

立法會
Legislative Council

LC Paper No. LS 69/05-06

**Paper for the House Committee Meeting
on 19 May 2006**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 12 and 13 May 2006**

Date of Tabling in LegCo : 17 May 2006

Amendment to be made by : 14 June 2006 (or 5 July 2006 if extended by resolution)

PART I FEE REVISION

Broadcasting Ordinance (Cap. 562)

Broadcasting (Revision of Licence Fees) Regulation 2006 (L.N. 98)

L.N. 98 amends Schedules 1, 2, 3 and 4 to the Broadcasting (Licensing Fees) Regulation (Cap. 562 sub. leg. A)—

- (a) to increase the fixed fee and reduce the variable fee of the annual licence fee for domestic free television programme service;
- (b) to increase the fixed fee of the annual licence fee for domestic pay television programme service;
- (c) to reduce the annual licence fee for type A non-domestic television programme service;
- (d) to increase the fixed fee of the annual licence fee for type B non-domestic television programme service;
- (e) to reduce the fixed fee of the annual licence fee for type A other licensable television programme service; and
- (f) to increase the fixed fee of the annual licence fee for type B other licensable television programme service.

2. Members may refer to the LegCo Brief (File Ref.: CTB/B/203/14(05) VI) issued by the Television and Entertainment Licensing Authority on 12 May 2006 for background information. Details of the fee revision ranging from -24% to 13% are set out in Annex B of the LegCo Brief. The cost computations are set out in Annex C. The existing fees have taken effect since February 2001 and the Regulation will come into operation on 7 July 2006.

3. The Panel on Information Technology and Broadcasting considered the fee proposals at its meeting on 6 April 2006. According to the Administration, it has explained in its consultation with all existing licensees the reasons for proposing the fee revision. Members noted that the two domestic free television programme service licensees and the three domestic pay television programme service licensees were opposed to the fee increase. Their reasons and the Administration's responses have been summarized in paragraphs 16 to 18 of the LegCo Brief. Members present at the Panel meeting raised no objection to the proposal as it was in line with existing government policy on cost recovery for provision of services.

4. The Hong Kong Cable Television Limited and PCCW Limited have made submissions setting out the grounds of their objection, copies of which are attached at the Annex (English version only). According to the LegCo Brief, the fixed fee of the annual licence fee for domestic pay television programme service will be increased by 12% from \$1,371,000 to \$1,533,000 to recover the rise in administrative costs which include those of commissioning market and economic analyses for adopting an evidence-based approach to deal with regulatory issues.

Fire Services Ordinance (Cap. 95)

Fire Service (Installation Contractors) (Fee Revision) Regulation 2006 (L.N. 99)

Fire Services Department (Reports and Certificates) (Fee Revision) Regulation 2006 (L.N. 100)

Dangerous Goods Ordinance (Cap. 295)

Dangerous Goods (General) (Fee Revision) Regulation 2006 (L.N. 101)

Timber Stores Ordinance (Cap. 464)

Timber Stores (Fee Revision) Regulation 2006 (L.N. 102)

5. L.N. 99 amends the Fire Service (Installation Contractors) Regulations (Cap. 95 sub. leg. A) to increase the fees payable for—

- (a) the registration of fire service installation contractors and written examinations and interviews for them;
- (b) the inspection and re-inspection of workshops and new workshops used by them; and

- (c) the change of their registered names or addresses and notification of change of director, employee or partner.

The fees will be increased by 10% to 20%. They were last revised in February 2001.

6. L.N. 100 amends the Table to Regulation 3 of the Fire Services Department (Reports and Certificates) Regulations (Cap. 95 sub. leg. C)—

- (a) to reduce the fee payable on a report on fire or other calamity attended by the Fire Services Department; and
- (b) to increase the fees payable to the Director of Fire Services in respect of the issue of certificates which are required for compliance with certain statutory provisions.

The fee payable on a report on fire or other calamity will be reduced by 22%. Other fees will be increased by 1% to 20%. These fees were last revised in April 1997.

7. L.N. 101 amends the Table to Regulation 183(1) of the Dangerous Goods (General) Regulations (Cap. 295 sub. leg. B) to increase the fees payable for—

- (a) the grant or renewal of licences or permits relating to the storage, manufacture and conveyance of various categories of dangerous goods; and
- (b) the issue of duplicates of and the making of alterations or additions to, or endorsements on, such license or permits.

The fees will be increased by 10% to 21%. They were last revised in March 1995.

8. L.N. 102 amends the Schedule to the Timber Stores Regulation (Cap. 464 sub. leg. A)—

- (a) to reduce the fee payable for the renewal of a licence for the operation of a timber store; and
- (b) to increase the fees payable for the grant, transfer or issue of a duplicate of the licence and the amendment of its conditions or particulars.

