

**Legislative Council
Bills Committee on Broadcasting Bill**

Licensing Criteria for Television Programme Service Licences

Purpose

This paper informs Members of the licensing criteria for television programme service licences.

Background

2. At the Bills Committee meeting on 14 March 2000, Members requested the Administration to provide a paper explaining the criteria for the Chief Executive in Council (CE in C) in consideration of a licence application.

General licensing policy

3. Following the 1998 Review of Television Policy, the Administration announced the policy decision, among others, to open up the television market. We believe that a vibrant and thriving television market would attract investment, encourage innovation and, most important of all, widen viewers' choice of programmes. To assist interested parties in making applications for television broadcasting licences, the Administration issued a Guidance Note in August 1999. The Guidance Note is available at the website of ITBB at <http://www.info.gov.hk/itbb/broad/index.htm>. It is stated in the Guidance Note that subject to physical or other constraints, there is no pre-set limit on the number of licences to be issued.

Licensing criteria

4. Under the existing regulatory regime, the licensing criteria are set out in the Television Ordinance as well as in the Guidance Note. In line with existing practice, it is our intention to issue guidance notes from time to time under the new regulatory regime to provide practical

guidance for interested parties to submit applications. Similarly, the licensing criteria will be set out in the Broadcasting Bill (the Bill) and guidance notes.

Statutory criteria

5. Statutory criteria set out in the Broadcasting Bill now include:-

Local company

- (a) the applicant must be a company formed and registered in Hong Kong under the Companies Ordinance (Cap. 32) (Clause 8(1) and (2) and Clause 2(1) of the Bill). In the case of a domestic free television programme service licence, the applicant cannot be a subsidiary of a corporation (Clause 8(3) of the Bill);

Residence requirements for directors and principal officers

- (b) for domestic free and domestic pay television programme service licences: except with the prior approval of the Broadcasting Authority (BA), the majority of the directors and the majority of principal officers of the company shall each be a person who is for the time being ordinarily resident in Hong Kong and who also has been so resident for at least one continuous period of not less than 7 years (the residence requirements) (Clause 8(4)(a)(iv) of the Bill). For non-domestic and other licensable licences: only one director or principal officer must satisfy the residence requirements (Clause 8(4)(b) of the Bill);

Restriction on disqualified persons

- (c) no disqualified person, other than a person whose disqualification is disclosed in the application, should exercise control of a domestic free or domestic pay television programme service licensee (clause 8(4)(a)(v) of the Bill);

Restriction on unqualified voting controllers

- (d) an unqualified voting controller shall not, without the prior

approval in writing of the BA, hold or exercise or cause or permit to be exercised 2% or more in aggregate of the total voting control of a domestic free television programme service licensee (Section 20 of Schedule 1 of the Bill) ; and

Restrictions on persons not regarded as fit and proper

- (e) a licensee and any person exercising control of the licensee shall and remain a fit and proper person (Clause 20 of the Bill).

Other assessment criteria

6. Apart from the above statutory requirements, there are other licensing criteria which are contingent upon the prevailing market condition or technological developments. For example, while the financial strength of applicants was a cardinal criterion in the past, this factor can be assessed more flexibly under the new regulatory regime which allows for the provision of a service targeting a small or niche market (in the case of other licensable services which provide service to less than 5,000 households). Because of the existing spectrum constraint of the in-building networks in most buildings in Hong Kong, applicants are at present required to employ spectrum-efficient technology¹ to transmit their programmes. This is important because this has direct bearing on the extent of programming choice for consumers. This criterion, however, may be rendered obsolete with the advance in technologies in future. To allow flexibility in our licensing framework to cater for the fast-changing broadcasting environment, we consider that these assessment criteria should more appropriately be set out in the form of guidance notes issued by the BA.

7. In the Guidance Note issued in August 1999, the following factors are listed as assessment criteria –

- (a) Financial soundness and commitment to investment
- (b) Proven managerial and technical expertise
- (c) The variety, quantity, quality of programmes
- (d) Technical soundness and a satisfactory quality of service
- (e) Technological innovation and new services
- (f) Coverage of service

¹ With the use of digital compression, one single analogue television channel can be used to deliver up to around 6 digital television channels. In other words, the capacity of in-building networks can be increased six-fold.

- (g) Service rollout
- (h) Minimum inconvenience to member of the public
- (i) Benefits to the local broadcasting industry, viewers/
customers and the economy as a whole
- (j) Quality control and compliance

The above assessment criteria will be reviewed in the light of market and technological developments every time we issue a guidance note to invite applications for television programme service licences.

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Information Technology and Broadcasting Bureau

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