

**For information on
22 July 2010**

**Legislative Council Panel
on Information Technology and Broadcasting**

**Applications for Domestic Free Television
Programme Service Licences**

Purpose

This paper sets out the framework for processing applications for domestic free television programme service licences.

Statutory Requirements

2. Section 10(1) of the Broadcasting Ordinance (BO) provides that after considering recommendations made by the Broadcasting Authority (“BA”), the Chief Executive in Council (“CE in C”) may grant a domestic free television programme service licence. Sections 9(1) and (2) of the BO stipulate that an application shall be submitted to the BA in the specified form and that the BA shall consider the application and make recommendations thereon to the CE in C¹.

3. Section 9(3) of the BO provides that the BA shall consult the public on the application by publishing a notice in the Gazette stating the name of the applicant and the type of licence sought by the applicant together with such other particulars as the BA thinks fit². Interested members of the public may forward their comments or views on the application to the BA by a date specified in the notice, being a date not less than 21 days after the notice is published. The BA shall consider the comments or views received. Extracts of the relevant provisions are at **Annex A**.

¹ The BA has issued a guidance note and a specified form for applications for domestic free television programme service licence (BA S.F.07/2002).

² Pursuant to the BA’s public consultation guidelines, in addition to publishing of the applications in the Gazette, the applications were also published in two newspapers (one English and one Chinese) as well as the BA’s website. Moreover, the BA has promulgated a specified form (BA S.F. 15/2006) setting out the detailed information to be provided for the purpose of consultation. This includes corporate information, programming information, technical information and other relevant information of the application.

Applications on hand

4. The BA received applications from City Telecom (HK) Limited (“CTI”), Fantastic Television Limited (“Fantastic TV”) and HK Television Entertainment Company Limited (“HKTVE”) on 31 December 2009, 15 January 2010 and 31 March 2010 respectively. The BA is processing the applications in accordance with the BO and established procedures.

5. The applications received contain commercially sensitive information. The BA has consulted the three applicants and sought their agreement on the details of the applications to be published in the notices for public consultation. The notices concerning the applications of CTI, Fantastic TV and HKTVE are at **Annexes B, C and D** respectively. The notices contain the following information in respect of the applications –

- (a) Company information
 - (i) principal shareholders;
 - (ii) compliance with statutory requirements;
 - (iii) financial soundness;
 - (iv) managerial and technical expertise; and
 - (v) quality control and compliance.

- (b) Programming information
 - (i) programming to be provided, by nature, and number of channels and extent of local production;
 - (ii) compliance with programming requirements; and
 - (iii) the daily operating hours of the service.

- (c) Technical information
 - (i) transmission mode to be employed;
 - (ii) geographic coverage and service roll-out;
 - (iii) proposed service coverage milestones; and
 - (iv) equipment and facilities required at the customer end.

- (d) Other information
 - (i) commencement of service;
 - (ii) construction work required and its impact on the public; and
 - (iii) the benefit brought by the implementation of the proposal to the local industry, audience/customer and the economy as a whole.

The information provided by the applicants represents the applicants' statement of intent the content of which should not be construed as acceptance by the BA or Government. the BA and the Government reserve the power, discretion and rights as enshrined in the law and in accordance with the relevant prevailing policies.

Public Consultation

6. The BO stipulates that the consultation for licence application should last for not less than 21 days. Taking into account the need for transparency, a reasonable period to collect public views and the need to process the application in a timely manner, the BA has decided to carry out a one-month consultation.

7. Pursuant to the BO and the BA's consultation guidelines, the BA published the notices on 9 July 2010 in the Gazette, one Chinese newspaper and one English newspaper, and uploaded them onto the BA's website. Members of the public are invited to forward their views on the applications by post, fax or email to the BA by 8 August 2010.

Criteria for Processing the Applications

8. As set out in the BA guidance note for domestic free television programme service licence applications, the BA will assess the application in accordance with the following criteria –

- (a) financial soundness and commitment to investment;
- (b) proven managerial and technical expertise;
- (c) the variety, quantity and quality of programmes;
- (d) technical soundness and a satisfactory quality of service;
- (e) speed of service roll-out;
- (f) minimum inconvenience to members of the public;
- (g) benefit to the local broadcasting industry, viewers and the economy as a whole; and
- (h) quality control and compliance.

