable under this paragraph shall be payable quarterly in accordance with subparagraph (b).

- (b) The Licensee shall make a payment to the Director of Accounting Services of the amount (if any) due on amount of the royalty payable by him under this paragraph in respect of a quarter beginning on the 1st day of January, the 1st day of April, the 1st day of July or the 1st day of October in any year.
- 1.4
 - (a) The royalty payable under this paragraph shall be due at the time when the fee or other charge in respect of which the royalty is payable is due, either in whole or in part, to the Licensee; but
 - (b) for purpose of determining when the said fee or other charge is due to the Licensee, it shall be due not later than when it would reasonably be expected to be due between the parties concerned were they negotiating in the open market and at arm's length.
- 1.5
 - (a) Within the period of 30 days immediately following a quarter referred to in subparagraph 3, the Licensee shall -
 - (i) furnish to the Director of Accounting Services an amount, certified by the Licensee, or by someone acting on his behalf, to be true and correct, of the amounts described in subparagraph 1 and due (whether in whole or in part) to the Licensee in the quarter; and
 - (ii) remit to the Director of Accounting Services the amount of the royalty (if any) payable by it under this paragraph in respect of the quarter.
 - (b) The Director of Accounting Services may require accounts referred to in subparagraph (a)(i) to be a form and contain particulars specified by him, and in case a requirement under this paragraph is made and is not withdrawn, the Licensee shall comply with it.
- 1.6
 - (a) Where a royalty is payable under this paragraph as regards a particular quarter (in this subparagraph referred to as "the current quarter") but the Licensee is unable, before the expiration of the current quarter or the period of 28 days commencing on the expiration of that quarter, to ascertain the aggregate of the fees or other charges by reference to which the amount due on account of the royalty as respects the current quarter is to be determined, the Licensee shall, within the period of 30 days immediately following the expiration of the current quarter, pay to the Director of Accounting Services a sum the amount of which shall have been calculated by the Licensee having had regard to -
 - (i) the sum (if any) paid by the Licensee on account of the royalty in respect of the quarter immediately preceding the current quarter; and
 - (ii) an estimate by the Licensee of the amount which, were such aggregate ascertainable, would be payable by him on account of the royalty as respects the current quarter.
 - (b) Where a payment is made under subparagraph (a) and when ascertained the amount due on account of the royalty payable under this paragraph as respects

the current quarter is found to exceed the amount of the payment -

- (i) the excess or any part thereof shall be payable to the Director of Accounting Services on demand; and
 - (ii) the making of the payment shall not prejudice any mode of recovery should the Licensee fail to pay any part of the excess remaining to be paid pursuant to the requirements of sub-subparagraph (i).
- (c) Where a payment is made under subparagraph (a) and when ascertained the amount first referred to in subparagraph (b) is found to be less than the amount of the payment, the Licensee shall be entitled to a refund equal to the amount of the overpayment.

1.7 Where the Director of Accounting Services believes that an amount payable under this section by the Licensee, in relation to any period consisting of one quarter or of two or more consecutive quarters, was greater than the total amount (if any) paid by him in relation to that period, then, without prejudice to any other action which may be taken, he may make an estimate in one sum of the total amount which in his opinion should have been paid in respect of the quarter or quarters comprised in such period and may give to the Licensee a notice in writing specifying -

- (a) the total amount so estimated;
- (b) the total amount (if any) paid by the Licensee in relation to the said period; and
- (c) the balance remaining unpaid.

1.8 Where a notice is given under subparagraph 7 to the Licensee, the following provisions shall apply -

- (a) the Licensee may, if he claims that the total amount or, as the case may be, the balance remaining unpaid is excessive, give a notification to that effect in writing to the Director of Accounting Services, within the period of 21 days beginning on the date of the notice under subparagraph 7;
- (b) on the expiration of the said period, if no notification under this subsection is received by the Director of Accounting Services or, if such a notification is so received, non determination of the difference by agreement or arbitration, the balance remaining unpaid as specified in the notification or the amended balance (if any) as so determined shall become due and payable as if the amount were one which the Licensee was liable to pay for the quarter during which the period of 14 days from the date of the giving of the notice under subparagraph 7 expired or during which the difference was determined by agreement or arbitration, or where those quarters are different, whichever of them is the later.

1.9 (a) Where a notification under paragraph 8 is given, the difference to which the

notification relates shall be determined by arbitration in accordance with the Arbitration Ordinance and for the purposes of giving effect to the foregoing, the person by whom, or on whose behalf, the notification is given and the Director of Accounting Services shall be regarded as having concluded an arbitration agreement (within the meaning of that Ordinance) whose provisions shall be taken to include a provision that the aforesaid difference shall, in the absence of agreement, be determined by a single arbitrator.

- (b) In the absence of agreement, the Arbitration Ordinance shall, with any necessary modifications, apply to the determination of a difference to which a notification under subparagraph 8 relates.

1.10 Each of the following periods shall, for the purposes of this paragraph, be regarded as being an accounting year of the Licensee -

- (a) in case the accounting year of the Licensee begins on a day other than the specified day, the period beginning on the specified day and ending on the expiration of the Licensee's accounting year in which the specified day occurs;
- (b) in case this licence commences on a day other than the first day of an accounting year of the relevant Licensee, the period beginning on such commencement and ending on the expiration of the Licensee's accounting year in which the commencement occurs; and
- (c) in case notice of non-renewal is given under section 13E of the Telecommunication Ordinance or in case this licence is surrendered or revoked and the non-renewal, surrender or revocation has effect on a day other than the first day of an accounting year of the Licensee, the period beginning on the commencement of the Licensee's accounting year in which the non-renewal, surrender or revocation, as may be appropriate, has effect and ending immediately before that non-renewal, surrender or revocation, as may be appropriate, has effect.

1.11 In subparagraph 10(a), "the specified day" means the day specified for the purposes of that subparagraph by the Governor by notice in the Gazette.

2. Powers of Financial Secretary in relation to royalty

2.1 For the purpose of determining amounts payable on account of a royalty payment under paragraph 1 of this Schedule and ensuring its payment, any person authorised by the Financial Secretary in that behalf may at all reasonable times -

- (a) enter any building or other premises in which the Licensee or a subsidiary company carries on business;
- (b) require any person whom he reasonably believes to be employed in connection with such business to produce for examination any book, record or other document which relates to such business and which is in possession or under his control;

- (c) examine and, if he thinks fit, take copies of, or copies of any entry in, any book, record or other document so produced;
 - (d) remove any such book, record or other document for further examination; and
 - (e) require any director or servant of such company to give him such explanation or further particulars in respect of a book, record or other document produced in compliance with a requirement under subparagraph (b) as he shall specify.
- 2.2 Where any information or matter relevant to the determination of the amounts of royalty payable is recorded otherwise than in legible form, the powers conferred by subparagraph 1 apply to require the production of a reproduction of the recording of any such information or matter or of a relevant part of it in a legible form.
- 2.3 A person who is a director or a servant of the Licensee or its subsidiary company shall assist and shall not obstruct a person exercising a power under this paragraph.
- 2.4 Any book, record or other document removed in exercise of a power under this paragraph may be retained for any period not exceeding the period of 6 months beginning on the date of its removal, or where the book, record or other document is required in connection with any criminal proceedings, for such longer period as may be necessary for the purposes of those proceedings.
- 2.5 Where a persons removes a book, record or other document under this paragraph he shall, as soon as reasonably practicable, give a receipt for it, and he shall permit any person who would be entitled to inspect it but for such removal to inspect the document at any reasonable time and to make copies of and take extracts from it; but such permission shall be subject to such reasonable conditions as to security or otherwise as the Financial Secretary may impose.
- 2.6 Every person exercising any power under subparagraph 1 shall, upon request, produce for inspection evidence of his identity and of his authorisation under subparagraph 1.
3. Confidential material to be safeguard
- 3.1 Subject to subparagraph 2 -
- (a) any information which is furnished and any book, record or other document which is produced by the Licensee to a person authorised under paragraph 2.1 of this Schedule shall be confidential; and
 - (b) unless the Licensee otherwise permits and expect in accordance with such permission no such information or book, record or other document or any copy thereof shall be divulged or shown to any person other than in confidence to members of the Broadcasting Authority or any committee appointed thereby, or to a public officer acting in the performance of his duties under or for the purposes of the Telecommunication Ordinance, the Broadcasting Authority

Ordinance or this licence.

3.2 Subparagraph 1 shall not be construed as prohibiting the disclosure of information -

- (a) with a view to the institution of or otherwise for the purpose of any criminal proceedings or any investigation in connection therewith, whether under the Telecommunication Ordinance, the Broadcasting Authority Ordinance or otherwise, in Hong Kong; or
- (b) in connection with civil proceedings to which the Financial Secretary is a party.

4. Notwithstanding anything said in this Schedule, royalty shall be payable on a pro-rata basis in respect of that portion of the Licensee's accounting year which has effluxed before the amendment date but not thereafter, and the rate applicable to the calculation of the royalty payable shall be based on the Appropriate Amounts referred to in paragraph 1.1 as if the Licensee would be required to pay to the Hong Kong Government a royalty for the remainder of its accounting year in which the amendment date falls.

SECOND SCHEDULE

TECHNICAL

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1. Broadcasting coverage requirement

- 1.1 The Licensee shall broadcast to those parts of Hong Kong as specified by the Broadcasting Authority and construct such additional relay stations within such period of time as directed from time to time by the Broadcasting Authority.
- 1.2 For the purpose of subparagraph 1, "broadcast" means broadcasting in such a manner as to enable the Licensee's transmissions to be received to the satisfaction of the Broadcasting Authority.
- 1.3 The field strength produced by the transmission of each service operated by the Licensee shall be such that equal facility for the reception of the service operated by any licensees (including the Licensee) in a given area is available to any audience using a suitable receiver and aerial. All transmitters and relay stations operated by the Licensee shall be required to maintain minimum field strengths specified by the Telecommunications Authority within the areas to be served.

2. Transmission Plan

- 2.1 The Licensee shall be required to transmit its programmes in accordance with the transmission plan specified by the Telecommunications Authority.
- 2.2 The transmission plan referred to in subparagraph 1 may be amended from time to time by the Telecommunications Authority.
- 2.3 The Licensee shall not activate any additional transmitter or associated equipment established after the date of the grant of this licence without the approval of the Telecommunications Authority and shall observe such conditions as may be imposed by the Telecommunications Authority regarding the testing and operation of the said equipment.

3. Radio Signals

The transmission system operated by the Licensee shall transmit radio signals in accordance with the characteristics specified in the appropriate Codes of Practice issued by the Broadcasting Authority.

4. Combined transmitting equipment

- 4.1 If required by the Telecommunications Authority, the Licensee shall use, in co-operation with any other licensee or person (including Radio Television Hong Kong and its successor) combined transmitting antenna systems for all transmitter and relay stations from the date of commencement of this licence or at a later date specified by the Telecommunications Authority and thereafter shall continue the use without interruption throughout the period of validity of this licence.

4.2 Each of the combined transmitting antenna systems referred to in subparagraph 1 shall comply with technical specifications provided by the Telecommunications Authority.

4.3 All costs involved in providing any combined transmitting antenna system shall be shared equally between the Licensee and any other licensee or person (including Radio Television Hong Kong and its successor).

5. Interference with other services

5.1 The Licensee shall use all of its apparatus and equipment in such a manner as not to cause interference with any authorised or permitted telecommunication, broadcasting or communication services or apparatus operating in or outside Hong Kong.

5.2 In order to avoid or remedy any such interference, the Licensee shall comply with all instructions given to it by the Telecommunications Authority in respect of the operation and use of its apparatus and equipment. Pending the implementation by the Licensee of any action or conduct to avoid or remedy any such interference required by and satisfactory to the Telecommunications Authority, the Telecommunications Authority may, if he reasonably considers that such interference is likely to cause injury (including death) loss or damage, order the cessation of the Licensee's transmissions for such a period as may be necessary.

6. Compliance with international conventions

The Licensee shall to the extent required by the Telecommunications Authority perform and observe the requirements of any international telecommunications convention or agreement dealing with broadcasting or telecommunications which may from time to time be acceded to by or applied to Hong Kong.

7. Common facilities

7.1 The Licensee shall allow any other Licensee or person (including Radio Television Hong Kong and its successor) to use jointly the common facilities at a particular transmitter or relay station as directed by the Telecommunications Authority.

7.2 The facilities referred to in subparagraph 1 shall include the transmitting antenna system, tower, building, standby generator and other site amenities as specified by the Telecommunications Authority.

7.3 The Telecommunications Authority shall appoint the Licensee, or another licensee or person to maintain the common facilities and the person appointed shall ensure that no licensee (including the Licensee) or person shall have any operational advantages over any other licensee or person.

7.4 All costs involved in the provision and maintenance of the common facilities shall be shared equally between the Licensee and any other licensee or person.

8. Station power supplies

8.1 The Licensee shall provide a standby power supply at all transmitter and relay stations operated by the Licensee for use in the event of disconnection from the public electricity supply systems.

8.2 The standby power supply referred to in subparagraph 1 shall be able to restart the transmission within one minute after disconnection of the public electricity supply and shall be able to maintain normal transmission for at least 48 hours thereafter.

9. Standby equipment

The Licensee shall provide and maintain standby transmitter with automatic changeover devices at all transmitter and relay stations.

10. Sufficient spare parts

The Licensee shall maintain sufficient spare parts in Hong Kong to ensure that any interruption of transmission due to equipment fault shall be avoided or minimised as far as reasonably possible.

11. Test equipment

The Licensee shall maintain and provide such test equipment and operating staff as may be required by the Telecommunications Authority for the purpose of determining compliance with the terms and conditions of this licence.

Amended on this day of 2001

Signed—:

Clerk to the Executive Council
COUNCIL CHAMBER

Date—:

Accepted by .:

Signature :

Capacity :

Date .:

TELECOMMUNICATION ORDINANCE

(CAP 106)

SOUND BROADCASTING LICENCE

METRO BROADCAST CORPORATION LIMITED

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1. Grant of licence

In exercise of the powers conferred by section 13C, 13D and 13E of the Telecommunication Ordinance (Cap. 106), the Governor in Council hereby:-

- (a) grants a broadcasting licence to Metro Broadcast Corporation Limited ("the Licensee"), a company formed and registered in Hong Kong under the Companies Ordinance (Cap. 32), whose registered office is situate at 22nd Floor, Hutchison House, 10 Harcourt Road, Hong Kong; and
- (b) renews that licence on the date determined by him by order ("the Renewal date")

on the following terms and conditions.

2. Interpretation

2.1 For the purposes of this licence:-

“amendment date”
means 9 January 2001.

"auditor"

means a professional accountant registered and holding a practising certificate under the Professional Accountants Ordinance (Cap. 50).

"broadcasting"

means transmitting sound (otherwise than as part of a television broadcast) for general reception by means of radio waves.

"Broadcasting Authority"

means the Broadcasting Authority established by section 3 of the Broadcasting Authority Ordinance (Cap. 391).

"clock-hour"

means a period of 60 minutes beginning on any hour.

"day"

means a period of 24 hours beginning at midnight.