The fee for renewal of a licence will be reduced by 10%. Other fees will be increased by 11% to 15%. These fees were last revised in February 2001.

9. Members may refer to the LegCo Brief (File Ref.: SEC 9/6/10) issued by the Security Bureau in May 2006 for background information. The changes are made as a result of a recent costing review and details are set out in Annex E of the LegCo Brief. The increase is made with a view to achieving full cost recovery

within three to seven years. All of the Regulations will come into operation on 7 July 2006.

10. The Panel on Security was consulted by circulation of paper and at the meeting of 6 December 2005 on the Administration's proposals to revise the fees and charges for services which would not directly affect people's livelihood or general business activities within the purview of the Security Bureau. The proposals included the fee revision in the Regulations. Members did not raise any query.

PART II COMMENCEMENT NOTICE

Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Ordinance 2006 (10 of 2006)

Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Ordinance 2006 (Commencement) Notice (L.N. 103)

11. L.N. 103 appoints 13 May 2006 as the day on which the Chief Executive Election and Legislative Council Election (Miscellaneous Amendments) Ordinance 2006 (10 of 2006) will come into operation. The Ordinance mainly addresses the issues identified in the Fifth Report of the Constitutional Development Task Force, provides for an election requirement if only one Chief Executive candidate is validly nominated and introduces amendments relating to the electorate of the Election Committee.

12. According to the paper "2007 Chief Executive Election" (LC Paper No. CB(2)870/05-06(02)) provided by the Administration to the Panel on Constitutional Affairs for the meeting on 16 January 2006, technical amendments would be included in the Ordinance to reflect changes in the names of the organizations eligible to be the electorate of the Election Committee or the names of their umbrella organizations, and to remove organizations and umbrella organizations which have ceased to exist. The Administration has also advised in that paper that the Ordinance should be enacted and take effect before 16 May 2006, which is the deadline for registration as voters for the 2006 Election Committee subsectors.

Encl

Prepared by

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Legislative Council Secretariat
18 May 2006



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附件
Annex

CABLE TV

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13 May 2006

The Hon. Mrs. Rita Fan Hsu Lai-tai, GBS, JP
President
Legislative Council
8 Jackson Road, Central
Hong Kong

By fax & by hand
(Fax no. 2877 9600)

Dear Mrs. Fan,

Broadcasting (Revision of Licence Fees) Regulation 2006


By its letter dated 12 May, the Administration told us that the above regulation would be tabled at the Legislative Council for negative vetting on 17 May.

We would like to draw Members' attention to the fact that the television industry has reservations about the proposed revision. Detailed grounds for HKCTV's objection, which have been forwarded to the Administration, are replicated on the attached.

We should be most grateful if Members of the Council would take account of our concerns in deliberating the above regulation.

Thank you.

Yours sincerely,
Hong Kong Cable Television Limited



Desmond S.H. Chan

Encl.



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HKCTV's Objection to the Proposed Increase of License Fees for Television Programme Service Licences

1. Since 1997, all industries have been suffering from the economic doldrums. The pay TV industry is of no exception. Unlike some of its relating sectors whose licence fees or other government charges have been reduced (more than once in some cases) during this difficult period of time¹, the pay TV industry has not received similar assistance.
2. Following the increase in competition on various fronts (including contents and people) in the pay TV market, the investments in and costs for running our business have been rocketing. Despite the recent improvement of economy, it is unlikely that our financial burden would abate in near future given the competition has shown no sign of abating.
3. We understand from the Administration that the proposed fee increase is attributable to the competition and firewall complaints. We have difficulty in accepting this contention. The competition provisions in the Broadcasting Ordinance and the firewall provisions in the licences of TVB and Galaxy were put in place in July 2000, roughly 7 months before Cap. 526A took effect. Logically, the Government must have taken account of the costs of implementation of the competition and firewall provisions when devising the new charging formula under Cap. 526A, to ensure that the licence fees collected (especially the fixed fee component) are large enough to cover these implementation costs.
4. The Government has announced its plan to set up a single, lean and skilled, and responsive regulator overseeing the entire electronic communications sector, and to examine whether the regulator should further reduce its monitoring and rule-making role, keeping regulation to a minimum with greater focus on ensuring fair competition in the converging communications market. Naturally, this plan will significantly bring down the overall regulatory costs. Thus, to save the trouble of re-adjusting the licence fees in near future, the proposed increase of licence fees should be withheld pending the study of the regulatory convergence.

¹ Please see the attached Appendix for examples of fee reduction.