The BA will also take into account public views received in processing the applications. It will submit its recommendations on the applications to the CE in C as soon as possible after it has assessed the applications.

**Commerce and Economic Development Bureau
July 2010**

**Excerpts of Relevant Provisions On
Applications for Television Programme Service Licences**

Broadcasting Ordinance (Cap. 562)

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9. Recommendations by the Broadcasting Authority on Applications for Licences

(1) An application for the purposes of section 8(1) or (2) shall be submitted to the Broadcasting Authority in the specified form.

(2) The Broadcasting Authority shall consider applications for a domestic free television programme service licence or a domestic pay television programme service licence and make recommendations thereon to the Chief Executive in Council.

(3) (a) cause a notice to be published in the Gazette as soon as is practicable –

(i) stating the name of the applicant and the type of licence sought by the applicant together with such other particulars as the Broadcasting Authority thinks fit; and

(ii) stating that members of the public who are interested may make representations on the application to the Broadcasting Authority by a date specified in the notice, being a date not less than 21 days after the notice is published; and

(b) consider the representations, if any, received by the date.

10. Grant of Licences

(1) The Chief Executive in Council may, after considering recommendations made pursuant to section 9(2), grant a licence under section 8(1) subject to such conditions as he thinks fit specified in the licence.

Broadcasting Ordinance (Chapter 562)

Notice is hereby given that the Broadcasting Authority has received an application from City Telecom (H.K.) Limited, a company duly incorporated in Hong Kong whose registered office is situated at Level 39, Tower 1, Metroplaza, No. 223 Hing Fong Road, Kwai Chung, N.T., for a domestic free television programme service licence.

The particulars of the application in this Notice, as set out below, are provided by City Telecom (H.K.) Limited. Nothing in this notice shall affect or prejudice any powers, discretion and rights of the Broadcasting Authority or the Government.

1. COMPANY INFORMATION

Principal shareholders

City Telecom (H.K.) Limited (“CTI”) is a publicly listed company in Hong Kong under HKEx (Stock Code: 1137) and the U.S. under NASDAQ (Ticker Symbol: CTEL). As at 6 July 2010, the company’s shares are held by Top Group International Limited (44.42%) and other shareholders including Mr Ricky Wong Wai Kay (0.93%), Mr Lai Ni Quiaque and Mrs Lai Michelle Pek Lian (1.36%), Mr Paul Cheung Chi Kin (2.27%), Worship Limited (3.26%) and general public (47.46%).

Compliance with statutory requirements

- (a) CTI submits that it is a company registered and incorporated in Hong Kong under the Companies Ordinance (Cap. 32) in 1992.
- (b) CTI submits that it is not a subsidiary of a corporation¹.
- (c) CTI submits that the company and all persons exercising control of the company will be and remain fit and proper persons².

¹ Section 8(3) of the Broadcasting Ordinance and section 2 of Schedule 4 to the Ordinance prohibit a domestic free television programme service licence to be granted to or held by a company which is the subsidiary of a corporation. Under section 2 of the Ordinance, “subsidiary” has the same meaning as in the Companies Ordinance.

² Section 1(6) of Schedule 1 to the Broadcasting Ordinance provides that a person exercises control of a corporation if he is –

- (a) a director or principal officer of the corporation;
- (b) the beneficial owner of more than 15% of the voting shares in the corporation;
- (c) a voting controller of more than 15% of the voting shares in the corporation; or
- (d) a person who has the power, by virtue of any powers conferred by the Memorandum and Articles of Association or other instrument regulating that corporation or any other corporation, to ensure that the affairs

- (d) CTI submits that all the directors and principal officers of CTI, including the principal officer in charge of the selection, production or scheduling of television programmes, are ordinarily resident in Hong Kong and have been so resident for at least one continuous period of not less than 7 years³.
- (e) CTI submits that the control and management of CTI will be bona fide exercised in Hong Kong, the majority of its directors described in (d) will actively participate in the direction of the company⁴.
- (f) CTI submits that there are no disqualified persons⁵ exercising control of CTI or vice versa. While CTI has two subsidiaries designated as advertising agencies, i.e. IDD1600 Company Limited and CTI Marketing Company Limited, which may be construed as an “advertising agency” under the Broadcasting Ordinance, these companies have never conducted business as an advertising agency or exercised control of an advertising agency, nor will they do so in future. As such, CTI submits that it does not exercise control of any advertising agencies. Upon the grant of the licence, CTI will apply for deregistration of the two subsidiaries.
- (g) CTI submits that there are no unqualified voting controllers⁶ holding,

of the first-mentioned corporation are conducted in accordance with the wishes of that person.