"director"

includes any person occupying in relation to a company the position of a director (by whatever name called) and any person in accordance with whose directions or instructions (not being advice given in an independent professional capacity) the directors of that company are accustomed to act.

"ordinarily resident in Hong Kong"

bears the meaning ascribed in Part IIIA of the Telecommunication Ordinance.

"subsidiary company"

bears the meaning ascribed in section 2 of the Companies Ordinance.

"Telecommunications Authority"

means the Authority appointed under section 5 of the

Telecommunication Ordinance.

- 2.2 Save where the contrary intention appears expressly or by necessary implication in this licence words and expressions referring to one gender include the others and references to the singular include the plural and vice versa.
- 2.3 The interpretation of this licence shall not be varied, limited or extended by any index or headings annexed to or contained in this licence.
- 2.4 All references herein to an Ordinance, subsidiary legislation, regulation, direction, Code of Practice or any provision thereof include those in force from time to time and those enacted or made (as the case may be) in place or substitution in whole or in part of any other Ordinance, subsidiary legislation, regulation, direction, Code of Practice or provision thereof.
- 2.5 Subject to any express terms or conditions herein, where this licence requires any act, conduct, matter, issue or thing of the Licensee to be approved, the approval shall not be validly given unless given in writing under the hand of or on behalf of the person giving it.
- 2.6 This licence shall include the 2 Schedules hereto which shall form and be read as an integral part.

3. Authorisation

This licence authorises the Licensee:-

- (a) to establish and maintain a broadcasting service; and

- (b) to establish and maintain such associated telecommunication apparatus and service incidental to the operation of a broadcasting service as may be authorised by the Telecommunications Authority; and
- (c) to carry on such types of business which are in the opinion of the Broadcasting Authority directly connected or associated with the foregoing.

4. Licence granted subject to

This licence is granted subject to the provisions of the Telecommunication Ordinance, the Broadcasting Authority Ordinance and all subsidiary legislation, regulations, directions and Code of Practice made thereunder and the Licensee shall comply with all applicable provisions thereof.

5. Indemnity

The Licensee shall indemnify the Hong Kong Government against any losses, claims, charges, expenses, actions or demands which it may incur or which may be made against it, as the case may be, as a result of or in relation to any breach or alleged breach of or failure or alleged failure to observe or perform the said terms and conditions subject to which this licence is granted.

6. Period

- 6.1 This licence shall be valid for a period of twelve years from 1 June 1991

to 31 May 2003, both dates inclusive.

- 6.2 This licence shall be treated for all purposes as one single continuous licence notwithstanding the amendments to its provisions and conditions from time to time including renewal pursuant to section 13E(2)(a) of the Telecommunication Ordinance, and all references in this licence to "the validity of this licence", "the Renewal date" and "this licence" shall be given effect to accordingly.

7. Notice of intent

The Licensee shall indicate in writing its interest (if any) in applying for a further licence to establish and maintain a broadcasting service not less than 18 months before this licence may otherwise expire on 31 May 2003.

8. Principles of Broadcasting

- 8.1 The Licensee shall accept that the radio frequency spectrum is not the property of the Licensee but of the community and being a natural and limited asset the Licensee shall make proper use of it in the best interests of the whole community and the Licensee shall accept that regulation of that use of the radio frequency spectrum is the purpose of this licence and is necessary and justified because radio programmes go freely into homes and may be readily understood by children and adults.

8.2 The Licensee shall:-

- (a) entertain, inform and educate the audience; and

- (b) ensure that its programming is balanced in content and provides an adequate and comprehensive service which is responsive to the diverse needs and aspirations of the community; and
- (c) apply up-to-date technology to perfect the sounds that it broadcasts.

9. Reservation

- 9.1 There is hereby reserved the power to impose during the validity of this licence such further terms and conditions as the Governor in Council may in the public interest specify from time to time and for that purpose the Governor in Council may revoke, vary, limit or extend the terms and conditions of this licence.
- 9.2 For the purposes of subparagraph 1, the Governor in Council shall afford the Licensee a period of at least 14 days but not exceeding one month from the date of a notice in writing to the Licensee to the effect that the Governor in Council is considering an amendment and the nature thereof in order to make representations in writing to the Governor in Council as to why the proposed amendment shall not be made or should be modified or qualified and the nature thereof.

9.3 In the period referred to in subparagraph 2 and thereafter, the Governor in Council may consult with and receive written recommendations from such persons as he sees fit and the Licensee shall be afforded a period of at least 7 days but not exceeding 14 days to make representations in writing to the Governor in Council on those recommendations.

10. The Broadcasting Authority

Subject to the express terms and provisions of the Telecommunication Ordinance, the Broadcasting Authority Ordinance and this licence, the Broadcasting Authority shall in its absolute discretion determine, approve, disapprove, hold an opinion or decide any matter, issue or thing which it is requested, permitted or required to determine, approve, disapprove, hold an opinion regarding or decide under this licence.

11. Licence fee

11.1 Subject to subparagraph 3 and the right of the Governor in Council to revise and review at any time the level of licence fee on the basis of recovery of the reasonable administrative costs of the Hong Kong Government in administering this licence or otherwise, the Licensee shall pay to the Hong Kong Government a licence fee for the first year beginning with the Renewal date and for each subsequent year beginning on the anniversary of the Renewal date specified as follows:-

(a) First Year - \$3,383,000 x 0.2

(b) Second Year - \$3,383,000 x (1+GCED at the first anniversary) x 0.4

- (c) Third Year - $\$3,383,000 \times (1+\text{GCED at the first anniversary}) \times (1+\text{GCED at the second anniversary}) \times 0.6$
- (d) Fourth Year - $\$3,383,000 \times (1+\text{GCED at the first anniversary}) \times (1+\text{GCED at the second anniversary}) \times (1+\text{GCED at the third anniversary}) \times 0.8$
- (e) Fifth Year - $\$3,383,000 \times (1+\text{GCED at the first anniversary}) \times (1+\text{GCED at the second anniversary}) \times (1+\text{GCED at the third anniversary}) \times (1+\text{GCED at the fourth anniversary})$
- (f) Sixth Year - $\$3,383,000 \times (1+\text{GCED at the first anniversary}) \times (1+\text{GCED at the second anniversary}) \times (1+\text{GCED at the third anniversary}) \times (1+\text{GCED at the fourth anniversary}) \times (1+\text{GCED at the fifth anniversary})$

For the purpose of this subparagraph and subparagraph 3, GCED at any anniversary of the Renewal date or the amendment date, as the case may be, means the forecast movement of Government Consumption Expenditure Deflator for the year of publication, published by the Hong Kong Government in the most recent edition of "Economic Prospects" or any similar Hong Kong Government publications containing the forecast movement of the Government Consumption Expenditure Deflator. For the avoidance of doubt, the formula for calculating GCED for any year of publication (Year N) will be as follows:-

"GCED" for Year N =

$$\frac{(\text{Forecast Government Consumption Expenditure for Year N})/(\text{Preliminary Estimates for Year (N-1)})}{(1+\text{Forecast Growth Rate of Government Consumption Expenditure in Real terms for Year N})} - 1$$

11.2 The first payment of the licence fee payable under subparagraph 3 shall be made within 14 days of the amendment date ~~Renewal date~~ and thereafter payments of the licence fee shall be made on or before the anniversary of the amendment date ~~Renewal date~~ within 14 days of demand of the Hong Kong Government.

11.3 Subject to the right of the Chief Executive in Council to revise and review at any time the level of licence fee on the basis of recovery of the reasonable administrative costs of the Hong Kong Government in administering this licence or otherwise, the Licensee shall pay to the Hong Kong Government a licence fee for the first year beginning with the amendment date and for each subsequent year beginning on the anniversary of the amendment date specified as follows:-

(a) First Year - HK\$3,540,410

(b) Second Year - HK\$3,540,410 x (1+GCED at the first anniversary)

(c) Third Year - HK\$3,540,410 x (1+GCED at the first anniversary) x (1+GCED at the second anniversary)

provided the last payment of the licence fee payable under (c) shall be made to the Hong Kong Government on a pro-rata basis for the period from the second anniversary of the amendment date to the end of this licence (both dates inclusive).

11.4 Subject to payment of the licence fee for the first year from the amendment date in accordance with subparagraph 3, the Licensee shall

be entitled to a refund without any interest of the licence fee already paid under subparagraph 1 for the period from the amendment date to 31 May 2001 (both dates inclusive).

12. Non-assignment

12.1 The Licensee shall not without the approval of the Governor in Council assign, share, franchise or permit another the use of, in whole or in part, the rights, powers and privileges granted hereunder or purport to do the same.

12.2 The Licensee shall not delegate any of its duties or responsibilities granted hereunder other than those commonly carried out by independent professional advisers or auditors.

13. Revocation

13.1 Where the Governor in Council considers that there may be cause for revoking this licence he may direct the Broadcasting Authority to conduct an inquiry and submit recommendations concerning the revocation of this licence, and, after considering such recommendations and such other information, matter and advice as he may see fit, may revoke this licence.

13.2 Revocation of this licence under subparagraph 1 shall take effect subject to the notice required to be given under subparagraph 5.

13.3 Notwithstanding subparagraphs 1 and 2, the Governor in Council may at any time revoke this licence:-

- (a) for failure by the Licensee to pay, within one month after payment thereof has been demanded, any royalty owing by him or to pay any financial penalty imposed on him under the Broadcasting Authority Ordinance;
 - (b) if having regard to such of the following as is or are appropriate in the particular case, namely, the number of times this licence has been suspended, the number of financial penalties imposed on the Licensee under the Broadcasting Authority Ordinance since the grant of this licence, the number of occasions on which, since such grant, the requirements of the Telecommunication Ordinance have, in relation to the Licensee, been contravened, any failure by the Licensee, whether by act or omission, to comply with a term or condition attached to this licence, or any such failure to comply with any direction or order applicable to the Licensee and given or made by the Broadcasting Authority either under the Broadcasting Authority Ordinance or under a provision of a Code of Practice, he is satisfied that this licence should be revoked;
 - (c) if the Licensee :-
 - (i) goes into compulsory liquidation or into voluntary liquidation other than for the purpose of amalgamation or reconstruction; or
 - (ii) makes any assignment to, or composition with, its creditors;
- and such revocation shall take effect forthwith or on such day as the Governor in Council specifies.

13.4 In determining whether to revoke this licence, the Governor in Council may have regard to the matters to which the Broadcasting Authority had regard under paragraph 14.2.

13.5 Where it is decided to revoke this licence pursuant to subparagraph 1, the Governor in Council shall cause notice in writing of the decision to be given to the Licensee, and the decision shall come into effect on the day specified therein which shall be a day not earlier than the 60th day after the date of the notice.

13.6 Where it is necessary for the due compliance with this paragraph the Governor in Council may extend the term of this licence.

14. Suspension of licence

14.1 Subject to the provisions of this paragraph, the Broadcasting Authority may suspend this licence for such period, being a period not exceeding 30 days, as specified in the notice of the suspension.

14.2 This licence shall only be suspended under this paragraph where, if having regard to such of the following as is or are appropriate in the particular case, namely, the number of financial penalties imposed on the Licensee under the Broadcasting Authority Ordinance since the grant of this licence, the number of occasions on which, since such grant, the requirements of the Telecommunication Ordinance have, in relation to the Licensee, been contravened, any failure by the Licensee, whether by act or omission, to comply with a term or condition attached to this licence, or any such failure to comply with any direction or order applicable to the Licensee and given or made by the Broadcasting Authority either under the Broadcasting Authority Ordinance or under a

provision of a Code of Practice, the Broadcasting Authority is satisfied that this licence should be suspended.

14.3 The Broadcasting Authority shall not suspend this licence unless and until it has given to the Licensee notice stating that that Authority has under consideration the suspension of this licence and the grounds upon which and any other reason why such suspension is being considered and the Broadcasting Authority has considered any representation or objection made to it as regards the proposed suspension.

14.4 The notice referred to in subparagraph 3 shall, in addition to stating the matters required by that subparagraph, state that representations and objections as regards the proposed suspension may be made to the Broadcasting Authority (either orally or in writing or both) during such period (being a period of not less than 28 days beginning on the date of receipt by the Licensee of the notice) as shall be specified in the notice.

14.5 Where this licence is suspended under this paragraph the suspension shall not come into force before:-

- (a) in case an appeal is not taken under section 26 of the Broadcasting Authority Ordinance, the expiration of the period during which such an appeal may be taken; or
- (b) in case such an appeal is taken, the appeal is either withdrawn or determined.

15. Restriction on business

The only business that may be carried on by the Licensee is:-

- (a) to establish and maintain a broadcasting service;
- (b) to establish and maintain such associated telecommunication apparatus and services incidental to the operation of a broadcasting service as may be authorised by the Telecommunications Authority; and
- (c) to carry on such types of business which are in the opinion of the Broadcasting Authority directly connected or associated with the foregoing.

16. Prohibition on holding certain shares etc.

16.1 The Licensee shall not hold or acquire, either directly or indirectly, an interest in any person unless:-

- (a) the holding or acquisition has been approved by the Broadcasting Authority; and
- (b) the said person carried on (to the exclusion of all others) the types of business mentioned in paragraph 15; and
- (c) in the case of a holding or acquisition of shares in a company, not less than 51% of the issued voting shares are registered in and only in the name of the Licensee or a subsidiary company of the Licensee and where control and management of the said company are under the control of the Licensee.

16.2 For the purpose of subparagraph 1, the reference to an interest in any

person means any shareholding, interest under a trust or financial interest as a creditor or assignee of a debt (whether secured, guaranteed or otherwise) unless the debt arose directly out of the day-to-day activities of the Licensee in earning profits from carrying on any business that may be carried on under paragraph 15 of this licence.

17. Station identification

17.1 On and after the Renewal date, the Licensee shall, when broadcasting any programmes, including any test or experimental transmissions, transmit a station identification signal as frequently as practicable.

17.2 Without prejudice to subparagraph 1, the Licensee shall transmit its station identification signal at least once during each clock-hour of the transmission of its broadcast programmes, unless to do so would cause unreasonable interruption of its broadcast programmes.

17.3 The Licensee shall give the Telecommunications Authority not less than 14 days' notice of any proposed change to its station identification signal and shall comply with any direction of that Authority in relation to the signal.

17.4 For the purposes of this licence, "station identification signal" means any aural transmission exclusively for the purpose of identifying the broadcasting service as that of the Licensee and, without prejudice to the generality of the foregoing, not for the promotion of the Licensee's station or programme services.

18. Copyright

The Licensee shall not do any act or permit any act to be done which is an infringement of any copyright which may exist in any published programme or other printed or recorded matter or which is or may be protected under the provision of any enactment for the time being in force or under any other law enforceable in Hong Kong.

19. Language of books etc

All the books and accounts of the Licensee shall be written in the English or Chinese language.

20. Number of services, language and hours of service

20.1 The Licensee shall broadcast two services in the FM frequencies and one service in the AM frequency. In any one of the services, at least eighty per cent of the time during which broadcasting takes place in any one day shall be conducted in the English language. In either one of the other services, at least eighty per cent of the time during which broadcasting takes place in any one day shall be conducted in a Chinese dialect. Upon application in writing by the Licensee the Broadcasting Authority may approve any deviation from the said language requirements.

