

**Administration's response to views submitted by organisations on
Telecommunications (Amendment) Bill 2009
(as of 7 December 2009)**

Criteria to be considered in granting sound broadcasting licences			
	Organisations / Individuals	Views / Concerns	Administration's Response
1	<p>I. Written submissions by the following parties –</p> <p>(a) Wave Media Limited</p> <p>(b) Metro Broadcast Corporation Limited</p> <p>(c) Civic Party</p> <p>(d) The Law Society of Hong Kong</p> <p>(e) Hong Kong Journalists Association</p>	<p>(i) Strongly supported the proposal of setting out the licensing criteria in the law, which would provide legal certainty and increase transparency. (<i>Wave Media Limited</i>)</p> <p>(ii) Considered the existing scope of the proposed licensing criteria covering aspects like spectrum availability, technical requirements, financial soundness, managerial expertise, programme variety and benefits to the citizens comprehensive and appropriate. (<i>Wave Media Limited</i>)</p> <p>(iii) Agreed that the criterion relating to financial soundness without specification of any threshold was appropriate and had struck a right balance between the need to ensure that the licensee would be able to maintain effective operation and level of service and to avoid setting any high threshold to deter entry of new or small players. (<i>Wave Media Limited</i>)</p>	<p>(i) Noted.</p> <p>(ii) Noted.</p> <p>(iii) Noted.</p>