Under section 21(1) of the Broadcasting Ordinance, a television programme service licensee and any person exercising control of the licensee shall be and remain a fit and proper person.

³ Under section 8(4)(a)(iv) of the Broadcasting Ordinance, a domestic free television programme service licence shall not be granted to or held by a company unless, except with the prior approval in writing of the Broadcasting Authority, the majority of the directors of the company and the majority of the principal officers of the company, including the principal officers of the company in charge of the selection, production or scheduling of television programmes, is each an individual who is for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of "ordinarily resident in Hong Kong" in section 2(1) and has been so resident for at least one continuous period of not less than 7 years.

⁴ Under sections 8(4)(a)(i) to (iii) of the Broadcasting Ordinance, a domestic free television programme service licence shall not be granted to or held by a company unless –

- (i) the company complies with paragraph (b) of the definition of "ordinarily resident in Hong Kong" in section 2(1);
- (ii) the majority of the directors required under section 8(4)(a)(iv) actively participate in the direction of the company;
- (iii) a quorum of every meeting of the directors of the company has a majority of directors who is each for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of "ordinarily resident in Hong Kong" in section 2(1) and has been so resident for at least one continuous period of not less than 7 years.

⁵ Generally, under sections 4 to 7 of Schedule 1 to the Broadcasting Ordinance, television programme service licensees, sound broadcasting licensees, advertising agencies, proprietors of newspapers printed or produced in Hong Kong, and all persons exercising control of them, as well as associates of the above, are all disqualified persons in relation to a domestic free television programme service licensee.

⁶ Under section 1 to Schedule 1 of the Broadcasting Ordinance, “unqualified voting controller” means a voting controller who is not a qualified voting controller. A qualified voting controller means, inter alia, a voting controller who –

acquiring or exercising or causing or permitting to be exercised 2% or more of the total voting control of CTI⁷.

- (h) CTI submits that CTI is empowered under its Memorandum and Articles of Association to comply fully with the provisions of the Broadcasting Ordinance and the terms and conditions of the domestic free television programme service licence.

Financial soundness

CTI submits that its subsidiary, Hong Kong Broadband Network Limited (“HKBN”) has invested over HK\$3 billion on the construction of a territory-wide fibre network in Hong Kong. Riding on HKBN’s fibre transmission network, CTI envisages that the capital expenditure and operating expenditure in the first six years of operation are projected at \$1,052 million. CTI plans to invest \$180 million on capital expenditure and \$394 million on programming (excluding capital expenditure) (self-produced programmes) in the first six years⁸.

CTI submits that the funding requirement of the proposed service will be supported by the CTI group. CTI is a listed company in Hong Kong with a market capitalisation of \$3.3 billion as at 6 July 2010. The total revenue of the company was \$1.5 billion for 2009. According to CTI’s submission, the financial status of the company is robust and should be adequate for funding the investment and operating activities of the proposed service.

Managerial and technical expertise

CTI submits that its management team has managerial experience and technical

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- (i) in the case of an individual, is ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of "ordinarily resident in Hong Kong" in section 2(1) of this Ordinance and has been so resident for at least one continuous period of not less than 7 years;
- (ii) in the case of a corporation, is ordinarily resident in Hong Kong.

“Ordinarily resident in Hong Kong” means –

- (a) in relation to an individual, residence in Hong Kong for not less than 180 days in any calendar year, or residence in Hong Kong for not less than 300 days in any two consecutive calendar years;
- (b) in relation to a corporation, a corporation which satisfies the following –
- (i) if the number of directors who actively participate in its direction –
- (A) is 2, each is an individual;
- (B) is more than 2, each of a majority of them is an individual, for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) and has been so resident for at least one continuous period of not less than seven years; and
- (ii) the control and management of the company is bona fide exercised in Hong Kong.

⁷ Under section 20(1) of Schedule 1 to the BO, an unqualified voting controller shall not without the prior approval of the BA hold or acquire 2% or more of the total voting control of a domestic free television programme licensee.