Examples of Reduction of Licence Fees/ Government Charges

Telecom Sector

May 1999	PRS licence fee reduced from \$75 to \$55 per station
May 2000	PRS licence fee reduced from \$55 to \$30 per station
May 2002	PRS/ PNETS/ mobile carrier licence fee reduced from \$30 to \$24 per station
May 2003	Fixed carrier annual licence fee reduced from \$1m to \$0.5m
May 2004	Fixed carrier annual licence fee reduced from \$0.5m to \$0.2m PRS/ PNETS/ mobile carrier licence fee reduced from \$24 to \$20 per station
May 2005	PRS/ PNETS/ mobile carrier licence fee reduced from \$20 to \$18 per station

Film Sector

Jan 2002	Five fee items relating to the release of films reduced by 3% to 77.6% under the Film Censorship Regulations
June 2005	Licence fees for producing special effects in film production and entertainment programmes reduced by 7.1% to 10.7%



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The Honourable Ms Miriam Lau Kin-ye, GBS, JP
The Chairman
House Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

18 May 2006

Dear Ms Lau,

Broadcasting (Revision of Licence Fees) Regulation 2006

We have been informed of the HKSAR Government Administration's intention to table the licence fee increase proposal for domestic pay television programme service for negative vetting on 17 May 2006.

We would like to highlight that PCCW has serious concerns about the proposed 11.8% licence fee increase and have indeed forwarded our comments to the Administration. A summary of our key concerns is replicated per the attached. PCCW would be most grateful if the Honourable Members of the Council would take into account our concerns in the deliberation of the licence fee increase proposal. We would respectfully request that the proposal not to be passed and that a sub-committee be set up to review the justifications for the licence fee increase.

Thank you.

Yours sincerely,


Stuart Chiron
Director of Regulatory Affairs

Att'd 2 pages

cc. The Honourable Mr Sin Chung-kai, JP (Fax 2121 0420)



Summary of PCCW's objection to the Proposed Licence Fee Increase for Domestic Pay Television Programme Service Licence

1. **Other Market Benchmarks**

PCCW notes that the licence fee in the telecommunications industry has not been increased for more than 10 years. For the fixed line services, the quantum of the licence fee has remained unchanged since 1995 whereas for the mobile service licence, the licence fee has been reduced by 73% since 1995¹.

It is therefore not uncommon for the liberalised industry to benefit from decreasing regulatory costs on a per licensee basis in the form of reduced licence fee. Again, this would suggest that any licence fee increase needs to be fully described and supported with firm data and clear evidence.

2. **Income from licensees**

The proposed licence fee increase is inconsistent with the growth of licence revenues, and should not occur. Whilst the number of domestic pay TV licensees has remained the same in 2004 and 2005, the number of subscribers, on which the variable fee is payable, has increased from 1,000,000 to the market estimate of 1,200,000 bringing Television and Entertaining Licensing Authority (TELA) / Broadcasting Authority (BA) an additional income of \$800,000 in 2005. It is forecasted that the pay television market will continue to grow thus increasing the associated income of TELA/BA.

3. **Consumer Price Index ("CPI")**

CPI provides a barometer of inflation and is very often used as a benchmark factor for public bodies' fee/charge increase. The composite CPI records a modest increase of only 1.7% on all items from the period November 2004 to November 2005. The proposed licence fee increase of 12% is therefore significantly higher than the general CPI. If the CPI were to be used, the first requirement would be for TELA/BA to fully and convincingly explain why licence fees were not decreased for the recent period when the CPI was negative. It would be irrational to use this indicator only when it supports a proposed action.

4. **Penalty Charges**

PCCW notes that whilst the number of complaints registered with TELA/BA increased in 2005, the quantum of the penalty has remained small even for licensees who repeatedly commit licence breach. This leniency undermines the deterrence effect of the penalty and indirectly increases the unnecessary additional workload arising from compliance investigation.

¹ The annual PMRS/Mobile licence fee has been reduced several times since 1995 as follows: Schedule 3 to the Telecommunications (Carrier Licences) Regulations (Cap. 106V) - Part 3 Mobile Carrier Licences Other Than Mobile Carrier (Restricted) Licence

	1995	1999	2000	2002	2004
First 200 mobile station (\$)	15,000	11,000	6,000	4,800	4,000
Additional 100 mobile station (\$)	7,500	5,500	3,000	2,400	2,000

The current licence fee has been reduced by 73% as compared with that in 1995.

03/02/06



5. **Transparency**

PCCW notes that an internal costing exercise has been conducted by TELA prior to the tabling of this licence fee increase proposals to the broadcasting licensees. However no detailed information has been provided in the proposal (eg. licence fee and other sources of income, increased expenditure, additional workload, level of increased manpower, external consultancy fee etc.) to facilitate PCCW to understand the full justifications for the proposed fee increase. In the name of transparency and reasoned decision making, PCCW would ask that all this material and data be released to the public.

Based on the foregoing, PCCW is of the view that the domestic pay television programme service licence fee should be reduced. Any proposal to increase the fees should be fully supported and vetted in a transparent proceeding.

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