20.2 The Licensee shall broadcast for at least 10 hours each day in respect of each service.

21. Residential requirement of directors

21.1 The chairman and the managing director (and any person occupying these positions by whatever name called) and the majority of the directors who take an active part in the control of the Licensee shall,

unless otherwise approved by the Broadcasting Authority, each be ordinarily resident in Hong Kong and have been so resident for one continuous period of at least seven years.

21.2 The control of the Licensee shall be bona fide exercised within Hong Kong.

22. Licensee to formulate general guidelines

The Licensee shall formulate written guidelines for all employees and agents concerned with the content of programmes and advertising stating the Licensee's principles regarding its responsibilities to the public, with particular reference to its obligations under the Codes of Practice relating to Programme and Advertising Standards and the Licensee shall make these employees and agents aware, and refresh their memory at regular intervals, of the guidelines and the Codes of Practice.

23. (Withdrawn from the Renewal date)

24. Discipline and training

The Licensee shall ensure good discipline and training among its staff as regards adherence to the Codes of Practice relating to Programme, Advertising and Technical Standards.

25. Comments and Complaints

25.1 The Licensee shall receive and consider any comment and complaint from or on behalf of any person who believes himself to have been treated unjustly or unfairly in any programme, material or item broadcast

by the Licensee or who comments or complains in substance or in form with respect to the whole or part of the content, production, transmission coverage, technical requirements or time of broadcasting of such programme, material or item or of any matter relating thereto, or with respect to the management of the Licensee.

- 25.2 The Licensee shall implement a procedure for dealing with comments and complaints as required from time to time by the Broadcasting Authority.
- 25.3 The Licensee shall keep a complete and up-to-date complaints record and submit it to the Broadcasting Authority on a regular basis and on demand.
- 25.4 The Licensee shall keep a written record of programmes broadcast showing the date and time of broadcasting and shall retain the written scripts (if any) and recordings of all broadcasts for such a period as specified by the Broadcasting Authority and shall submit them to the Broadcasting Authority for examination on demand.
26. (Withdrawn from the Renewal date)
27. (Already withdrawn)
28. News programmes
- 28.1 Subject to such alternative arrangements as may be approved from time to time by the Broadcasting Authority, the Licensee shall broadcast in each service on each day:-

- (a) a minimum of two programmes consisting of comprehensive news bulletins of not less than 10 minutes each between the hours of 12:00 noon and 12:00 midnight; and
- (b) half-hourly news and weather reports between the hours of 6:00 a.m. and 12:00 midnight and hourly news and weather reports for the remaining hours of broadcasting unless to do so would cause unreasonable interruption of its broadcast programmes.

28.2 In broadcasting any news programme, reports or items, the Licensee shall ensure that international and local affairs are treated impartially and broadcast accurately.

29. Weather programmes

29.1 Subject to subparagraph 2, the Licensee may broadcast any weather programme or announcement produced from sources approved by the Broadcasting Authority.

29.2 The Licensee shall, if it is directed to do so by the Broadcasting Authority, broadcast any weather programme or announcement supplied to it by the Hong Kong Government in place of or in addition to any other such programme or announcement produced by the Licensee or any other person.

30. Current affairs programmes

30.1 On and after the Renewal date the Licensee shall broadcast a minimum of two 15-minutes current affairs programmes each week in each service between the hours of 8:00 a.m. and midnight.

30.2 Upon application in writing by the Licensee the Broadcasting Authority may approve arrangements for broadcasting current affairs programmes alternative to those in subparagraph 1.

31. Programmes for young persons and senior citizens

31.1 On and after the Renewal date and subject to any directions issued by the Broadcasting Authority:-

- (a) the Licensee shall broadcast in one of its services a minimum of one half-hour programme each week between the hours of 8:00 a.m. and midnight which is intended and suitable for the education and proper development of young people in Hong Kong aged 16 years to 24 years (inclusive) ("Young Persons"); and
- (b) the Licensee shall broadcast in one of its other services a minimum of one half-hour programme each week between the hours of 8:00 a.m. and midnight which is intended and suitable for the particular requirements of, and in relation (but not necessarily limited) to the health, financial position or recreation of, senior citizens in Hong Kong over the age of 60 years ("Senior Citizens"); and
- (c) the Licensee shall also broadcast in the remainder of its services a minimum of one half-hour programme each week between the hours of 8:00 a.m. and midnight which is intended and suitable for either Young Persons or Senior Citizens.

31.2 Upon application in writing by the Licensee the Broadcasting Authority may approve arrangements for broadcasting programmes for Young

Persons and/or Senior Citizens alternative to those in subparagraph 1.

31A. Arts and culture programmes

- (a) On and after the Renewal date and subject to any directions issued by the Broadcasting Authority, the Licensee shall broadcast, between 8:00 a.m. and midnight, in each of any two of its services, one of which to be broadcast in Cantonese, a minimum of 30 minutes of programming each week intended and suitable for promoting the development and appreciation of the literary, performing and visual arts and other topics or activities of cultural value.
- (b) Upon application in writing by the Licensee the Broadcasting Authority may approve arrangements for broadcasting arts and culture programmes alternative to those in subparagraph 1.

32. Announcements in the Public Interest

The Licensee shall broadcast in each service for periods not exceeding in total one minute in each clock-hour such announcements in the public interest as the Broadcasting Authority may determine.

32A. Publicity Material of the Broadcasting Authority

- (a) On and after the Renewal date, the Licensee shall broadcast in each of its services such publicity material as the Broadcasting Authority may direct in order to promote knowledge and understanding of the activities and functions of the Broadcasting Authority, the Broadcasting Authority Complaints Committee appointed under section 10 of the Broadcasting Authority Ordinance, and such other committees of the Broadcasting

Authority appointed under section 12 of the Broadcasting Authority Ordinance; and

- (b) the publicity material referred to in subparagraph (a) may be directed to be broadcast twice daily for not more than one minute in each of its services between the hours of 6:00 p.m. and 11:00 p.m. subject to a maximum limit of 5 minutes in aggregate each week in each of its services.

33. Advertising

The Licensee shall monitor and ensure strict compliance with the Codes of Practice relating to Advertising Standards issued by the Broadcasting Authority.

34. Restriction of advertising

In each period of 24 hours beginning at 6 o'clock in the morning the Licensee shall limit the broadcast of advertising material to a total not exceeding 12% of the time during which broadcasting takes place within the said period of 24 hours.

35. Tobacco and alcohol advertising/sponsorship

35.1 The Licensee shall not broadcast any advertisement for tobacco products or invite, offer or accept sponsorship or commercial promotion for such products in respect of any programme, material or item broadcast.

35.2 The Licensee shall not between the hours of 4 p.m. and 8:30 p.m. broadcast any advertisement for alcoholic beverages or invite, offer or

accept sponsorship or commercial promotion for such beverages in respect of any programme, material or item broadcast between those hours.

36. Advertising charges to be published

The Licensee shall publish, in such manner as the Broadcasting Authority may direct, the charges and consideration for broadcasting advertising material.

37. Programme development and capital investment

37.1 On and after the Renewal date and unless otherwise approved by the Broadcasting Authority, the Licensee shall implement the six-year plan contained in the Licensee's submission to the Broadcasting Authority and dated 29 October 1996 in so far as the same relates to the programme development and capital investment of the Licensee in the years 1997-2003.

37.2 The Licensee shall comply at all times with the statements (including statements of intention) and representations made by or on its behalf in or with reference to the said plan. The Broadcasting Authority may approve any deviation from the said plan.

38. Notices or directions given to the Licensee

38.1 On and after the Renewal date, where any consent, notice, direction, authorisation or approval of or from the Broadcasting Authority or Telecommunications Authority is required under this licence for the doing of any matter or thing by or on behalf of the Licensee, or a notice

or notification is required to be given by or on behalf of the Licensee to the Broadcasting Authority or the Telecommunications Authority, that consent, notice, direction, authorisation, approval or notification is valid only if given in writing and signed by a person with authority to do so and, subject to subparagraph 2, given before the doing of the said matter or thing in question.

38.2 The Broadcasting Authority and the Telecommunications Authority may generally or specifically in relation to a particular matter or thing referred to in subparagraph 1 by notice in writing to the Licensee waive the requirement for its or his (as the case may be) consent, notice, direction, authorisation or approval to be given before the doing of the matter or thing in question, provided that no such waiver shall estop the Broadcasting Authority or the Telecommunications Authority from withdrawing the waiver, with prospective effect, in whole or in part, or from requiring that the consent, notice, direction, authorisation or approval, (as the case may be), be required timeously in relation to other matters or things.

38.3 Without any limitation whatsoever on the rights and powers conferred by Part VI (Powers) of the Interpretation and General Clauses Ordinance (Cap. 1), where the Broadcasting Authority or the Telecommunications Authority gives any consent, notice, direction, authorisation or approval under this licence to the Licensee, the same may be:

(a) withdrawn, modified or replaced from time to time by the Broadcasting Authority or the Telecommunications Authority, as the case may be, in the same circumstances, and with the same effect, as if the withdrawal, modification or replacement were the giving of a consent, notice, direction, approval or authorisation

under this licence and the Licensee shall comply therewith;

- (b) given once or from time to time; and
- (c) made subject to such conditions as the Broadcasting Authority or Telecommunications Authority, as the case may be, may impose.

38.4 All references in this licence to the doing of any matter or thing by the Broadcasting Authority or the Telecommunications Authority include any delegate thereof, or other agents, authorised in that regard by or under any law or Ordinance.

38.5 Any communication in writing moving from the Broadcasting Authority or the Telecommunications Authority to the Licensee under this licence may be validly served or given either by delivering it to a responsible officer or employee of the Licensee at the registered office of the Licensee or its last known place of business in Hong Kong or by forwarding it by registered post to its registered office or last known place of business in Hong Kong.

39. Purchase of lands, buildings, etc

39.1 Where:-

- (a) notice of non-renewal of this licence is given under section 13E of the Telecommunication Ordinance; or
- (b) this licence is or has been, or is to be, revoked or surrendered;

the Governor in Council may direct The Financial Secretary Incorporated

to acquire by purchase any lands (which for the purposes of this paragraph shall include any licence or option over land), installations, plant and equipment in or over which the Licensee has a right, title or interest and used by the Licensee for the purposes of this licence.

39.2 Not less than 4 months and not more than 8 months after the giving of notice of non-renewal of this licence under section 13E of the Telecommunication Ordinance or, where this licence is or has been, or is to be, revoked or surrendered, at any time within 12 months after the giving of the direction under subparagraph 1, The Financial Secretary Incorporated may acquire by purchase such parts of the lands, installations, plant and equipment in which the Licensee has a right, title or interest and used by the Licensee for the purposes of this licence as may be specified by The Financial Secretary Incorporated.

39.3 The consideration to be paid to the Licensee for the right, title or interest in or over the said land, installations, plant and equipment shall be a sum equal to the open market value thereof at the date of non-renewal, revocation or surrender (as the case may be) of this licence as between a willing buyer and a willing seller but without regard to:-

- (a) loss of profit,
- (b) goodwill,
- (c) the right of pre-emption,
- (d) the cost of raising capital,
- (e) all the property being placed on the market at one and the same time.

39.4 In the event of the price offered by The Financial Secretary Incorporated being refused, the price shall be determined by arbitration in accordance

with the Arbitration Ordinance (Cap. 341) and for the purpose of giving effect to the foregoing, The Financial Secretary Incorporated and the Licensee shall be regarded as having concluded an arbitration agreement (within the meaning of that Ordinance) whose provisions shall be taken to include a provision that the aforesaid price shall, in the absence of agreement, be determined by a single arbitrator.

39.5 Where land or any interest in land is purchased under this paragraph on the direction of the Governor in Council, the Licensee shall when called upon to do so execute an assignment in favour of The Financial Secretary Incorporated and within one month thereafter The Financial Secretary Incorporated shall register such assignment in the Land Office.

39.6 All property purchased under this paragraph on the direction of the Governor in Council (except land or any interest in land the title to which shall vest in The Financial Secretary Incorporated at the date of the assignment) shall, as the case may be, vest in The Financial Secretary Incorporated:-

- (a) upon the expiry of this licence after notice of a decision not to renew;
- (b) where this licence is revoked or surrendered, when the revocation or surrender (as the case may be) takes effect or when a price is offered by The Financial Secretary Incorporated, whichever is the later, and thereupon all rights in such property on the part of the Licensee shall cease and determine.

39.7 Nothing in this paragraph shall confer on the Licensee any right to require The Financial Secretary Incorporated to purchase any part of its

lands, installations, plant or equipment.

39.8 The Licensee shall notify the Hong Kong Government:-

- (a) of all land in respect of which the Licensee has a right, title or interest (as the case may be) as at the date of the grant of this licence within 14 days thereafter and within 14 days after the date of each binding agreement entered into by or on behalf of the Licensee to acquire such a right, title or interest; and
- (b) of all land and interests in land which it uses for the purposes of this licence within 14 days after the commencement of the use.

40. Licensee to submit audited accounts

40.1 The Licensee shall submit to the Financial Secretary, not later than 6 months after the end of its accounting year, accounts audited by the auditor of the Licensee in such manner and containing such details as may be approved and required by the Financial Secretary.

40.2 Where a company is a subsidiary company of the Licensee, the Licensee shall, not later than 6 months after the end of an accounting year of the company, submit, or cause to be submitted, to the Financial Secretary a copy of the company's accounts audited by the auditor of the Licensee for that year.

41. Licensee to submit returns

41.1 The Licensee shall submit to the Broadcasting Authority not later than the end of the month of April in each year a return in a form specified by

it showing the names of each director, whether each is ordinarily resident in Hong Kong and has been so ordinarily resident for a continuous period of at least seven years and such details and evidence in support thereof as the Broadcasting Authority may reasonably require.

41.2 Without prejudice to subparagraph 1, the Licensee shall submit to the Broadcasting Authority in a form specified by it a return showing:-

- (a) particulars of every change of or addition to the persons who are directors ; and
- (b) whether following the said change or addition each of the directors is ordinarily resident in Hong Kong and has been so for a continuous period of at least seven years; and
- (c) such details and evidence in support of the foregoing as the Broadcasting Authority may reasonably require.

41.3 Unless otherwise approved by the Broadcasting Authority, the return referred to in subparagraph 2 shall be submitted to the Broadcasting Authority not later than 14 days after the said change or addition.

41.4 The Licensee shall submit to the Broadcasting Authority on demand such other information as it may consider that it reasonably requires for the purposes of exercising its functions under the Broadcasting Authority Ordinance.

42. Non-compliance due to acts of God

42.1 Subject to subparagraph 2, the Licensee shall be exonerated from

observing or performing the terms and conditions of this licence if and so long as the failure to observe or perform those terms and conditions shall be directly attributable to any act of God, any riot, civil commotion or disturbance, the restraint of any ruler, any strike, combination of workmen or lockout, any fire, explosion, typhoon, storm, flooding, landslide, subsidence of ground or other catastrophe, any war blockade or embargo, any breakdown of plant, machinery or equipment not due to the negligence or want of reasonable maintenance on the part of the Licensee, its servants or agents, any commandeering or requisitioning of the Licensee's installations, equipment or facilities or any other interference or circumstance wholly beyond the control of the Licensee.