⁸ CTI submits that operating expenditure (excluding programming expenditure) in the first six years is projected at \$478 million.

expertise, comprising businessmen, professionals, executives and experts with experience in both telecommunications and broadcasting. Its subsidiary, HKBN, has been providing a subscription-based video service over the Internet in Hong Kong⁹ since 2003.

According to CTI's submission, all members of the Board of Directors are nominated and appointed by shareholders at the Annual General Meeting or Extraordinary General Meeting and the total number of Directors shall be not less than three. Currently, the Directors appointed are Mr Ricky Wong Wai Kay, Mr Paul Cheung Chi Kin, Mr William Yeung Chu Kwong, Mr Lai Ni Quiaque, Dr Moses Cheng Mo Chi, Mr John Lee Hon Ying, Dr Chan Kin Man and Mr Jefferson Peh Tun Lu.

Mr William Yeung Chu Kwong is the Chief Executive Officer ("CEO") overseeing the day-to-day operation of CTI under the direction of the Board of Directors. CTI plans to have nine divisions: Programming, Production, Finance, External Affairs, Engineering, Corporate Communications, Sales and Marketing, Talent and Administration, and News and Information Services for the operation of the domestic free television services. They will be overseen by a management team led by the CEO. The management team will comprise at least one Managing Director, News Controller and a number of Senior Managers.

Quality control and compliance

CTI submits that a designated operation manager will be responsible for overseeing the day-to-day operation of the broadcasting centre, on a round-the-clock basis, to ensure that the proposed service will meet the availability of not less than 99.98%.

CTI submits that it will set up a Standards and Practice Team to assure compliance of all the programme contents of CTI with applicable laws, licence conditions and codes of practice and directions or orders issued or made by the Broadcasting Authority. The Standards and Practice Team will be responsible for checking and vetting the programme and advertising content, in particular programmes that are targeting children, by strictly adhering to the codes of practice issued by the Broadcasting Authority. It will work closely with the scheduling team taking into account the likely viewership during the relevant hours of the day, in particular during the family viewing hours.

⁹ The Broadcasting Authority has ruled that HKBN's subscription-based video service is provided on the Internet and exempted from the licensing regime of the Broadcasting Ordinance.

2. PROGRAMMING INFORMATION

Programmes to be provided, by nature, and number of channels and extent of local production

CTI submits that it aims to meet the needs of its audience who are interested in knowledge and information about Hong Kong, the Mainland and the world.

CTI plans to operate a 12-channel domestic free television programme service (i.e. 2 self-produced channels, 4 turn-around channels¹⁰ and 6 partnership channels¹¹) at launch to be broadcast in both analogue and digital formats. CTI, however, has not indicated which channel will be designated as English language service as currently required for domestic free television programme service licensees. The number of channels will increase to 20 (i.e. 2 self-produced channels, 8 turn-around channels and 10 partnership channels) within 3 years of launch and up to 30 (i.e. 2 self-produced channels, 11 turn-around channels and 17 partnership channels) within 6 years of launch.

CTI plans to produce and/or commission local news, current affairs and entertainment programmes for its self-produced Cantonese channels. It plans to broadcast 1 to 3 hours of locally produced programmes daily during prime time (i.e. between 7:00p.m. and 11:00p.m.). Not less than 1.5 hours of prime time programmes will be first-run programmes.

CTI plans to acquire programmes from branded channel providers and producers in the Mainland and overseas.

CTI submits that it plans to provide, in its digital programme service, standard definition television programmes but not high definition television programmes in the first six years but will consider offering high definition television programmes if there are overwhelming market demands.

Compliance with programming requirements

CTI submits that it commits to carry Broadcasting Authority publicity materials, announcements in the public interest and television programmes (including RTHK programmes and educational programmes for school) supplied by the Government as currently required for domestic free television programme service licensees.

¹⁰ These are acquired channels of which the channel providers pay the carriage fee to CTI. According to CTI's submission, these channels will comprise financial news, information programmes and programmes for regional affairs.

¹¹ These are acquired channels of which the channel providers share revenue with CTI. According to CTI's submission, these channels will comprise children's programmes, adventure-reality programmes, international news programmes and science programmes.

CTI submits that it should not be subject to the requirements to carry positive programmes¹² other than those supplied by the Government as currently required for domestic free television programme service licensees, taking into account that it does not use UHF frequencies. However, CTI is prepared to provide a minimum amount of positive programmes provided that UHF frequencies are allocated to it to provide its service after the switch-off of the analogue television services.