	<p>II. Oral submissions on 30 November by the following parties –</p> <p>(a) Wave Media Limited</p> <p>(b) Civic Party</p> <p>(c) The Law Society of Hong Kong</p> <p>(d) Hong Kong Journalists Association</p> <p>(e) Citizens’ Radio</p> <p>(f) Hong Kong Human Rights Monitor</p>	<p>(iv) Supported the proposed legislative amendments and considered the licensing criteria relevant and reasonable in assessing sound broadcasting licence applications. <i>(Metro Broadcast Corporation Limited)</i></p> <p>(v) Raised concern that the licensing criteria were too stringent and only large corporations with sufficient resources would be able to obtain a licence. <i>(Civic Party, Hong Kong Journalists Association, Hong Kong Human Rights Monitor)</i></p> <p>(vi) Suggested that amendments be made to the Bill to specify that the CE-in-Council should also have regard to the scale of the proposed broadcasting service in considering sound broadcasting licence application. <i>(Civic Party, Hong Kong Journalists Association)</i></p> <p>(vii) Considered that the licensing criteria should be conducive to the enhancement of programme diversity and safeguarding of freedom of expression. <i>(Civic Party, Hong Kong Journalists Association, Hong Kong Human Rights Monitor)</i></p>	<p>(iv) Noted.</p> <p>(v) We reiterate that the proposed licensing criteria do not in any way specify any threshold whereby an applicant must meet before it can be granted a licence. The proposed criteria would not discriminate against applicants on the ground of the scale of the proposed operation.</p> <p>(vi) The proposed licensing criteria do not in any way specify any threshold whereby an applicant must meet before it can be granted a licence.</p> <p>(vii) The proposed criterion relating to the “variety, quantity and quality of programmes” can help address the programme diversity of the broadcasting services proposed by the applicants.</p>
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		<p>table of frequency allocations issued by the International Telecommunications Union as well as the Hong Kong Table of Frequency Allocations in assessing which frequencies would be suitable for use in providing the proposed broadcasting service. (<i>Law Society of Hong Kong</i>)</p> <p>(xii) Suggested to rephrase subparagraph (a) of section 13C subsection (4) to the effect that the applicant corporation's fitness and properness should also be taken into account. (<i>Law Society of Hong Kong</i>)</p> <p>(xiii) Suggested that subsequent guidelines be issued to spell out what factors would be taken into account when assessing "financial soundness" of an applicant for sound broadcasting licence. (<i>Law Society of Hong Kong</i>)</p> <p>(xiv) Suggested that some of the licensing</p>	<p>(xii) Under section 13F of the Telecommunications Ordinance (TO), it has already been specified that the applicant for sound broadcasting licence must be a corporation. Hence, whether the corporation concerned is fit and proper for the purpose of granting sound broadcasting licence will be assessed in individual applications in accordance with the relevant provision of the TO.</p> <p>(xiii) Noted. The BA will indeed promulgate a set of guidelines under section 13CA(1) of the TO on how it will process sound broadcasting licence applications, having regard to the licensing criteria prescribed in the TO, including the financial soundness of the applicant.</p> <p>(xiv) The definition of disqualified person is</p>
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		<p>criteria might be added to the definition of “disqualified person” under section 13(A) subsection (1) of the TO. (<i>Law Society of Hong Kong</i>)</p> <p>(xv) Suggested that the applicant corporation should be evaluated as to its fitness and properness by adding parameters such as the risk of the applicant corporation being involved in money laundering, the nature of the business of the applicant corporation, the business record of the applicant corporation, etc. (<i>Law Society of Hong Kong</i>)</p> <p>(xvi) Raised concern that with unfettered discretionary power given to the CE-in-Council under the TO to grant sound broadcasting licences and a lack of meaningful criteria, the proposed legislative amendments failed to satisfy the requirement to protect freedom of expression enshrined in international human rights conventions. (<i>Hong Kong Journalists Association</i>)</p>	<p>already in place under the TO to restrict cross-media ownership, which is a separate matter. There is no need to address it in the licensing criteria.</p> <p>(xv) The definition on “fit and proper person” under the TO has referred to the need to check business record of the applicant corporation, which necessarily includes the nature of its business. The said definition has also referred to the need to check the record of the applicant corporation in situations of trust and candour, which should cover areas such as involvement in money laundering and other crimes which have a significant bearing on the credibility of the applicant corporation.</p> <p>(xvi) In Hong Kong, freedom of expression is enshrined and well protected under the Basic Law and the Hong Kong Bills of Right Ordinance. This can be demonstrated by the fact that Hong Kong is an open, free and pluralistic society where the public may freely express their views through various means, including the Internet. There is no conflict whatsoever between the protection of</p>
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		<p>(xvii) Commented that the proposed licensing criteria were far less clear than those in Bulgaria. (<i>Hong Kong Journalists Association</i>)</p> <p>(xviii) Media diversity should be included as a criterion in considering a sound broadcasting licence application. Similar change should be made to the Broadcasting Ordinance concerning the licensing of television stations. (<i>Hong Kong Journalists Association</i>)</p>	<p>freedom of expression and the regulation of scarce radio spectrum resources available in Hong Kong.</p> <p>(xvii) The licensing criteria in Hong Kong are drawn up based on local experience in considering broadcasting licence applications as well as international best practice in developed countries like US, UK, Australia, etc.</p> <p>(xviii) The existing cross-media ownership requirement under the BO can already help ensure media diversity.</p>
Power and status of the licensing authority			
	Organisations / Individuals	Views / Concerns	Administration's Response
2	<p>I. Written submissions by the following parties –</p> <p>(a) Metro Broadcast</p>	<p>(i) Supported the Chief Executive (CE)-in-Council to serve as the licensing authority. (<i>Wave Media Limited</i>)</p> <p>(ii) Considered the existing sound broadcasting</p>	<p>(i) Noted.</p> <p>(ii) Noted.</p>