42.2 The Licensee shall, with all due diligence and speed, repair, rebuild, restore, reinstate and take all such actions as may be required to repair, rebuild, restore and reinstate in all respects the broadcasting service in accordance with the terms and conditions of this licence and resume observing and performing those terms and conditions.

43. Liability of Licensee for contraventions

The Licensee shall be liable for the contravention of:-

- (a) any applicable provision of the Telecommunication Ordinance, the Broadcasting Authority Ordinance, any other relevant Ordinance, subsidiary legislation, regulation, direction, Code of Practice or any provision thereof; and
- (b) (subject to paragraph 42), any term or condition of this licence;

where the contravention is due to the act or omission of the

directors, officers, employees or agents of the Licensee acting for or on behalf of the Licensee.

44 Savings of rights granted

44.1 Notwithstanding anything contained in this licence, the Licensee shall not in any way whatsoever abrogate or interfere with any of the exclusive telecommunication services or off-air broadcasts authorized under the Telecommunication Ordinance or Television Ordinance (Cap. 52).

44.2 Nothing in this licence shall prejudice or affect the right of the Hong Kong Government to establish, extend, maintain or work any telecommunication, broadcasting or communication services or systems or to receive or distribute broadcast matter or to enter into agreements or grant licences for the establishment, extension, maintenance or working of any such services or systems.

45. Statements made on application binding on the Licensee

The Licensee shall comply at all times with the statements and representations made by or on its behalf in the application for this licence submitted by it except in so far as such statements and representations are no longer applicable due to amendment of the laws of Hong Kong relating to the establishment and operation of broadcasting services, or subject to the approval of the Broadcasting Authority, to material changes in the operating environment which have occurred since the making of those statements or representations, or are superseded by this licence.

46. Free Competition

- 46.1 On and after the Renewal date, the Licensee shall not, whether pursuant to an option or right conferred before or after that date, or otherwise, enter into any agreement or arrangement, or offer any inducement (whether financial or otherwise) to any person, or enforce by way of legal proceedings, arbitration, forfeiture of liquidated damages, adjustment or rebate of charges or otherwise any term or condition, or solicit or permit another to do so, or take or receive the benefit of any such term or condition, which will, or is calculated to, restrict, impede or restrain competition by any person other than the Licensee in relation to the establishment, provision or operation of any service or network for telecommunication in Hong Kong, or broadcasting in Hong Kong in relation to a subscription television broadcasting licensee, commercial television broadcasting licensee, satellite uplink licensee or sound broadcasting licensee.
- 46.2 The Licensee shall not contravene subparagraph 1 if it satisfies the Broadcasting Authority that any aforesaid restriction, impediment or restraint is one that is and remains fair and reasonable in reference to the interests of the public in Hong Kong including without limitation the preservation of the freedom from restriction, impediment or restraint of competition protected by that subparagraph and having regard to the interests of licensees referred to therein and of the Licensee.
- 46.3 Subject to the Proviso, subparagraph 1 shall not apply in respect of any aforesaid restriction, impediment or restraint upon:
- (a) broadcasting any programme material acquired or produced by or for the Licensee and broadcast by it under this licence;

- (b) any person from:
 - (i) disclosing or using any proprietary right vested in the Licensee or other person (including without limitation the disclosure of any information in respect of which there is such a proprietary right);
 - (ii) using or exploiting his artistic talent or ability;
- (c) any employee or former employee of the Licensee who has or had access to information in which the Licensee has a proprietary right from engaging in any business, or being employed by any person, in competition with the Licensee during the period of his employment and for a reasonable period not exceeding six months from the date of termination of his employment,

provided that the said restriction, impediment or restraint is not void or unenforceable under any law or Ordinance or would not be void or unenforceable if the proper law governing the restriction, impediment or restraint were that of Hong Kong.

46.4 For the purposes of this paragraph, without prejudice to the other rights, power and duties of the Broadcasting Authority, that Authority may consult with and seek the views of any person.

47. Publication of Licence

On and after the Renewal date the licensee shall make a available for inspection by members of the public, free of charge, a true copy of this licence (other than the plan referred to in paragraph 37) at:-

- (a) its principal place of business; and
- (b) the head office of the Television and Entertainment Licensing Authority.

FIRST SCHEDULE

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1. Royalty

- 1.1 The Licensee shall, as regards each of its accounting years, pay to the Hong Kong Government a royalty determined by reference to the amounts which, having regard to this paragraph, are the appropriate amounts for fees or other charges in respect of advertising, whether in the form of display or other advertisements, advertising magazine programmes, sponsored or promoted programmes or in any other form of broadcast by the Licensee, and as regards a particular such year the amount of such royalty shall be determined in accordance with the following rates -

| <u>Appropriate Amounts</u> | <u>Rate</u> |
|----------------------------|-------------|
| On the first \$20m | 1% |
| On the next \$20m | 2% |
| On the next \$20m | 3% |

| | |
|--------------------------|----|
| On the next \$20m | 4% |
| On the excess over \$80m | 5% |

Provided that the amount of the royalty payable hereunder as regards any such accounting year shall not exceed an amount which is equal to 4 per cent of such appropriate amounts for that year.

- 1.2 The appropriate amounts referred to in subparagraph 1 shall be the amounts which in the circumstances of a particular case would reasonably be expected to be agreed to between the parties concerned were they negotiating in the open market and at arm's length.
- 1.3 (a) The royalty payable under this paragraph shall be payable quarterly in accordance with subparagraph (b).

(b) The Licensee shall make a payment to the Director of Accounting Services of the amount (if any) due on account of the royalty payable by him under this paragraph in respect of a quarter beginning on the 1st day of January, the 1st day of April, the 1st day of July or the 1st day of October in any year.
- 1.4 (a) The royalty payable under this paragraph shall be due at the time when the fee or other charge in respect of which the royalty is payable is due, either in whole or in part, to the Licensee; but

(b) for the purpose of determining when the said fee or other charge is due to the Licensee, it shall be due not later than when it would

reasonably be expected to be due between the parties concerned were they negotiating in the open market and at arm's length.

- 1.5 (a) Within the period of 30 days immediately following a quarter referred to in subparagraph 3, the Licensee shall -
- (i) furnish to the Director of Accounting Services an account, certified by the Licensee, or by someone acting on his behalf, to be true and correct, of the amounts described in subparagraph 1 and due (whether in whole or in part) to the Licensee in the quarter; and
 - (ii) remit to the Director of Accounting Services the amount of the royalty (if any) payable by it under this paragraph in respect of the quarter.
- (b) The Director of Accounting Services may require accounts referred to in subparagraph (a)(i) to be in a form and contain particulars specified by him, and in case a requirement under this paragraph is made and is not withdrawn, the Licensee shall comply with it.
- 1.6 (a) Where a royalty is payable under this paragraph as regards a particular quarter (in this subparagraph referred to as "the current quarter") but the Licensee is unable, before the expiration of the current quarter or the period of 28 days commencing on the expiration of that quarter, to ascertain the aggregate of the fees or other charges by reference to which the amount due on account of the royalty as respects the current quarter is to be determined, the Licensee shall, within the period of 30 days immediately following

the expiration of the current quarter, pay to the Director of Accounting Services a sum the amount of which shall have been calculated by the Licensee having had regard to :

- (i) the sum (if any) paid by the Licensee on account of the royalty in respect of the quarter immediately preceding the current quarter; and
 - (ii) an estimate by the Licensee of the amount which, were such aggregate ascertainable, would be payable by him on account of the royalty as respects the current quarter.
- (b) Where a payment is made under subparagraph (a) and when ascertained the amount due on account of the royalty payable under this paragraph as respects the current quarter is found to exceed the amount of the payment -
- (i) the excess or any part thereof shall be payable to the Director of Accounting Services on demand; and
 - (ii) the making of the payment shall not prejudice any mode of recovery should the Licensee fail to pay any part of the excess remaining to be paid pursuant to the requirements of sub-subparagraph (i).
- (c) Where a payment is made under subparagraph (a) and when ascertained the amount first referred to in subparagraph (b) is found to be less than the amount of the payment, the Licensee shall be entitled to a refund equal to the amount of the overpayment.

1.7 Where the Director of Accounting Services believes that an amount payable under this section by the Licensee, in relation to any period consisting of one quarter or of two or more consecutive quarters, was greater than the total amount (if any) paid by him in relation to that period, then, without prejudice to any other action which may be taken, he may make an estimate in one sum of the total amount which in his opinion should have been paid in respect of the quarter or quarters comprised in such period and may give to the Licensee a notice in writing specifying -

- (a) the total amount so estimated;
- (b) the total amount (if any) paid by the Licensee in relation to the said period; and
- (c) the balance remaining unpaid.

1.8 Where a notice is given under subparagraph 7 to the Licensee, the following provisions shall apply -

- (a) the Licensee may, if he claims that the total amount or, as the case may be, the balance remaining unpaid is excessive, give a notification to that effect in writing to the Director of Accounting Services, within the period of 21 days beginning on the date of the notice under subparagraph 7;
- (b) on the expiration of the said period, if no notification under this subsection is received by the Director of Accounting Services or, if such a notification is so received, on determination of the difference by agreement or arbitration, the balance remaining

unpaid as specified in the notification or the amended balance (if any) as so determined shall become due and payable as if the amount were one which the Licensee was liable to pay for the quarter during which the period of 14 days from the date of the giving of the notice under subparagraph 7 expired or during which the difference was determined by agreement or arbitration, or where those quarters are different, whichever of them is the later.

- 1.9 (a) Where a notification under paragraph 8 is given, the difference to which the notification relates shall be determined by arbitration in accordance with the Arbitration Ordinance and for the purposes of giving effect to the foregoing, the person by whom, or on whose behalf, the notification is given and the Director of Accounting Services shall be regarded as having concluded an arbitration agreement (within the meaning of that Ordinance) whose provisions shall be taken to include a provision that the aforesaid difference shall, in the absence of agreement, be determined by a single arbitrator.
- (b) In the absence of agreement, the Arbitration Ordinance shall, with any necessary modifications, apply to the determination of a difference to which a notification under subparagraph 8 relates.
- 1.10 Each of the following periods shall, for the purposes of this paragraph, be regarded as being an accounting year of the Licensee -
- (a) in case the accounting year of the Licensee begins on a day other than the specified day, the period beginning on the specified day and ending on the expiration of the Licensee's accounting year in which the specified day occurs;

- (b) in case this licence commences on a day other than the first day of an accounting year of the relevant Licensee, the period beginning on such commencement and ending on the expiration of the Licensee's accounting year in which the commencement occurs; and
- (c) in case notice of non-renewal is given under section 13E of the Telecommunication Ordinance or in case this licence is surrendered or revoked and the non-renewal, surrender or revocation has effect on a day other than the first day of an accounting year of the Licensee, the period beginning on the commencement of the Licensee's accounting year in which the non-renewal, surrender or revocation, as may be appropriate, has effect and ending immediately before that non-renewal, surrender or revocation, as may be appropriate, has effect.

1.11 In subparagraph 10(a), "the specified day" means the day specified for the purposes of that subparagraph by the Governor by notice in the Gazette.

2. Powers of Financial Secretary in relation to royalty

2.1 For the purpose of determining amounts payable on account of a royalty payable under paragraph 1 of this Schedule and ensuring its payment, any person authorized by the Financial Secretary in that behalf may at all reasonable times -

- (a) enter any building or other premises in which the Licensee or a subsidiary company carries on business;

- (b) require any person whom he reasonably believes to be employed in connection with such business to produce for examination any book, record or other document which relates to such business and which is in his possession or under his control;
 - (c) examine and, if he thinks fit, take copies of, or copies of any entry in, any book, record or other document so produced;
 - (d) remove any such book, record or other document for further examination; and
 - (e) require any director or servant of such company to give him such explanation or further particulars in respect of a book, record or other document produced in compliance with a requirement under subparagraph (b) as he shall specify.
- 2.2 Where any information or matter relevant to the determination of the amounts of royalty payable is recorded otherwise than in a legible form, the powers conferred by subparagraph 1 apply to require the production of a reproduction of the recording of any such information or matter or of a relevant part of it in a legible form.
- 2.3 A person who is a director or a servant of the Licensee or its subsidiary company shall assist and shall not obstruct a person exercising a power under this paragraph.
- 2.4 Any book, record or other document removed in exercise of a power under this paragraph may be retained for any period not exceeding the period of 6 months beginning on the date of its removal or, where the

book, record or other document is required in connection with any criminal proceedings, for such longer period as may be necessary for the purposes of those proceedings.

2.5 Where a person removes a book, record or other document under this paragraph he shall, as soon as reasonably practicable, give a receipt for it, and he shall permit any person who would be entitled to inspect it but for such removal to inspect the document at any reasonable time and to make copies of and take extracts from it; but such permission shall be subject to such reasonable conditions as to security or otherwise as the Financial Secretary may impose.

2.6 Every person exercising any power under subparagraph 1 shall, upon request, produce for inspection evidence of his identity and of his authorisation under subparagraph 1.

3. Confidential material to be safeguard

3.1 Subject to subparagraph 2 -

(a) any information which is furnished and any book, record or other document which is produced by the Licensee to a person authorised under paragraph 2.1 of this Schedule shall be confidential; and

(b) unless the Licensee otherwise permits and except in accordance with such permission no such information or book, record or other document or any copy thereof shall be divulged or shown to any person other than in confidence to members of the Broadcasting Authority or any committee appointed thereby, or to a public

officer acting in the performance of his duties under or for the purposes of the Telecommunication Ordinance, the Broadcasting Authority Ordinance or this licence.

3.2 Subparagraph 1 shall not be construed as prohibiting the disclosure of information -

- (a) with a view to the institution of or otherwise for the purpose of any criminal proceedings or any investigation in connection therewith, whether under the Telecommunication Ordinance, the Broadcasting Authority Ordinance or otherwise, in Hong Kong; or
- (b) in connection with civil proceedings to which the Financial Secretary is a party.

4. Notwithstanding anything said in this Schedule, royalty shall be payable on a pro-rata basis in respect of that portion of the Licensee's accounting year which has effluxed before the amendment date but not thereafter, and that the rate applicable to the calculation of the royalty payable shall be based on the Appropriate Amounts referred to in paragraph 1.1 as if the Licensee would be required to pay to the Hong Kong Government a royalty for the remainder of its accounting year in which the amendment date falls.

SECOND SCHEDULETECHNICAL

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(Withdrawn from the Renewal date)

1. Broadcasting coverage requirement

- 1.1 The Licensee shall broadcast to those parts of Hong Kong as specified by the Broadcasting Authority and construct such additional relay stations within such period of time as directed from time to time by the Broadcasting Authority.
- 1.2 For the purpose of subparagraph 1, "broadcast" means broadcasting in such a manner as to enable the Licensee's transmissions to be received to the satisfaction of the Broadcasting Authority.
- 1.3 The field strength produced by the transmission of each service operated by the Licensee shall be such that equal facility for the reception of the service operated by any licensees (including the Licensee) in a given area is available to any audience using a suitable receiver and aerial. All transmitters and relay stations operated by the Licensee shall be required to maintain minimum field strengths specified by the Telecommunications Authority within the areas to be served.

