

立法會
Legislative Council

LC Paper No. CB(1)917/09-10
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/09

**Bills Committee on
Telecommunications (Amendment) Bill 2009**

**Minutes of the third meeting
held on Tuesday, 8 December 2009, at 4:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon Andrew LEUNG Kwan-yuen, SBS, JP (Chairman)
Hon LAU Kong-wah, JP
Hon Emily LAU Wai-hing, JP
Hon LEE Wing-tat
Hon WONG Ting-kwong, BBS, JP
Hon Cyd HO Sau-lan
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Dr Hon Samson TAM Wai-ho, JP

Members absent : Hon Timothy FOK Tsun-ting, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Ronny TONG Ka-wah, SC

**Public Officers
attending** : Agenda Item I

Mr Alan SIU, JP
Deputy Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Aaron LIU
Principal Assistant Secretary for Commerce and
Economic Development (Communications and
Technology)A

Ms Maisie CHENG, JP
Commissioner for Television and Entertainment
Licensing

Mr PO Pui-leong
Assistant Commissioner for Television and Entertainment
Licensing (Broadcasting)

Mr T F SO
Assistant Director (Operation)
Office of the Telecommunications Authority

Ms Monica LAW
Senior Assistant Law Draftsman
Department of Justice

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (1)3

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 3

Miss Winnie LO
Assistant Legal Adviser 7

Ms Annette LAM
Senior Council Secretary (1)3

Action

- I. Meeting with the Administration**
(LC Paper No. CB(1)590/09-10(01) -- List of follow-up actions arising from the discussion at the meeting on 30 November 2009
- LC Paper No. CB(1)457/09-10(03) -- List of follow-up actions arising from the discussion at the meeting on 5 November 2009
- LC Paper No. CB(1)457/09-10(04) -- Administration's paper on licensing of sound broadcasting services and other related matters
- LC Paper No. CB(1)457/09-10(05) -- Administration's response to issues raised at meeting on 5 November 2009

- LC Paper No. CB(1)457/09-10(06) -- Administration's paper on development of digital audio broadcasting in Hong Kong
- File Ref: CTB(CR) 9/2/26 (06) Pt.4 -- LegCo Brief on Ocean Technology Limited's application for sound broadcasting licence to operate community radio service
- LC Paper No. CB(1)498/09-10(01) -- Administration's paper on examples of licensing-related provisions under other legislation
- LC Paper No. LS15/09-10 -- Information note on how a licence to provide a television programme service is granted under the Broadcasting Ordinance (Cap. 562) prepared by the Legal Service Division of the Legislative Council Secretariat
- LC Paper No. CB(1)611/09-10(01) -- Administration's paper on use of *(tabled at the meeting and subsequently issued on 9 December 2009)* FM radio spectrum in Hong Kong
- LC Paper No. CB(1)611/09-10(02) -- Administration's response to views *(tabled at the meeting and subsequently issued on 9 December 2009)* submitted by organizations at meeting on 30 November 2009)

Other relevant papers

- (LC Paper No. CB(3)813/08-09 -- The Bill
- LC Paper No. CB(1)187/09-10(01) -- Marked-up copy of the Bill prepared by the Legal Service Division
- File Ref: CTB(CR)9/19/15 (09) Pt. 3 -- Legislative Council Brief on Telecommunications (Amendment) Bill 2009 issued by the Commerce and Economic Development Bureau
- LC Paper No. LS2/09-10 -- Legal Service Division Report

LC Paper No. RP07/07-08

-- Research report on regulation of radio broadcasting services in selected places prepared by the Research and Library Services Division of the Legislative Council Secretariat on 5 June 2008)

The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Admin 2. The Administration was requested to:

- (a) provide information on previous cases in which the Chief Executive -in-Council, in exercising the discretion whether to grant a licence in respect of an application for a licence to establish and maintain a broadcasting service, had made a decision contrary to the recommendations of the Broadcasting Authority; and
- (b) explain why section 13C of the Telecommunications Ordinance was not amended by repealing "Governor" and substituting "Chief Executive" as stated in Clause 3 of the Telecommunications (Amendment) Bill 2009.

(Post-meeting note: The information in respect of paragraph 2 were issued to members vide LC Paper No. CB(1)716/09-10(02) on 17 December 2009.)

II. Any other business

Date of next meeting

3. The Chairman reminded members that the next meeting would be held on 22 December 2009 at 9:00 am in Conference Room A of the Legislative Council Building. The Bills Committee might proceed to commence clause-by-clause examination of the Bill at the next meeting.