	<p>Corporation Limited</p> <p>(b) Civic Party</p> <p>(c) Hong Kong Journalists Association</p> <p>II. Oral submissions on 30 November by the following parties –</p> <p>(a) Wave Media Limited</p> <p>(b) Civic Party</p> <p>(c) The Law Society of Hong Kong</p> <p>(d) Hong Kong Journalists Association</p> <p>(e) Citizens' Radio</p>	<p>regime in Hong Kong, with the enhancements to be brought about by the Bill, has struck a right balance in regulating the use of spectrum resources while at the same time facilitating the healthy growth and development of the sound broadcasting industry. (<i>Metro Broadcast Corporation Limited</i>)</p> <p>(iii) Raised concern that the law had given too wide a power to the CE-in-Council as the licensing authority, which is not an independent body as in the case of some overseas licensing regime. (<i>Hong Kong Journalists Association, Hong Kong Human Rights Monitor</i>)</p> <p>(iv) Considered it acceptable for the CE-in-Council to serve as the licensing authority as long as licence applications were vetted by an independent body beforehand. (<i>Citizens' Radio</i>)</p> <p>(v) Mentioned that in accordance with the earlier magistrate's ruling on the Citizens' Radio case, the lack of independence of the licensing authority and recommending body was considered not in accordance</p>	<p>(iii) We note that many overseas licensing authorities are also appointed by the Government. To ensure that the CE-in-Council will be provided with independent advice, all sound broadcasting licence applications are processed and recommended by the BA, which is an independent statutory authority.</p> <p>(iv) The CE-in-Council is already provided with advice from the BA which is an independent statutory authority before making licensing decision.</p> <p>(v) The magistrate's ruling in question has already been overturned by the Court of Appeal. We see no conflict between the safeguarding of freedom of expression and the need to regulate the proper use of</p>
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	<p>(f) Hong Kong Human Rights Monitor</p>	<p>with the requirement that any restrictions on the freedom of expression and speech must be prescribed by law and therefore in breach of both the Basic Law and the Hong Kong Bill of Rights. (<i>Hong Kong Journalists Association</i>)</p> <p>(vi) Considered that an independent mechanism to hear appeals from applicants other than to seek relief through judicial review should be established such that unsuccessful applicants would not be deterred from seeking redress given the high legal costs involved in judicial review. (<i>Citizens' Radio, Hong Kong Journalists Association</i>)</p>	<p>scarce spectrum resources.</p> <p>(vi) Applicants who are aggrieved by the decisions of the licensing authority may lodge an appeal by way of judicial review. This is on par with similar arrangements in many overseas jurisdictions including US, UK and Australia. Individuals who wish to seek redress through judicial review but with a lack of means may apply for legal aid. We see no sufficient justifications for change.</p>
<p>Community broadcasting</p>			
	<p>Organisations / Individuals</p>	<p>Views / Concerns</p>	<p>Administration's Response</p>
<p>3</p>	<p>I. Written submissions by the following parties –</p> <p>(a) Wave Media Limited</p>	<p>(i) Considered that the Radio Television Hong Kong, being the public service broadcaster in Hong Kong, was the most appropriate body to facilitate the participation of community groups such as ethnic minorities, pressure groups, non-governmental organisations, etc in</p>	<p>(i) Noted. In our decision on the future of public service broadcasting and RTHK made in September 2009, we have already tasked RTHK to facilitate the participation of community groups in broadcasting. RTHK will provide technical and other support for community groups in</p>

	<p>(b) Civic Party</p> <p>(c) Hong Kong Journalists Association</p> <p>II. Oral submissions on 30 November by the following parties –</p> <p>(a) Wave Media Limited</p> <p>(b) Civic Party</p> <p>(c) Hong Kong Journalists Association</p> <p>(d) Citizens’ Radio</p> <p>(e) Hong Kong Human Rights Monitor</p>	<p>broadcasting. (<i>Wave Media Limited</i>)</p> <p>(ii) Considered that digital audio broadcasting should be launched as soon as possible to facilitate community broadcasting. (<i>Civic Party</i>)</p> <p>(iii) With the additional spectrum to be released by digitisation, the Government has no reason to reserve the air waves for big companies only. Small broadcasters should also be allowed to offer their services to the public. (<i>Civic Party, Hong Kong Journalists Association</i>)</p>	<p>producing their own programmes for broadcasting on RTHK’s platform. RTHK will also establish a Community Broadcasting Involvement Fund to provide financial support to community groups concerned.</p> <p>(ii) The Government takes a market-led approach in digital audio broadcasting (DAB) and has reserved frequency spectrum for the purpose. We will keep in view market and technological development in considering the policy to introduce DAB services.</p> <p>(iii) We reiterate that the proposed licensing criteria do not in any way specify any threshold whereby an applicant must meet before it can be granted a licence. The criteria concerned are not meant to discriminate against applicants with a smaller scale of operation.</p>
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FM frequencies for sound broadcasting			
	Organisations / Individuals	Views / Concerns	Administration's Response
4	I. Oral submission on 30 November by the following party – (a) Citizens' Radio	(i) Considered that some FM frequencies between 87 MHz and 108 MHz should be available for assignment to small groups (like Citizens' Radio) for sound broadcasting purpose. <i>(Citizens' Radio)</i>	(i) Owing to the need to harmonise our radio spectrum utilisation with neighbouring places (such as Guangdong and Macao) and the mountainous terrain in Hong Kong, there is no more room for the provision of territory-wide FM sound broadcasting services in Hong Kong. Details can be found in the paper separately submitted to the Bills Committee with a title "Use for FM Radio Spectrum in Hong Kong".