2. Transmission Plan

- 2.1 The Licensee shall be required to transmit its programmes in accordance with the transmission plan specified by the Telecommunications Authority.
- 2.2 The transmission plan referred to in subparagraph 1 may be amended from time to time by the Telecommunications Authority.
- 2.3 The Licensee shall not activate any additional transmitter or associated equipment established after the date of the grant of this licence without

the approval of the Telecommunications Authority and shall observe such conditions as may be imposed by the Telecommunications Authority regarding the testing and operation of the said equipment.

3. Radio Signals

The transmission system operated by the Licensee shall transmit radio signals in accordance with the characteristics specified in the appropriate Codes of Practice issued by the Broadcasting Authority.

4. Combined transmitting equipment

- 4.1 If required by the Telecommunications Authority, the Licensee shall use, in co-operation with any other licensee or person (including Radio Television Hong Kong and its successor) combined transmitting antenna systems for all transmitter and relay stations from the date of commencement of this licence or at a later date specified by the Telecommunications Authority and thereafter shall continue the use without interruption throughout the period of validity of this licence.
- 4.2 Each of the combined transmitting antenna systems referred to in subparagraph 1 shall comply with technical specifications provided by the Telecommunications Authority.
- 4.3 All costs involved in providing any combined transmitting antenna system shall be shared equally between the Licensee and any other licensee or person (including Radio Television Hong Kong and its successor).

5. Interference with other services

5.1 The Licensee shall use all of its apparatus and equipment in such a manner as not to cause interference with any authorised or permitted telecommunication, broadcasting or communication services or apparatus operating in or outside Hong Kong.

5.2 In order to avoid or remedy any such interference, the Licensee shall comply with all instructions given to it by the Telecommunications Authority in respect of the operation and use of its apparatus and equipment. Pending the implementation by the Licensee of any action or conduct to avoid or remedy any such interference required by and satisfactory to the Telecommunications Authority, the Telecommunications Authority may, if he reasonably considers that such interference is likely to cause injury (including death), loss or damage, order the cessation of the Licensee's transmissions for such a period as may be necessary.

6. Compliance with international conventions

The Licensee shall to the extent required by the Telecommunications Authority perform and observe the requirements of any international telecommunications convention or agreement dealing with broadcasting or telecommunications which may from time to time be acceded to by or applied to Hong Kong.

7. Common facilities

7.1 The Licensee shall allow any other Licensee or person (including Radio Television Hong Kong and its successor) to use jointly the common

facilities at a particular transmitter or relay station as directed by the Telecommunications Authority.

- 7.2 The facilities referred to in subparagraph 1 shall include the transmitting antenna system, tower, building, standby generator and other site amenities as specified by the Telecommunications Authority.
- 7.3 The Telecommunications Authority shall appoint the Licensee, or another licensee or person to maintain the common facilities and the person appointed shall ensure that no licensee (including the Licensee) or person shall have any operational advantages over any other licensee or person.
- 7.4 All costs involved in the provision and maintenance of the common facilities shall be shared equally between the Licensee and any other licensee or person.

8. Station power supplies

- 8.1 The Licensee shall provide a standby power supply at all transmitter and relay stations operated by the Licensee for use in the event of disconnection from the public electricity supply systems.
- 8.2 The standby power supply referred to in subparagraph 1 shall be able to restart the transmission within one minute after disconnection of the public electricity supply and shall be able to maintain normal transmission for at least 48 hours thereafter.

9. Standby equipment

The Licensee shall provide and maintain standby transmitter with automatic changeover devices at all transmitter and relay stations.

10. Sufficient spare parts

The Licensee shall maintain sufficient spare parts in Hong Kong to ensure that any interruption of transmission due to equipment fault shall be avoided or minimised as far as reasonably possible.

11. Test equipment

The Licensee shall maintain and provide such test equipment and operating staff as may be required by the Telecommunications Authority for the purpose of determining compliance with the terms and conditions of this licence.

12. (Withdrawn from the Renewal date)

Amended this _____ day of _____ 2001

Signed _____:

Clerk to the Executive Council
COUNCIL CHAMBER

Accepted by:

Signature _____:

Capacity _____:

Date _____:

Date : ~~27th May 1997~~

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Annex D

TELECOMMUNICATION ORDINANCE

(CAP 106)

RENEWED SOUND BROADCASTING LICENCE

HONG KONG COMMERCIAL BROADCASTING

COMPANY LIMITED

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~~FIRST SCHEDULE~~ : ~~ROYALTY~~

~~SECOND~~ SCHEDULE : TECHNICAL

:

1. **Renewal of licence**

In exercise of the powers conferred by sections 13D and 13E of the Telecommunication Ordinance (Cap. 106) and all the powers enabling him in that behalf, the Chief Executive in Council hereby renews the broadcasting licence granted on 26 August 1989 to Hong Kong Commercial Broadcasting Company Limited ("the Licensee"), a company formed and registered in Hong Kong under the Companies Ordinance (Cap. 32), whose registered office is situated at No. 3 Broadcast Drive, Kowloon, Hong Kong and as subsequently amended and renewed, on such date as may be determined by him by order and on the following terms and conditions.

2. **Interpretation**

2.1 Save where the contrary intention appears expressly or by necessary implication in this licence, the following words and expressions shall have the meanings as follows:-

"auditor"

means a professional accountant registered and holding a practising certificate under the Professional Accountants Ordinance (Cap. 50).

"broadcasting"

means transmitting sound (otherwise than as part of a television broadcast) for general reception by means of radio waves.

"Broadcasting Authority"

means the Broadcasting Authority established by section 3 of the Broadcasting Authority Ordinance (Cap. 391).

"clock-hour"

means a period of 60 minutes beginning on any hour.

“commercial television broadcasting licensee”

means a company holding a commercial television broadcasting licence granted under section 8 of the Television Ordinance (Cap. 52).

"day"

means a period of 24 hours beginning at 12:00 midnight.

"director"

includes any person occupying in relation to a company the position of a director (by whatever name called) and any person in accordance with whose directions or instructions (not being advice given in an independent professional capacity) the directors of that company are accustomed to act.

“Government”

means the Government of the Hong Kong Special Administrative Region of the People’s Republic of China.

"ordinarily resident in Hong Kong"

bears the meaning ascribed in Part IIIA of the Telecommunication Ordinance.

“programme service licensee”

means a company holding a programme service licence granted under section 8 of the Television Ordinance.

“satellite uplink licensee”

means a company holding a satellite television uplink and downlink licence granted under section 7 of the Telecommunication Ordinance.

“subscription television broadcasting licensee”

means a company holding a subscription television broadcasting licence granted under section 8 of the Television Ordinance.

"subsidiary company"

bears the meaning ascribed in section 2 of the Companies Ordinance.

"Telecommunications Authority"

means the Authority appointed under section 5 of the Telecommunication Ordinance.

- 2.2 Save where the contrary intention appears expressly or by necessary implication in this licence words and expressions used in this licence shall bear the same meaning, if any, as in the Telecommunication Ordinance and in the Interpretation and General Clauses Ordinance (Cap. 1) and in the event of any conflict or inconsistency between their meanings, the meaning in the Telecommunication Ordinance shall prevail over that in the Interpretation and General Clauses Ordinance.
- 2.3 The interpretation of this licence shall not be varied, limited or extended by any indexes or headings annexed to or contained in this licence.
- 2.4 All references herein to an Ordinance, subsidiary legislation, regulation, direction, Code of Practice or any provision thereof include those from time to time in force and those enacted or made (as the case may be) in place or substitution in whole or in part of any other Ordinance, subsidiary legislation, regulation, direction, Code of Practice or provision thereof.
- 2.5 Subject to any express terms or conditions herein, where this licence requires any act, conduct, matter, issue or thing of the Licensee to be approved, the approval shall not be validly given unless given in writing under the hand of or on behalf of the person giving it.
- 2.6 This licence shall include the ~~2~~Schedules hereto which shall form and be read as an integral part.
- 2.7 In this licence, save where the contrary intention appears expressly or by necessary implication, words and expressions:-
- (a) which import one gender include the 2 other genders;

- (b) which import the singular include the plural and vice versa; and
- (c) extend to their grammatical variations and cognate expressions where those words and expressions are defined herein or by reference to any other definition.

2.8 If at any time any terms or conditions of this licence are or become illegal, invalid or unenforceable in any respect, the legality, validity or enforceability of the remaining provisions shall not in any way be affected or impaired.

3. **Authorisation**

This licence authorises the Licensee:-

- (a) to establish and maintain a broadcasting service;
- (b) to establish and maintain such associated telecommunication apparatus and services incidental to the operation of a broadcasting service as may be authorised by the Telecommunications Authority; and
- (c) to carry on such types of business which are in the opinion of the Broadcasting Authority directly connected or associated with the foregoing.

4. **Licence renewed subject to**

This licence is renewed subject to:-

- (a) the provisions from time to time in force of the Telecommunication Ordinance, the Broadcasting Authority Ordinance and any Ordinance enacted in place or substitution in whole or in part thereof and all subsidiary legislation, regulations, directions and Codes of Practice made thereunder;

- (b) the terms and conditions set out in the ~~First and Second~~ Schedules to this licence; and
- (c) the performance and observance of the several terms and conditions contained in the licence from time to time in force before the period of validity referred to in paragraph 6 ("the Previous Licence") and on the Licensee's part to be performed and observed and of the provisions from time to time in force of the Telecommunication Ordinance, the Broadcasting Authority Ordinance and any Ordinance enacted in place or substitution in whole or in part thereof and all subsidiary legislation, regulations, directions and Codes of Practice made thereunder during the term of the Previous Licence.

5. **Indemnity**

The Licensee shall indemnify the Government against any losses, claims, charges, expenses, actions or demands which it may incur or which may be made against it, as the case may be, as a result of or in relation to any breach or alleged breach of or failure or alleged failure to observe or perform the said terms and conditions subject to which this licence is renewed.

6. **Period**

This licence shall be valid for a period of three years from 26 August 2001 ("the Commencement Date") to 25 August 2004, both dates inclusive.

7. **Notice of intent**

The Licensee shall indicate in writing its interest (if any) in applying for a further licence to establish and maintain a broadcasting service not less than 24 months (or

such shorter period as may be determined by the Broadcasting Authority) before this licence may otherwise expire.

8. **Principles of broadcasting**

8.1 The Licensee shall accept that the radio frequency spectrum is not the property of the Licensee but of the community and being a natural and limited asset the Licensee shall make proper use of it in the best interests of the whole community and the Licensee shall accept that regulation of that use of the radio frequency spectrum is the purpose of this licence and is necessary and justified because radio programmes go freely into homes and may be readily understood by children and adults.

8.2 The Licensee shall:-

- (a) entertain, inform and educate;
- (b) ensure that its programming is balanced in content and provides an adequate and comprehensive service which is responsive to the diverse needs and aspirations of the community; and
- (c) apply up-to-date technology to perfect the sounds that it broadcasts.

9. **Reservation**

9.1 There is hereby reserved the power to impose during the validity of this licence such further terms and conditions as the Chief Executive in Council may in the public interest specify from time to time and for that purpose the Chief Executive in Council may revoke, vary, limit or extend the terms and conditions of this licence.

9.2 For the purposes of subparagraph 1, the Chief Executive in Council shall afford the Licensee a period of at least 14 days but not exceeding one month from the date of a

notice in writing to the Licensee to the effect that the Chief Executive in Council is considering an amendment and the nature thereof in order to make representations in writing to the Chief Executive in Council as to why the proposed amendment should not be made or should be modified or qualified and the nature thereof.

- 9.3 In the period referred to in subparagraph 2 and thereafter, the Chief Executive in Council may consult with and receive written recommendations from such persons as he sees fit and the Licensee shall be afforded a period of at least 7 days but not exceeding 14 days to make representations in writing to the Chief Executive in Council on those recommendations.

10. **The Broadcasting Authority**

Subject to the express terms and provisions of the Telecommunication Ordinance, the Broadcasting Authority Ordinance and this licence, the Broadcasting Authority shall in its absolute discretion determine, approve, disapprove, hold an opinion or decide any matter, issue or thing which it is requested, permitted or required to determine, approve, disapprove, hold an opinion regarding or decide under this licence.

11. **Licence fee**

- 11.1 Subject to the right of the Chief Executive in Council to revise and review at any time the level of licence fee on the basis of recovery of the reasonable administrative costs of the Government in administering this licence or otherwise ("full costs recovery basis"), the Licensee shall pay in advance to the Government a licence fee for the first year beginning with the Commencement Date and for each subsequent year beginning on the anniversary of the Commencement Date specified as follows:-

- (a) First Year - ~~HK\$~~HK\$3,540,410
- (b) Second Year - ~~HK\$~~HK\$3,540,410 x (1 + GCED at the first anniversary)

- (c) Third Year - ~~[X]HK\$3,540,410~~ x (1 + GCED at the first anniversary) x (1 + GCED at the second anniversary)

~~[Note: X = \$3,383,000 x (1+GCED at 1998) x (1+GCED at 1999) x (1+GCED at 2000) x (1+GCED at 2001).]~~

For the purpose of this subparagraph, GCED at any anniversary of the Commencement Date means the forecast movement of the Government Consumption Expenditure Deflator for the year of publication, published by the Government in the most recent edition of "Economic Prospects" or any similar Government publications containing the forecast movement of the Consumption Expenditure Deflator. For the avoidance of doubt, the formula for calculating GCED for any year of publication (Year N) will be as follows:-

"GCED" for Year N =

$$\frac{(\text{Forecast Government Consumption Expenditure for Year N})/(\text{Preliminary Estimates for Year (N-1)})}{(1+\text{Forecast Growth Rate of Government Consumption Expenditure in Real terms for Year N})} - 1$$

- 11.2 The first payment of the licence fee shall be made within 14 days of the Commencement Date and thereafter payments of the licence fee shall be made on or before the anniversary of the Commencement Date within 14 days of demand of the Government.

12. Non-assignment

- 12.1 The Licensee shall not without the approval of the Chief Executive in Council assign, share, franchise or permit another the use of, in whole or in part, the rights, powers and privileges granted hereunder or purport to do the same.
- 12.2 The Licensee shall not delegate any of its duties or responsibilities granted hereunder

other than those commonly carried out by independent professional advisers or auditors.

13. **Revocation**

13.1 Where the Chief Executive in Council considers that there may be cause for revoking this licence he may direct the Broadcasting Authority to conduct an inquiry and submit recommendations concerning the revocation of this licence, and, after considering such recommendations and such other information, matter and advice as he may see fit, may revoke this licence.

13.2 Revocation of this licence under subparagraph 1 shall take effect subject to the notice required to be given under subparagraph 5.