CTI submits that subtitling service will be provided on the two self-produced channels for emergency announcements only¹³. Subject to programme sources, some of the programmes originated from the content providers may provide subtitling.

The daily operating hours of the service

CTI plans to provide 12 hours to 24 hours daily broadcasting¹⁴.

3. TECHNICAL INFORMATION

Transmission mode to be employed

CTI plans to hire the fibre network operated by its subsidiary, HKBN, to transmit the proposed service in both analogue format and digital terrestrial television (DTT) format of Hong Kong. Television signals will be modulated to the designated channels for transmission over the buildings' existing in-building coaxial cable distribution systems ("IBCCDS") to reach domestic households covered by the IBCCDS. The choice of deploying IBCCDS channels for receiving various CTI's free television services is to be decided by the residents of concerned buildings.

Geographic coverage and service roll-out

CTI submits that the fibre network of HKBN currently reaches 78% of households, i.e. 1.8 million households and all these households will be able to access the proposed service within 36 months after the grant of licence, and the remaining

¹² The positive programme requirements comprise the minimum amount of news, documentary, current affairs programmes, and programmes for children to be broadcast on each of the licensee's services, and programmes for young people, senior citizens and on arts and culture, to be broadcast on the licensee's Cantonese language service.

¹³ The domestic free television programme service licensees are currently required to provide subtitling for all news, current affairs, weather programmes and emergency announcements on its analogue/simulcast digital channels. In addition, on the Cantonese channels, Chinese subtitles must be provided for programmes shown between 7:00pm and 11:00pm, and on the English channels, two hours per week of English programmes with educational value targeting teenagers shall carry English subtitles.

¹⁴ Section 10 of Schedule 4 to the Broadcasting Ordinance provides that the minimum duration of each language television programme service shall not be less than 5 hours for each day.

22% of households will be covered either by the extended fibre network of HKBN (or other operators) or by vacated spectrum released following the analogue switch-off. CTI intends to achieve territory-wide coverage within 6 years after launch.

CTI submits that HKBN will extend its fibre coverage to (a) the public estates, private developments (including village houses and tenement buildings) or (b) the demarcation point within 10 metres from the public estate and private developments if no building access approval from the Building Management Offices (“BMOs”)/Incorporated Owners (“IOs”) can be obtained.

CTI proposes to install a set-top box and other reception equipment at the headend of each residential building to enable the domestic households to receive the proposed service. Coordination with BMOs or IOs is required for installation of the relevant equipment inside the buildings.

CTI submits that it will bear the cost for the transmission of video signal to buildings and that the BMOs/IOs are expected to make available the relevant equipment at their own cost for the reception of the proposed service and CTI may provide one-off subsidy during the first two years. CTI submits that it will provide the BMOs/IOs technical support and advice on the choice of equipment and network design free of charge and coordinate interconnection arrangement inside buildings with network operators.

Proposed service coverage milestones¹⁵

CTI commits to pass: –

- (a) not less than 100,000 domestic premises within 9 months after service commencement;
- (b) not less than 500,000 domestic premises within 24 months after service commencement; and
- (c) not less than 1,500,000 domestic premises within 36 months after service commencement.

Equipment and facilities required at the customer end

CTI submits that viewers can receive the proposed analogue domestic free television programme service by any existing television set. In the case of digital channels, if a viewer’s television set is not equipped to receive DTT signal, a standard set-top box for the reception of such signal would be required.

¹⁵ CTI submits that the proposed milestones are its minimum commitments and may not tally with CTI’s plan stated in the application.

4. OTHER INFORMATION

Commencement of service

CTI plans to commence the 12-channel service within 9 months after the grant of licence.

Construction work required and its impact on the public, if any

CTI submits that riding on the existing infrastructure already built by HKBN, there is no need to undertake large-scale civil works for rolling out the proposed service. However, certain upgrading works inside the buildings are required to connect HKBN's fibre network to the IBCCDS headend. The actual time spent for each upgrade work in a typical building will be less than half a day. Due to environmental constraints, upgrade work in tenement buildings and buildings without appropriate connecting space will be determined on a case-by-case basis.