4. There being no other business, the meeting ended at 6:25 pm.

Council Business Division 1
Legislative Council Secretariat
19 January 2010

**Proceedings of the third meeting of
Bills Committee on Telecommunications (Amendment) Bill 2009
on Tuesday, 8 December 2009, at 4:30 pm
in Conference Room B of the Legislative Council Building**

| Time marker | Speaker | Subject(s) | Action required |
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| 000110 – 000133 | Chairman | Opening remarks by the Chairman | |
| 000134 – 003423 | Chairman Administration Mr LEE Wing-tat Mr LAU Kong-wah Ms Emily LAU Mrs Regina IP | <p>Briefing by the Administration (LC Paper No. CB(1)611/09-10(01))</p> <p>Discussion on the availability, allocation and the use of Frequency Modulation (FM) Band (87MHz - 108MHz) in Hong Kong.</p> <p>Members enquired about the availability of frequency in the FM Band and whether community-based localized broadcasting covering a specific locality or region using low-power transmission, such as the radio station operated by the Citizens' Radio (CR), would interfere with regional broadcasts and aero-nautical communications.</p> <p>The Administration advised as follows:</p> <ul style="list-style-type: none"> (a) through frequency coordination with Guangdong and Macao on the basis of the technical standards set by the International Telecommunications Union (ITU), Hong Kong was currently using 49 FM frequencies while about 50 FM frequencies were being used by Guangdong cities and Macao; (b) to avoid interference, frequency used at one hilltop site could not be used elsewhere. Therefore, each of the existing seven FM programme channel in Hong Kong required at least seven FM frequencies; (c) all 49 FM frequencies available to Hong Kong for territory-wide broadcasting had already been allocated and were currently taken up by RTHK, Commercial Radio Hong Kong and Metro Broadcast; (d) in view of the mountainous terrain in Hong Kong and the need to harmonize radio spectrum utilization with neighbouring places to avoid mutual radio interference and interference with aero-nautical communications, there was no more room within the FM spectrum for territory-wide sound broadcasting; and (e) there was an incident in the past where CR's radio | |

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| | | <p>broadcast had caused interference with aero-nautical communications.</p> <p>In response to members' enquiry about the use of radio frequencies at the Hong Kong Franklin Graham Festival (HKFGF) held at end 2007, the Administration advised that under section 7E(1)(c) of the Telecommunications Ordinance (TO), the Telecommunications Authority (TA) could issue short-term permits for the operation of wireless public address systems in the FM Band on event-specific occasions. Such approval had been granted to a number of events, including the HKFGF held at the Hong Kong Stadium in November/December 2007.</p> <p>Members enquired about the use of the remaining one FM frequency, given that about 100 FM frequencies were technically available in the FM Band and that Hong Kong was using 49 FM frequencies while about 50 FM frequencies were being used by Guangdong cities and Macao.</p> <p>The Administration advised that although technically there were about 100 FM frequencies available in the FM Band, frequencies gaps must be carefully planned to avoid interference with regional and aero-nautical communications. As aero-nautical communications were operating in adjacent frequency band to FM broadcasting, some FM frequencies must be left idle in order to protect aero-nautical communications from undue interference.</p> <p>Mr LEE Wing-tat and Ms Emily LAU's view that the Government should be more open-minded to opening up airwaves and grant licences for social/ethnic/religious groups to operate community radio stations.</p> <p>The Administration advised as follows:</p> <p>(a) the Government adopted an open attitude to community broadcasting. The proposed licensing criteria did not in any way specify any threshold whereby an applicant must meet before it would be granted a licence. The criteria concerned were not meant to discriminate against applicants with a smaller scale of operation;</p> <p>(b) all applications, whether for territory-wide or localized broadcasting, would be entertained only if the Broadcasting Authority (BA), after consulting the TA, was satisfied that (a) the frequency in the radio spectrum that the applicant proposed to use was</p> | |

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| | | <p>available as at the date of the application; and (b) that frequency was suitable for use in providing the proposed broadcasting service; and</p> <p>(c) all applications would be considered on the basis of the proposed licensing criteria (covering spectrum availability, technical requirements, financial soundness, managerial expertise, programme variety and benefits to the citizens) depending on the applicant's business proposal in respect of the scale, nature and programme content of the services to be provided.</p> <p>In response to Mrs Regina IP's enquiry about interference and disputes over the use of frequency spectrum near the border area, the Administration advised that apart from holding regular coordination meetings, a mechanism had been established so that Mainland and Hong Kong might resolve interference issues in accordance with an agreement made between the two parties, which was prepared based on the ITU principles.</p> | |
| 003424 – 015129 | <p>Chairman Administration Ms Emily LAU Mr LEE Wing-tat Mr LAU Kong-wah Mrs Regina IP Assistant Legal Adviser (ALA)</p> | <p>Briefing by the Administration (LC Paper Nos. CB(1)457/09-10(04), (05) & (06), CB(1)611/09-10(01) & (02) and CB(1)498/09-10(01))</p> <p>Briefing by the Assistant Legal Advisor (LC Paper No. LS15/09-10)</p> <p><u>Power and status of the Chief Executive (CE)-in-Council as the licensing authority</u></p> <p>Ms Emily LAU and Mr LEE Wing-tat raised concern about the lack of transparency in the decision making process. They also expressed concern about the unfettered discretionary power given to the CE-in-Council which was not an independent licensing body as in the case of some overseas licensing regimes. Mr LEE Wing-tat held the view that an applicant who satisfied the licensing criteria and was so recommended by the BA should be granted a licence to operate and maintain sound broadcasting services. The CE-in-Council should not exercise its discretionary power to refuse the application.</p> <p>The Administration's response as follows:</p> <p>(a) many overseas licensing authorities were also appointed by the governments. To ensure that the CE-in-Council would be provided with independent advice, all sound broadcasting licence applications</p> | |