13.3 Notwithstanding subparagraphs 1 and 2, the Chief Executive in Council may at any time revoke this licence:-

- (a) for failure by the Licensee to pay, within one month after payment thereof has been demanded, any royalty owing by him or to pay any financial penalty imposed on him under the Broadcasting Authority Ordinance;
- (b) if having regard to such of the following as is or are appropriate in the particular case, namely, the number of times this licence has been suspended, the number of financial penalties imposed on the Licensee under the Broadcasting Authority Ordinance since the renewal of this licence, the number of occasions on which, since such renewal, the requirements of the Telecommunication Ordinance have, in relation to the Licensee, been contravened, any failure by the Licensee, whether by act or omission, to comply with a term or condition attached to this licence, or any such failure to comply with any direction or order applicable to the Licensee and given or made by the Broadcasting Authority either under the Broadcasting Authority Ordinance or under a provision of a Code of Practice, he is satisfied that this licence should be revoked;

- (c) if the Licensee:-
- (i) goes into compulsory liquidation or into voluntary liquidation other than for the purpose of amalgamation or reconstruction; or
 - (ii) makes any assignment to, or voluntary arrangement with, its creditors;

and such revocation shall take effect forthwith or on such day as the Chief Executive in Council specifies.

13.4 In determining whether to revoke this licence, the Chief Executive in Council may have regard to the matters to which the Broadcasting Authority had regard under paragraph 14.2.

13.5 Where it is decided to revoke this licence pursuant to subparagraph 1, the Chief Executive in Council shall cause notice in writing of the decision to be given to the Licensee, and the decision shall come into effect on the day specified therein which shall be a day not earlier than the 60th day after the date of the notice.

13.6 Where it is necessary for the due compliance with this paragraph the Chief Executive in Council may extend the term of this licence.

14. **Suspension of licence**

14.1 Subject to the provisions of this paragraph, the Broadcasting Authority may suspend this licence for such period, being a period not exceeding 30 days, as specified in the suspension.

14.2 This licence shall only be suspended under this paragraph where, if having regard to such of the following as is or are appropriate in the particular case, namely, the number of financial penalties imposed on the Licensee under the Broadcasting Authority

Ordinance since the renewal of this licence, the number of occasions on which, since such renewal, the requirements of the Telecommunication Ordinance have, in relation to the Licensee, been contravened, any failure by the Licensee, whether by act or omission, to comply with a term or condition attached to this licence, or any such failure to comply with any direction or order applicable to the Licensee and given or made by the Broadcasting Authority either under the Broadcasting Authority Ordinance or under a provision of a Code of Practice, the Broadcasting Authority is satisfied that this licence should be suspended.

- 14.3 The Broadcasting Authority shall not suspend this licence unless and until it has given to the Licensee notice in writing stating that that Authority has under consideration the suspension of this licence and the grounds upon which and any other reason why such suspension is being considered and the Broadcasting Authority has considered any representation or objection made to it as regards the proposed suspension.
- 14.4 The notice referred to in subparagraph 3 shall, in addition to stating the matters required by that subparagraph, state that representations and objections as regards the proposed suspension may be made to the Broadcasting Authority (either orally or in writing or both) during such period (being a period of not less than 28 days beginning on the date of receipt by the Licensee of the notice) as shall be specified in the notice.
- 14.5 Where this licence is suspended under this paragraph the suspension shall not come into force before:-
- (a) in case an appeal is not taken under section 26 of the Broadcasting Authority Ordinance, the expiration of the period during which such an appeal may be taken; or
 - (b) in case such an appeal is taken, the appeal is either withdrawn or determined.

15. **Restriction on business**

The only business that may be carried on by the Licensee is:-

- (a) to establish and maintain a broadcasting service;
- (b) to establish and maintain such associated telecommunication apparatus and services incidental to the operation of a broadcasting service as may be authorised by the Telecommunications Authority; and
- (c) to carry on such types of business which are in the opinion of the Broadcasting Authority directly connected or associated with the foregoing.

16. **Prohibition on holding certain shares etc.**

16.1 The Licensee shall not hold or acquire, either directly or indirectly, an interest in any person unless:-

- (a) the holding or acquisition has been approved by the Broadcasting Authority;
- (b) the said person carried on (to the exclusion of all others) the types of business mentioned in paragraph 15 ; and
- (c) in the case of a holding or acquisition of shares in a company, not less than 51% of the issued voting shares are registered in and only in the name of the Licensee or a subsidiary company of the Licensee and where control and management of the said company are under the control of the Licensee.

16.2 For the purpose of subparagraph 1, the reference to an interest in any person means any shareholding, interest under a trust or financial interest as a creditor or assignee of a debt (whether secured, guaranteed or otherwise) unless the debt arose directly out of the day-to-day activities of the Licensee in earning profits from the provision of

broadcasting services or such associated telecommunication apparatus or services incidental to the operation of a broadcasting service as may be authorised by the Telecommunications Authority.

17. **Station identification**

17.1 The Licensee shall, when broadcasting any programmes, including any test or experimental transmissions, transmit a station identification signal as frequently as practicable.

17.2 Without prejudice to subparagraph 1, the Licensee shall transmit its station identification signal at least once during each clock-hour of the transmission of its broadcast programmes, unless to do so would cause unreasonable interruption of its broadcast programmes.

17.3 The Licensee shall give the Telecommunications Authority not less than 14 days' notice in writing of any proposed change to its station identification signal and shall comply with any direction of that Authority in relation to the signal.

17.4 For the purposes of this licence, "station identification signal" means any aural transmission exclusively for the purpose of identifying the broadcasting service as that of the Licensee and, without prejudice to the generality of the foregoing, not for the promotion of the Licensee's station or programme services.

18. **Copyright**

The Licensee shall not do any act or permit any act to be done which is an infringement of any copyright which may exist in any published programme or other printed or recorded matter or which is or may be protected under the provision of any enactment for the time being in force or under any other law enforceable in Hong Kong.

19. **Language of books etc.**

All the books and accounts of the Licensee shall be written in the English or Chinese language.

20. **Number of services, language and hours of service**

20.1 The Licensee shall broadcast one service in which at least 80 per cent of the time during which broadcasting takes place in any one day shall be conducted in the English language ("the English language service") and two services in which at least 80 per cent of the time during which broadcasting takes place in any one day shall be conducted in a Chinese dialect ("the Chinese language services").

20.2 The Licensee shall broadcast for at least 10 hours each day in respect of each of the English language service and the Chinese language services.

21. **Residential requirement of directors**

21.1 The Chairman and the managing director (and any person occupying these positions by whatever name called) and the majority of the directors of the Licensee shall each be ordinarily resident in Hong Kong and have been so resident for one continuous period of at least seven years.

21.2 The control of the Licensee shall be bona fide exercised within Hong Kong.

22. **Licensee to formulate general guidelines**

The Licensee shall formulate written guidelines for all employees and agents concerned with the content of programmes and advertising stating the Licensee's principles

regarding its responsibilities to the public, with particular reference to its obligations under the Codes of Practice relating to Programme and Advertising Standards and the Licensee shall make these employees and agents aware, and refresh their memory at regular intervals, of the guidelines and the Codes of Practice.

23. **Discipline and training**

The Licensee shall ensure good discipline and training among its staff as regards adherence to the Codes of Practice relating to Programme, Advertising and Technical Standards.

24. **Comments and complaints**

24.1 The Licensee shall receive and consider any comment and complaint from or on behalf of any person who believes himself to have been treated unjustly or unfairly in any programme, material or item broadcast by the Licensee or who comments or complains in substance or in form with respect to the whole or part of the content, production, transmission coverage, technical requirements or time of broadcasting of such programme, material or item or of any matter relating thereto, or with respect to the management of the Licensee.

24.2 The Licensee shall implement a procedure for dealing with comments and complaints as required from time to time by the Broadcasting Authority.

24.3 The Licensee shall keep a complete, accurate and up-to-date record in writing of comments and complaints and submit it to the Broadcasting Authority on a regular basis and on demand. The record shall be retained by the Licensee for not less than 2 years.

24.4 The Licensee shall keep a written record of programmes broadcast showing the date and time of broadcasting and shall retain the written scripts (if any) and recordings of all

broadcasts for such a period as specified by the Broadcasting Authority and shall submit them to the Broadcasting Authority for examination on demand.

25. **News programmes**

25.1 Subject to such alternative arrangements as may be approved from time to time by the Broadcasting Authority, the Licensee shall broadcast on each of the English language service and the Chinese language services on each day:-

- (a) a minimum of two programmes consisting of comprehensive news bulletins of not less than 10 minutes each between the hours of 12:00 noon and 12:00 midnight; and
- (b) half-hourly news and weather reports between the hours of 6:00 a.m. and 12:00 midnight and hourly news and weather reports for the remaining hours of broadcasting unless to do so would cause unreasonable interruption of its broadcast programmes.

25.2 In broadcasting any news programmes, reports or items, the Licensee shall ensure that international and local affairs are treated impartially and broadcast accurately.

26. **Weather programmes**

26.1 Subject to subparagraph 2, the Licensee may broadcast any weather programme or announcement produced from sources approved by the Broadcasting Authority.

26.2 The Licensee shall, if it is directed to do so by the Broadcasting Authority, broadcast any weather programme or announcement supplied to it by the Government in place of or in addition to any other such programme or announcement produced by the Licensee or any other person.

27. **Current affairs programmes**

- 27.1 The Licensee shall broadcast a minimum of two 15-minute current affairs programmes each week on each of the English language service and the Chinese language services between the hours of 8:00 a.m. and 12:00 midnight.
- 27.2 Upon application in writing by the Licensee the Broadcasting Authority may approve arrangements for broadcasting current affairs programmes alternative to those in subparagraph 1.

28. **Programmes for young persons and senior citizens**

Subject to any directions issued by the Broadcasting Authority, the Licensee shall broadcast on either of the Chinese language services:-

- (a) a minimum of one half-hour programme each week between the hours of 8:00 a.m. and 12:00 midnight which is intended and suitable for the education and proper development of young people in Hong Kong aged 16 years to 24 years (inclusive); and
- (b) a minimum of one half-hour programme each week between the hours of 8:00 a.m. and 12:00 midnight which is intended and suitable for the particular requirements of senior citizens in Hong Kong over the age of 60 years in relation (but not necessarily limited) to their health, financial position or recreation.

29. **Arts and culture programmes**

Subject to any directions issued by the Broadcasting Authority, the Licensee shall broadcast on each of the Chinese language services between 8:00 a.m. and 12:00

midnight a minimum of 30 minutes of programming each week intended and suitable for promoting the development and appreciation of the literary, performing and visual arts and other topics or activities of cultural value.

30. **Announcement in the public interest**

The Licensee shall broadcast on each of the English language service and the Chinese language services for periods not exceeding in total one minute in each clock-hour such announcements in the public interest as the Broadcasting Authority may determine.

31. **Publicity material of the Broadcasting Authority**

- (a) The Licensee shall broadcast on each of the English language service and the Chinese language services such publicity material as the Broadcasting Authority may direct in order to promote knowledge and understanding of the activities and functions of that Authority and the Broadcasting Authority Complaints Committee appointed under section 10 of the Broadcasting Authority Ordinance; and
- (b) the publicity material referred to in subparagraph (a) may be directed to be broadcast twice daily for not more than one minute on each of the English language service and the Chinese language services between the hours of 6:00 p.m. and 11:00 p.m. subject to a maximum limit of 5 minutes in aggregate each week on each of the English language service and the Chinese language services.

32. **Advertising**

The Licensee shall monitor and ensure strict compliance with the Codes of Practice relating to Advertising Standards issued by the Broadcasting Authority.

33. **Restriction on advertising**

In each period of 24 hours beginning at 6:00 a.m. the Licensee shall limit the broadcast of advertising material to a total not exceeding 12% of the time during which broadcasting takes place within the said period of 24 hours.

34. **Tobacco and alcohol advertising/sponsorship**

34.1 The Licensee shall be prohibited from broadcasting any advertisement for tobacco products or from inviting, offering or accepting sponsorship or commercial promotion of such products.

34.2 The Licensee shall not between the hours of 4:00 p.m. and 8:30 p.m. broadcast any advertisement for alcoholic beverages or invite, offer or accept sponsorship or commercial promotion of such beverages in respect of any programme, material or item broadcast between those hours.

35. **Advertising charges to be published**

The Licensee shall publish, in such manner as the Broadcasting Authority may direct, the charges and consideration for broadcasting advertising material.

36. **Programme development and investment**

Unless otherwise approved by the Broadcasting Authority, the Licensee shall make such acquisitions and investments as are necessary in order to:-

(a) comply with the statements (including statements of intention) and

representations made by or on its behalf in the Licensee's letter to the Broadcasting Authority dated 27 August 1999 in so far as the same relate to the Licensee's programme development and investments in the years 2001 to 2004;

- (b) perform all the Licensee's obligations under this licence including in particular but without limitation paragraphs 4 and 9; and
- (c) comply with the provisions from time to time in force of the Telecommunication Ordinance, the Broadcasting Authority Ordinance and any Ordinance enacted in place or substitution in whole or in part thereof and all subsidiary legislation, regulations, directions and Codes of Practice made thereunder.

37. **Notices or directions given to the Licensee**

37.1 Where any consent, notice, direction, authorisation or approval of or from the Broadcasting Authority or Telecommunications Authority is required under this licence for the doing of any matter or thing by or on behalf of the Licensee, or a notice or notification is required to be given by or on behalf of the Licensee to the Broadcasting Authority or the Telecommunications Authority, that consent, notice, direction, authorisation, approval or notification is valid only if given in writing and signed by a person with authority to do so and, subject to subparagraph 2, given before the doing of the said matter or thing in question.

37.2 The Broadcasting Authority and the Telecommunications Authority may generally or specifically in relation to a particular matter or thing referred to in subparagraph 1 by notice in writing to the Licensee waive the requirement for its or his (as the case may be) consent, notice, direction, authorisation or approval to be given before the doing of the matter or thing in question, provided that no such waiver shall estop the Broadcasting Authority or the Telecommunications Authority from withdrawing the waiver, with prospective effect, in whole or in part, or from requiring that the consent, notice, direction, authorisation or approval (as the case may be), be required timeously in

relation to other matters or things.

37.3 Without any limitation whatsoever on the rights and powers conferred by Part VI (Powers) of the Interpretation and General Clauses Ordinance, where the Broadcasting Authority or the Telecommunications Authority gives any consent, notice, direction, authorisation or approval under this licence to the Licensee, the same may be:-

- (a) withdrawn, modified or replaced from time to time by the Broadcasting Authority or the Telecommunications Authority, as the case may be, in the same circumstances, and with the same effect, as if the withdrawal, modification or replacement were the giving of a consent, notice, direction, approval or authorisation under this licence and the Licensee shall comply therewith;
- (b) given once or from time to time; and
- (c) made subject to such conditions as the Broadcasting Authority or the Telecommunications Authority, as the case may be, may impose.

37.4 All references in this licence to the doing of any matter or thing by the Broadcasting Authority or the Telecommunications Authority include any delegate thereof, or other agents, authorised in that regard by or under any law or Ordinance.

37.5 Any communication in writing moving from the Broadcasting Authority or the Telecommunications Authority to the Licensee under this licence may be validly served or given either by delivering it to a responsible officer or employee of the Licensee at the registered office of the Licensee or its last known place of business in Hong Kong or by forwarding it by registered post to its registered office or last known place of business in Hong Kong.

38. **Purchase of lands, buildings, etc.**

38.1 Where:-

- (a) notice of non-renewal of this licence is given under section 13E of the Telecommunication Ordinance; or
- (b) this licence is or has been, or is to be, revoked or surrendered;

the Chief Executive in Council may direct The Financial Secretary Incorporated to acquire by purchase any lands (which for the purposes of this paragraph shall include any licence or option over land), installations, plant and equipment in or over which the Licensee has a right, title or interest and used by the Licensee for the purposes of this licence.

38.2 Not less than 4 months and not more than 8 months after the giving of notice of non-renewal of this licence under section 13E of the Telecommunication Ordinance or, where this licence is or has been, or is to be, revoked or surrendered, at any time within 12 months after the giving of the direction under subparagraph 1, The Financial Secretary Incorporated may acquire by purchase such parts of the lands, installations, plant and equipment in which the Licensee has a right, title or interest and used by the Licensee for the purposes of this licence as may be specified by The Financial Secretary Incorporated.

38.3 The consideration to be paid to the Licensee for the right, title or interest in or over the said land, installations, plant and equipment shall be a sum equal to the open market value thereof at the date of non-renewal, revocation or surrender (as the case may be) of this licence as between a willing buyer and a willing seller but without regard to:-

- (a) loss of profit,
- (b) goodwill,
- (c) the right of pre-emption,
- (d) the cost of raising capital,
- (e) all the property being placed on the market at one and the same time.

38.4 In the event of the price offered by The Financial Secretary Incorporated being refused,

- the price shall be determined by arbitration in accordance with the Arbitration Ordinance (Cap. 341) and for the purpose of giving effect to the foregoing, The Financial Secretary Incorporated and the Licensee shall be regarded as having concluded an arbitration agreement (within the meaning of that Ordinance) whose provisions shall be taken to include a provision that the aforesaid price shall, in the absence of agreement, be determined by a single arbitrator.
- 38.5 Where land or any interest in land is purchased under this paragraph on the direction of the Chief Executive in Council, The Financial Secretary Incorporated shall, within 1 month after the purchase, register in the Land Registry by memorial a declaration that it has been so purchased.
- 38.6 All property purchased under this paragraph on the direction of the Chief Executive in Council shall, as the case may be, vest in The Financial Secretary Incorporated:-
- (a) upon the expiry of this licence after notice of a decision not to renew;
 - (b) where this licence is revoked or surrendered, when the revocation or surrender (as the case may be) takes effect or when a price is offered by The Financial Secretary Incorporated, whichever is the later, and thereupon all rights in such property on the part of the Licensee shall cease and determine.
- 38.7 Nothing in this paragraph shall confer on the Licensee any right to require The Financial Secretary Incorporated to purchase any part of its lands, installations, plant or equipment.
- 38.8 The Licensee shall notify the Government:-
- (a) of all land in respect of which the Licensee has a right, title or interest (as the case may be) as at the Commencement Date within 14 days thereafter and within 14 days after the date of each binding agreement entered into by or on behalf of the Licensee to acquire such a right, title or interest; and

- (b) of all land and interests in land which it uses for the purposes of this licence within 14 days after the commencement of the use.

39. **Licensee to submit audited accounts**

39.1 The Licensee shall submit to the Financial Secretary, not later than 6 months after the end of its accounting year, audited accounts prepared by the auditor of the Licensee in such manner and containing such details as may be approved and required by the Financial Secretary.

39.2 Where a company is a subsidiary company of the Licensee, the Licensee shall, not later than 6 months after the end of an accounting year of the company, submit, or cause to be submitted, to the Financial Secretary a copy of the company's audited accounts by the auditor of the Licensee for that year.

40. **Licensee to submit returns**

40.1 The Licensee shall submit to the Broadcasting Authority not later than the end of the month of April in each year a return in a form specified by it showing the names of each director, whether each is ordinarily resident in Hong Kong and has been so ordinarily resident for a continuous period of at least seven years and such details and evidence in support thereof as the Broadcasting Authority may reasonably require.

40.2 Without prejudice to subparagraph 1, the Licensee shall submit to the Broadcasting Authority in a form specified by it a return showing:-

- (a) particulars of every change of or addition to the persons who are directors; and
- (b) whether following the said change or addition each of the directors is ordinarily resident in Hong Kong and has been so for a continuous period of at least seven years; and

- (c) such details and evidence in support of the foregoing as the Broadcasting Authority may reasonably require.
- 40.3 The Licensee shall submit to the Broadcasting Authority on demand such other information as it may consider that it reasonably requires for the purposes of exercising its functions under the Broadcasting Authority Ordinance.
41. **Non-compliance due to acts of God**
- 41.1 Subject to subparagraph 2, the Licensee shall be exonerated from observing or performing the terms and conditions of this licence if and so long as the failure to observe or perform those terms and conditions shall be directly attributable to any act of God, any riot, civil commotion or disturbance, the restraint of any ruler, any strike, combination of workmen or lockout, any fire, explosion, typhoon, storm, floodings, landslide, subsidence of ground or other catastrophe, any war, blockade or embargo, any breakdown of plant, machinery or equipment not due to the negligence or want of reasonable maintenance on the part of the Licensee, its servants or agents, any commandeering or requisitioning of the Licensee's installations, equipment or facilities or any other interference or circumstance wholly beyond the control of the Licensee.
- 41.2 The Licensee shall, with all due diligence and speed, repair, rebuild, restore, reinstate and take all such actions as may be required to repair, rebuild, restore and reinstate in all respects the broadcasting service in accordance with the terms and conditions of this licence and resume observing and performing those terms and conditions.

42. **Liability of Licensee for contraventions**

The Licensee shall be liable for the contravention of:-

- (a) any applicable provision of the Telecommunication Ordinance, the

Broadcasting Authority Ordinance, any other relevant Ordinance, subsidiary legislation, regulation, direction, Code of Practice or any provision thereof; and

(b) (subject to paragraph 41), any term or condition of this licence;

where the contravention is due to the act or omission of the directors, officers, employees or agents of the Licensee acting for or on behalf of the Licensee.

43. **Savings of rights granted**

43.1 Notwithstanding anything contained in this licence, the Licensee shall not in any way whatsoever abrogate or interfere with any of the exclusive telecommunication services or off-air broadcasts authorised under the Telecommunication Ordinance or Television Ordinance.

43.2 Nothing in this licence shall prejudice or affect the right of the Government to establish, extend, maintain or work any telecommunication, broadcasting or communication services or systems or to receive or distribute broadcast matter or to enter into agreements or grant licences for the establishment, extension, maintenance or working of any such services or systems.

44. **Statements made on application binding on the Licensee**

The Licensee shall comply at all times with the statements and representations made by or on its behalf in the application for the renewal of licence submitted by it except in so far as such statements and representations are no longer applicable due to amendment of the laws of Hong Kong relating to the establishment and operation of broadcasting services.

45. **Free competition**

45.1 The Licensee shall not, whether pursuant to an option or right conferred before or after the Commencement Date, or otherwise, enter into any agreement or arrangement, or offer any inducement (whether financial or otherwise) to any person, or enforce by way of legal proceedings, arbitration, forfeiture of liquidated damages, adjustment or rebate or charges or otherwise any term or condition, or solicit or permit another to do so, or take or receive the benefit of any such term or condition, which will, or is calculated to, restrict, impede or restrain competition by any person other than the Licensee in relation to the establishment, provision or operation of any service or network for telecommunication in Hong Kong, or broadcasting in Hong Kong in relation to a subscription television broadcasting licensee, commercial television broadcasting licensee, programme service licensee, satellite uplink licensee or sound broadcasting licensee.

45.2 The Licensee shall not contravene subparagraph 1 if it satisfies the Broadcasting Authority that any aforesaid restriction, impediment or restraint is one that is and remains fair and reasonable in reference to the interests of the public in Hong Kong including without limitation the preservation of the freedom from restriction, impediment or restraint of competition protected by that subparagraph and having regard to the interests of licensees referred to therein and of the Licensee.

45.3 Subject to the Proviso, subparagraph 1 shall not apply in respect of any aforesaid restriction, impediment or restraint upon:-

(a) broadcasting any programme material acquired or produced by or for the Licensee and broadcast by it under this licence;

(b) any person from:-

(i) disclosing or using any proprietary right vested in the Licensee or other person (including without limitation the disclosure of any information in

respect of which there is such a proprietary right);

- (ii) using or exploiting his artistic talent or ability;
- (c) any employee or former employee of the Licensee who has or had access to information in which the Licensee has a proprietary right from engaging in any business, or being employed by any person, in competition with the Licensee during the period of his employment and for a reasonable period not exceeding 6 months from the date of termination of his employment,

provided that the said restriction, impediment or restraint is not void or unenforceable under any law or Ordinance or would not be void or unenforceable if the proper law governing the restriction, impediment or restraint were that of Hong Kong.

45.4 For the purposes of this paragraph, without prejudice to the other rights, power and duties of the Broadcasting Authority, that Authority may consult with and seek the views of any person.

46. **Publication of licence**

46.1 The Licensee shall make available for inspection by members of the public, free of charge, a true copy of this licence (other than the Licensee's letter to the Broadcasting Authority referred to in paragraph 36(a)) at:-

- (a) its registered office and principal place of business; and
- (b) the head office of the Television and Entertainment Licensing Authority.

46.2 The Government may in its own discretion make the terms and conditions of this licence (other than any commercial confidential information expressly designated as such) publicly available in any manner it thinks fit.

FIRST SCHEDULE

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~~1. —~~ Royalty

~~1.1 — The Licensee shall, as regards each of its accounting years, pay to the Government a royalty determined by reference to the amounts which, having regard to this paragraph, are the appropriate amounts for fees or other charges in respect of advertising, whether in the form of display or other advertisements, advertising magazine programmes, sponsored or promoted programmes or in any other form of broadcast by the Licensee, and as regards a particular such year the amount of such royalty shall be determined in accordance with the following rates —~~

| <u>Appropriate Amounts</u> | <u>Rate</u> |
|----------------------------|-------------|
| On the first \$20m | 1% |
| On the next \$20m | 2% |
| On the next \$20m | 3% |
| On the next \$20m | 4% |
| On the excess over \$80m | 5% |

- ~~Provided that the amount of the royalty payable hereunder as regards any such accounting year shall not exceed an amount which is equal to 4 per cent of such appropriate amounts for that year.~~
- ~~1.2 — The appropriate amounts referred to in subparagraph 1 shall be the amounts which in the circumstances of a particular case would reasonably be expected to be agreed to between the parties concerned were they negotiating in the open market and at arm's length.~~
- ~~1.3 — (a) — The royalty payable under this paragraph shall be payable quarterly in accordance with subparagraph (b).~~
- ~~— (b) — The Licensee shall make a payment to the Director of Accounting Services of the amount (if any) due on account of the royalty payable by him under this paragraph in respect of a quarter beginning on the 1st day of January, the 1st day of April, the 1st day of July or the 1st day of October in any year.~~
- ~~1.4 — (a) — The royalty payable under this paragraph shall be due at the time when the fee or other charge in respect of which the royalty is payable is due, either in whole or in part, to the Licensee; but~~
- ~~— (b) — for the purpose of determining when the said fee or other charge is due to the Licensee, it shall be due not later than when it would reasonably be expected to be due between the parties concerned were they negotiating in the open market and at arm's length.~~
- ~~1.5 — (a) — Within the period of 30 days immediately following a quarter referred to in subparagraph 3, the Licensee shall—~~
- ~~— (i) — furnish to the Director of Accounting Services an account, certified by the Licensee, or by someone acting on his behalf, to be true and correct, of the amounts described in subparagraph 1 and due (whether in whole~~

or in part) to the Licensee in the quarter; and

~~(ii) remit to the Director of Accounting Services the amount of the royalty (if any) payable by it under this paragraph in respect of the quarter.~~

~~(b) The Director of Accounting Services may require accounts referred to in subparagraph (a)(i) to be in a form and contain particulars specified by him, and in case a requirement under this paragraph is made and is not withdrawn, the Licensee shall comply with it.~~

~~1.6 (a) Where a royalty is payable under this paragraph as regards a particular quarter (in this subparagraph referred to as "the current quarter") but the Licensee is unable, before the expiration of the current quarter or the period of 28 days commencing on the expiration of that quarter, to ascertain the aggregate of the fees or other charges by reference to which the amount due on account of the royalty as respects the current quarter is to be determined, the Licensee shall, within the period of 30 days immediately following the expiration of the current quarter, pay to the Director of Accounting Services a sum the amount of which shall have been calculated by the Licensee having had regard to—~~

~~(i) the sum (if any) paid by the Licensee on account of the royalty in respect of the quarter immediately preceding the current quarter; and~~

~~(ii) an estimate by the Licensee of the amount which, were such aggregate ascertainable, would be payable by him on account of the royalty as respects the current quarter.~~

~~(b) Where a payment is made under subparagraph (a) and when ascertained the amount due on account of the royalty payable under this paragraph as respects the current quarter is found to exceed the amount of the payment—~~

~~(i) the excess or any part thereof shall be payable to the Director of Accounting Services on demand; and~~

~~(ii) — the making of the payment shall not prejudice any mode of recovery should the Licensee fail to pay any part of the excess remaining to be paid pursuant to the requirements of sub-subparagraph (i).~~

~~(c) — Where a payment is made under subparagraph (a) and when ascertained the amount first referred to in subparagraph (b) is found to be less than the amount of the payment, the Licensee shall be entitled to a refund equal to the amount of the overpayment.~~

~~1.7 — Where the Director of Accounting Services believes that an amount payable under this section by the Licensee, in relation to any period consisting of one quarter or of two or more consecutive quarters, was greater than the total amount (if any) paid by him in relation to that period, then, without prejudice to any other action which may be taken, he may make an estimate in one sum of the total amount which in his opinion should have been paid in respect of the quarter or quarters comprised in such period and may give to the Licensee a notice in writing specifying —~~

~~(a) — the total amount so estimated;~~

~~(b) — the total amount (if any) paid by the Licensee in relation to the said period; and~~

~~(c) — the balance remaining unpaid.~~

~~1.8 — Where a notice is given under subparagraph 7 to the Licensee, the following provisions shall apply —~~

~~(a) — the Licensee may, if he claims that the total amount or, as the case may be, the balance remaining unpaid is excessive, give a notification to that effect in writing to the Director of Accounting Services, within the period of 21 days beginning on the date of the notice under subparagraph 7;~~

~~(b) — on the expiration of the said period, if no notification under this subsection is~~

~~received by the Director of Accounting Services or, if such a notification is so received, on determination of the difference by agreement or arbitration, the balance remaining unpaid as specified in the notification or the amended balance (if any) as so determined shall become due and payable as if the amount were one which the Licensee was liable to pay for the quarter during which the period of 14 days from the date of the giving of the notice under subparagraph 7 expired or during which the difference was determined by agreement or arbitration, or where those quarters are different, whichever of them is the later.~~

~~1.9 (a) Where a notification under paragraph 8 is given, the difference to which the notification relates shall be determined by arbitration in accordance with the Arbitration Ordinance and for the purposes of giving effect to the foregoing, the person by whom, or on whose behalf, the notification is given and the Director of Accounting Services shall be regarded as having concluded an arbitration agreement (within the meaning of that Ordinance) whose provisions shall be taken to include a provision that the aforesaid difference shall, in the absence of agreement, be determined by a single arbitrator.~~