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| | | <p>were processed and recommended by the BA which was an independent statutory authority;</p> <p>(b) the existing sound broadcasting licence application processing procedures and decision making process were transparent. Upon receipt of an application, the BA Secretariat would examine the application and might require the applicant to provide further information as necessary. Clarification or additional information might be sought with the applicants as necessary. In the event that the BA made an unfavourable recommendation and/or the Administration had a negative assessment, the applicant would be informed of such recommendation and/or assessment. The applicant would be invited to make representations in respect of the BA's analysis and recommendations. The CE-in-Council would, having regard to the applicant's submissions, the BA's recommendations and the Administration's assessment as well as the applicant's representation, if any, make a decision on the application. The Government would then issue a LegCo brief and press release to announce the final decision on the licence application. For transparency, licence applicants whose application for a licence had been refused would be informed of the reasons for refusal. Aggrieved parties could lodge an appeal by way of judicial review; and</p> <p>(c) similar to other licensing regimes, the CE-in-Council as the licensing authority retained the discretion to make the final decision.</p> <p>Members enquired about the reasons for refusing a licence application in the past, and whether there were previous cases in which the CE-in-Council, in exercising the discretion whether to grant a licence in respect of an application for a licence to establish and maintain a broadcasting service, had made a decision contrary to the BA's recommendation. Ms Emily LAU queried why the BA's recommendations were not released to the public and urged the Administration to consider exploring measures to enhance transparency.</p> <p>The Administration advised that it would not be appropriate to release details of individual cases. An application submitted by Ocean Technology Limited (OTL) in September 2005 to maintain and operate territory-wide sound broadcasting service had been refused by the CE-in-Council having taken into consideration the feasibility of OTL's technical proposal on the use of radio</p> | <p>The Administration to follow up as stated in paragraph 2(a) of the minutes.</p> |

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| | | <p>frequency spectrum, and its management, financial and technical capability to establish and maintain a sound broadcasting service. A LegCo brief had been issued and OTL had been duly informed of the decision and the reasons thereof.</p> <p>In response to members' enquiry about the CE-in-Council's discretionary power in licensing matters, ALA advised that in accordance with section 41(1) of the Interpretation and General Clauses Ordinance (Cap. 1), the CE-in-Council, in exercising the power conferred by section 13C(2) of the TO, had a discretion either to grant or to refuse to grant a sound broadcasting licences. ALA took members through the licensing-related provisions under other legislation as contained in LC Paper No. CB(1)498/09-10(01).</p> <p><u>Competence of licensee under section 13F of TO</u></p> <p>In response to Mr LAU Kong-wah and Mr LEE Wing-tat's enquiry, the Administration advised that section 13F of the TO specified that an applicant for sound broadcasting licence must be a corporation and not a subsidiary of a corporation. Religious bodies/community groups/non-governmental organizations incorporated could make an application under section 13B. ALA advised members of the definition of "corporation" under section 13A(1) of TO.</p> <p><u>Radio listening habits of Hong Kong people</u></p> <p>In response to Ms Emily Lau's enquiry, the Administration advised that information about the most common time slot respondents listened to radio was only available for 2005 and 2007 as the question was not covered in the surveys conducted prior to 2005.</p> <p><u>Digital audio broadcasting (DAB)</u></p> <p>In response to members' enquiry, the Administration advised as follows:</p> <ul style="list-style-type: none"> (a) the Government took a market-led approach in DAB and had reserved frequency channel in Band III for DAB services; (b) RTHK would be allocated appropriate resources and frequency channel to expand its scope of services, including the provision of dedicated digital television and sound broadcasting services; and (c) Wave Media Limited had been granted a permit to | |

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| | | <p>conduct technical trial on DAB.</p> <p>Mr LEE Wing-tat noted that Wave Media Limited would provide free radios to members of the public to facilitate technical trial on DAB. He enquired whether the Government would consider providing financial assistance/incentives to the industry to encourage the provision of DAB services and DAB take-up.</p> <p>The Administration advised that DAB receivers were in the price range of HK\$500-600 and the provision of DAB services required substantial investment by the service providers.</p> <p>In response to Mr LEE Wing-tat's suggestion for different groups to co-share or operate one channel so that more social/ethnic/religious bodies could participate in community broadcasting, the Administration advised that there would be practical management difficulties for different operators to co-share the same channel.</p> <p><u>Community involvement in broadcasting</u></p> <p>Mr LAU Kong-wah opined that community radio should deliver social gain and be provided primarily for the benefit of members of the public or of particular communities rather than primarily for commercial reasons or financial or other gain.</p> | |
| 015130 – 015456 | Chairman Administration Ms Emily LAU Mr WONG Ting-kwong ALA | Members' enquiry as to why section 13C of the TO was not amended by repealing "Governor" and substituting "Chief Executive" as stated in Clause 3 of the Bill. | The Administration to follow up as stated in paragraph 2(b) of the minutes. |
| 015457 – 015502 | Chairman | Date of next meeting | |