~~(b) In the absence of agreement, the Arbitration Ordinance shall, with any necessary modifications, apply to the determination of a difference to which a notification under subparagraph 8 relates.~~

~~1.10 Each of the following periods shall, for the purposes of this paragraph, be regarded as being an accounting year of the Licensee—~~

~~(a) in case the accounting year of the Licensee begins on a day other than the specified day, the period beginning on the specified day and ending on the expiration of the Licensee's accounting year in which the specified day occurs;~~

~~(b) in case this licence commences on a day other than the first day of an accounting year of the relevant Licensee, the period beginning on such commencement and ending on the expiration of the Licensee's accounting year in which the commencement occurs; and~~

~~(c) in case notice of non renewal is given under section 13E of the Telecommunication Ordinance or in case this licence is surrendered or revoked and the non-renewal, surrender or revocation has effect on a day other than the first day of an accounting year of the Licensee, the period beginning on the commencement of the Licensee's accounting year in which the non-renewal, surrender or revocation, as may be appropriate, has effect and ending immediately before that non-renewal, surrender or revocation, as may be appropriate, has effect.~~

~~1.11 In subparagraph 10(a), "the specified day" means the day specified for the purposes of that subparagraph by the Chief Executive by notice in the Gazette.~~

~~2. **Powers of Financial Secretary in relation to royalty**~~

~~2.1 For the purpose of determining amounts payable on account of a royalty payable under paragraph 1 of this Schedule and ensuring its payment, any person authorised by the Financial Secretary in that behalf may at all reasonable times –~~

~~(a) enter any building or other premises in which the Licensee or a subsidiary company carries on business;~~

~~(b) require any person whom he reasonably believes to be employed in connection with such business to produce for examination any book, record or other document which relates to such business and which is in his possession or under his control;~~

~~(c) examine and, if he thinks fit, take copies of, or copies of any entry in, any book, record or other document so produced;~~

~~(d) remove any such book, record or other document for further examination; and~~

- ~~(e) require any director or servant of such company to give him such explanation or further particulars in respect of a book, record or other document produced in compliance with a requirement under subparagraph (b) as he shall specify.~~
- ~~2.2 Where any information or matter relevant to the determination of the amounts of royalty payable is recorded otherwise than in a legible form, the powers conferred by subparagraph 1 apply to require the production of a reproduction of the recording of any such information or matter or of a relevant part of it in a legible form.~~
- ~~2.3 A person who is a director or a servant of the Licensee or its subsidiary company shall assist and shall not obstruct a person exercising a power under this paragraph.~~
- ~~2.4 Any book, record or other document removed in exercise of a power under this paragraph may be retained for any period not exceeding the period of 6 months beginning on the date of its removal or, where the book, record or other document is required in connection with any criminal proceedings, for such longer period as may be necessary for the purposes of those proceedings.~~
- ~~2.5 Where a person removes a book, record or other document under this paragraph he shall, as soon as reasonably practicable, give a receipt for it, and he shall permit any person who would be entitled to inspect it but for such removal to inspect the document at any reasonable time and to make copies of and take extracts from it; but such permission shall be subject to such reasonable conditions as to security or otherwise as the Financial Secretary may impose.~~
- ~~2.6 Every person exercising any power under subparagraph 1 shall, upon request, produce for inspection evidence of his identity and of his authorisation under subparagraph 1.~~

3. ~~Confidential material to be safeguarded~~

3.1 ~~Subject to subparagraph 2-~~

~~(a) any information which is furnished and any book, record or other document which is produced by the Licensee to a person authorised under paragraph 2.1 of this Schedule shall be confidential; and~~

~~(b) unless the Licensee otherwise permits and except in accordance with such permission no such information or book, record or other document or any copy thereof shall be divulged or shown to any person other than in confidence to members of the Broadcasting Authority or any committee appointed thereby, or to a public officer acting in the performance of his duties under or for the purposes of the Telecommunication Ordinance, the Broadcasting Authority Ordinance or this licence.~~

3.2 ~~Subparagraph 1 shall not be construed as prohibiting the disclosure of information-~~

~~(a) with a view to the institution of or otherwise for the purpose of any criminal proceedings or any investigation in connection therewith, whether under the Telecommunication Ordinance, the Broadcasting Authority Ordinance or otherwise, in Hong Kong; or~~

~~(b) in connection with civil proceedings to which the Financial Secretary is a party.~~

SECOND SCHEDULETECHNICAL

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| 2 | TRANSMISSION PLAN | 2 |
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1. **Broadcasting coverage requirement**

1.1 The Licensee shall broadcast to those parts of Hong Kong as specified by the Broadcasting Authority and construct such additional relay stations within such period of time as directed from time to time by the Broadcasting Authority.

1.2 For the purpose of subparagraph 1, "broadcast" means broadcasting in such a manner as to enable the Licensee's transmissions to be received to the satisfaction of the Broadcasting Authority.

1.3 The field strength produced by the transmission of each service operated by the Licensee shall be such that equal facility for the reception of the service operated by any licensees (including the Licensee) in a given area is available to any audience using a suitable receiver and aerial. All transmitters and relay stations operated by the Licensee shall be required to maintain minimum field strengths specified by the Telecommunications Authority within the areas to be served.

2. **Transmission plan**

2.1 The Licensee shall be required to transmit its programmes in accordance with the transmission plan specified by the Telecommunications Authority.

2.2 The transmission plan referred to in subparagraph 1 may be amended from time to time by the Telecommunications Authority.

2.3 The Licensee shall not activate any additional transmitter or associated equipment established after the Commencement Date without the approval of the Telecommunications Authority and shall observe such conditions as may be imposed by the Telecommunications Authority regarding the testing and operation of the said equipment.

3. **Radio signals**

The transmission system operated by the Licensee shall transmit radio signals in accordance with the characteristics specified in the appropriate Codes of Practice issued by the Broadcasting Authority.

4. **Combined transmitting equipment**

4.1 If required by the Telecommunications Authority, the Licensee shall use, in co-operation with any other licensee or person (including Radio Television Hong Kong and its successor) combined transmitting antenna systems for all transmitter and relay stations from the Commencement Date or at a later date specified by the Telecommunications Authority and thereafter shall continue the use without interruption throughout the period of validity of this licence.

4.2 Each of the combined transmitting antenna systems referred to in subparagraph 1 shall comply with technical specifications provided by the Telecommunications Authority.

4.3 All costs involved in providing any combined transmitting antenna system shall be shared equally between the Licensee and any other licensee or person (including Radio Television Hong Kong and its successor).

5. **Interference with other services**

5.1 The Licensee shall use all of its apparatus and equipment in such a manner as not to cause interference with any authorised or permitted telecommunication, broadcasting or communication services or apparatus operating in or outside Hong Kong.

5.2 In order to avoid or remedy any such interference, the Licensee shall comply with all instructions given to it by the Telecommunications Authority in respect of the operation and use of its apparatus and equipment. Pending the implementation by the Licensee of any action or conduct to avoid or remedy any such interference required by and satisfactory to the Telecommunications Authority, the Telecommunications Authority

may, if he reasonably considers that such interference is likely to cause injury (including death), loss or damage, order the cessation of the Licensee's transmissions for such a period as may be necessary.

6. **Compliance with international conventions**

The Licensee shall to the extent required by the Telecommunications Authority perform and observe the requirements of any international telecommunications convention or agreement dealing with broadcasting or telecommunications which may from time to time be acceded to by or applied to Hong Kong.

7. **Common facilities**

7.1 The Licensee shall allow any other Licensee or person (including Radio Television Hong Kong and its successor) to use jointly the common facilities at a particular transmitter or relay station as directed by the Telecommunications Authority.

7.2 The facilities referred to in subparagraph 1 shall include the transmitting antenna system, tower, building, standby generator and other site amenities as specified by the Telecommunications Authority.

7.3 The Telecommunications Authority shall appoint the Licensee, or another licensee or person to maintain the common facilities and the person appointed shall ensure that no licensee (including the Licensee) or person shall have any operational advantages over any other licensee or person.

7.4 All costs involved in the provision and maintenance of the common facilities shall be shared equally between the Licensee and any other licensee or person.

8. **Station power supplies**

8.1 The Licensee shall provide a standby power supply at all transmitter and relay stations

operated by the Licensee for use in the event of disconnection from the public electricity supply systems.

- 8.2 The standby power supply referred to in subparagraph 1 shall be able to restart the transmission within one minute after disconnection of the public electricity supply and shall be able to maintain normal transmission for at least 48 hours thereafter.

9. **Standby equipment**

The Licensee shall provide and maintain standby transmitter with automatic changeover devices at all transmitter and relay stations.

10. **Sufficient spare parts**

The Licensee shall maintain sufficient spare parts in Hong Kong to ensure that any interruption of transmission due to equipment fault shall be avoided or minimised as far as reasonably possible.

11. **Test equipment**

The Licensee shall maintain and provide such test equipment and operating staff as may be required by the Telecommunications Authority for the purpose of determining compliance with the terms and conditions of this licence.

~~Dated this [] day of [] 2000~~

Amended this day of 2001

Clerk to the Executive Council

COUNCIL CHAMBER

Accepted by:

Signature:

Capacity:

Date:

(#135937v1)

**The respective annual licence fees paid by the following licensees
after the commencement of the Broadcasting Ordinance**

| Licensees | Licence fee |
|------------------|--------------------|
| ATV | \$10,145,738 |
| TVB | \$10,145,738 |
| HKCTV | \$13,347,995 |
| PCCW VOD | \$2,030,114 |

Annex F

Formulae for calculating licence fees payable by television programme service licensees

| | Licence fee = Fixed fee + Variable fee | | |
|---|---|---|--|
| | Fixed fee | + | Variable fee |
| Domestic Free TV Programme Service Licence | \$3,811,000 | + | \$1,566,000 per television programme service channel |
| Domestic Pay TV Programme Service Licence | \$1,371,000 | + | \$4 per subscriber |
| Non-domestic TV Programme Service Licence | | | |
| Where a subscription is required to be paid for the service provided in Hong Kong | \$69,600 | + | \$4 per subscriber ⁽ⁱ⁾ |
| Others | \$56,600 | | N.A. |
| Other Licensable TV Programme Service Licence | | | |
| Hotel only | \$15,200 | + | \$5,400 per hotel |
| Others, e.g. for niche audience or housing estates | \$224,000 | + | \$4 per subscriber |

⁽ⁱ⁾ Only subscribers to the service in Hong Kong will count.

COST COMPUTATIONS

Licence Fees for TV Programme Service Licences

Television and Entertainment Licensing Authority

Unit Cost at 2001 Price Level

Domestic Free TV

| | <u>Fixed</u> | <u>Variable</u> |
|-------------------------------------|------------------|------------------|
| | \$ | \$ |
| Staff cost | 2,582,940 | 2,375,867 |
| Departmental expenses | 669,825 | 194,814 |
| Accommodation cost | 286,622 | 311,408 |
| Depreciation | 787 | 844 |
| Central administrative Overheads | 270,602 | 248,908 |
| Total Cost | <u>3,810,776</u> | <u>3,131,841</u> |

Estimated number of
programme channels per
licence for 2001

2 programme channels

Unit cost at 2001 prices

\$3,810,780

\$1,565,920 per programme
channel

New licence fee

\$3,811,000 + \$1,566,000 per programme channel

Computed Licence fee
for TVB and ATV

\$6,943,000

Domestic Pay TV

| | Fixed | Variable | |
|--|------------------|---------------------------------------|--------------------------------------|
| | | HKCTV | PCCW VOD |
| | \$ | \$ | \$ |
| Staff cost | 685,420 | 1,413,387 | 240,276 |
| Departmental expenses | 537,615 | 87,293 | 14,840 |
| Accommodation cost | 76,394 | 239,795 | 40,765 |
| Depreciation | 212 | 630 | 107 |
| Central administrative Overheads | 71,808 | 148,074 | 25,172 |
| Total Cost | 1,371,449 | 1,889,179 | 321,160 |
| Estimated number of subscribers per licence | | 486,110 subscribers ⁽ⁱ⁾ | 81,608 subscribers ⁽ⁱ⁾ |
| Unit cost at 2001 prices | \$1,371,450 | \$4 per subscriber | \$4 per subscriber |
| New licence fee | | \$1,371,000 + \$4 per subscriber | |
| Computed Licence fee | | \$3,315,440 | \$1,697,432 |

⁽ⁱ⁾ The number of subscribers as at 31.7.2000 of HKCTV and PCCW VOD Limited (formerly CWHKT VOD) are 486,110 and 81,608 respectively.

Non-Domestic TV

| | Non-Domestic (Free) | | Non-Domestic (Pay) | |
|-------------------------------------|----------------------------|--|-------------------------------|--|
| | Fixed | | Fixed | Variable |
| | \$ | | \$ | |
| Staff cost | 44,832 | | 55,037 | |
| Departmental expenses | 2,131 | | 2,669 | |
| Accommodation cost | 4,873 | | 6,111 | |
| Depreciation | 13 | | 17 | |
| Central administrative Overheads | 4,697 | | 5,766 | |
| Total Cost | 56,546 | | 69,600 | |
| | | | | |
| Unit cost at 2001 prices | \$56,550 | | \$69,600 | \$ 4 per subscriber ⁽ⁱⁱ⁾ |
| | | | | |
| New licence fee | \$56,600 | | \$69,600 + \$4 per subscriber | |

⁽ⁱⁱ⁾ It is assumed that the unit cost for each subscriber to non-domestic pay TV programme service is the same as that for the domestic pay TV programme service.

Other Licensable TV (for niche audience or housing estates)

| | <u>Fixed</u> | <u>Variable</u> |
|----------------------------------|---------------------------------|---|
| | \$ | |
| Staff cost | 141,248 | |
| Departmental expenses | 53,074 | |
| Accommodation cost | 14,690 | |
| Depreciation | 38 | |
| Central administrative Overheads | 14,798 | |
| Total Cost | <u>223,848</u> | |
| | | |
| Unit cost at 2001 prices | \$223,850 | \$ 4 per subscriber ⁽ⁱⁱⁱ⁾ |
| | | |
| New licence fee | \$224,000 + \$ 4 per subscriber | |

⁽ⁱⁱⁱ⁾ It is assumed that the unit cost for each subscriber to other licensable TV programme service (for housing estates and niche audience) is the same as that for the domestic pay TV programme service.

Licence Fees for Sound Broadcasting Licences

Television and Entertainment Licensing Authority (TELA) and Office of Telecommunications Authority (OFTA)

Unit Cost at 2001 Price Level

| | <u>TELA</u> | <u>OFTA</u> |
|----------------------------------|------------------|----------------|
| | \$ | \$ |
| Staff cost | 2,111,602 | 560,622 |
| Departmental expenses | 209,201 | 16,777 |
| Accommodation cost | 272,432 | 13,981 |
| Depreciation | 697 | 47,314 |
| Central administrative overheads | 221,223 | 2,370 |
| Cost of capital | - | 83,338 |
| Total Cost | <u>2,815,155</u> | <u>724,402</u> |
| Unit cost at 2001 prices | \$2,816,000 | \$724,410 |
| Computed licence fee | \$3,540,410 | |