The benefit brought by the implementation of the proposal to the local industry, audience/customers and the economy as a whole

CTI submits that it is able to contribute to the Hong Kong society in the following ways: –

- (a) *Bringing more programming choice for viewers* – CTI submits that it will adopt an innovative programming strategy with a view to bringing a wider choice of programmes to viewers, promoting fair and balanced views on social and public affairs, and broadening the reach of Hong Kong people to the Mainland and the world.
- (b) *Fostering competition in the free television market* – CTI submits that the current state of domestic free television market can improve if more competitors are present in the market. CTI is prepared to be a new competitor. With CTI's track record in the telecommunications industry, CTI envisages that it can introduce a new model in domestic free television programme service in Hong Kong.
- (c) *Promoting the development of local television industry* – CTI believes that a domestic free television programme service licensee should provide opportunities to different producers so that they can access the audience equally. The proposed service platform of CTI will serve as a catalyst to stimulate development of the local television industry, thus facilitating the development of creative industries and rectifying the distorted situation of the television industry in Hong Kong.
- (d) *Creating job opportunities and maintaining Hong Kong's position at the*

forefront of broadcasting technology – CTI submits that the substantial capital investments of CTI in building the free television service infrastructure will create job opportunities and help Hong Kong maintain its leading position as one of the most advanced network infrastructures in the world.

Members of the public may provide comments on CTI's application to the Broadcasting Authority by **8 August 2010** by mail, fax or e-mail as follows: –

The Broadcasting Authority
c/o Television and Entertainment Licensing Authority
39th Floor, Revenue Tower
5 Gloucester Road
Wan Chai
Hong Kong

Fax Number: 2507 2219
2598 5509 (Confidential)

E-mail: ba@tela.gov.hk

All comments received will not be made in confidence unless specified otherwise. We may reproduce and publish the submissions received in whole or in part (except confidential information as marked) in any form without seeking the permission of or providing acknowledgement to the party making the submission.

9 July 2010
Secretary, Broadcasting Authority

Broadcasting Ordinance (Chapter 562)

Notice is hereby given that the Broadcasting Authority has received an application from Fantastic Television Limited, a company duly incorporated in Hong Kong whose registered office is situated at 16th Floor, Ocean Centre, Harbour City, Canton Road, Kowloon, Hong Kong, for a domestic free television programme service licence.

The particulars of the application in this Notice, as set out below, are provided by Fantastic Television Limited. Nothing in this notice shall affect or prejudice any powers, discretion and rights of the Broadcasting Authority or the Government.

1. COMPANY INFORMATION

Principal Shareholders

Fantastic Television Limited (“Fantastic TV”) is currently a wholly-owned subsidiary of i-CABLE Communications Limited (“i-CABLE”), a publicly listed company in Hong Kong under HKEx (Stock Code: 1097) which is in turn a subsidiary of The Wharf (Holdings) Limited¹. Fantastic TV submits that two independent discretionary trustees, i.e. Discretionary Trustee A and Discretionary Trustee B, will each hold 42.55% of the voting shares and i-CABLE will retain 14.9% voting shares (and 100% non-voting shares) in Fantastic TV upon receiving approval-in-principle to grant a licence by the Chief Executive in Council (“CE in C”), or at any other time that the CE in C considers appropriate. Fantastic TV submits that the two discretionary trustees and i-CABLE will act independently in exercising their respective powers (including the voting power and the power to appoint directors) in Fantastic TV.

According to Fantastic TV’s submission, the two discretionary trustees will be an individual or corporation ordinarily resident in Hong Kong with financial, business and/or professional background and will be able to exercise the discretion under the trust deed without consultation with i-CABLE or third parties.

Compliance with Statutory Requirements

Fantastic TV submits that:

- (a) it is a company registered and incorporated in Hong Kong under the

¹ Another subsidiary of i-CABLE, i.e. Hong Kong Cable Television Limited (“HKCTV”) currently holds a domestic pay television programme service licence under the Broadcasting Ordinance.

Companies Ordinance (Cap. 32) in 2009.

- (b) upon completion of the corporate restructuring as described above, Fantastic TV will not be a subsidiary of a corporation as required by the Broadcasting Ordinance².
- (c) Fantastic TV and all persons exercising control of Fantastic TV will be, and remain, fit and proper persons³.
- (d) the majority of the directors and principal officers of Fantastic TV, including the principal officers in charge of the selection, production or scheduling of television programmes, will be ordinarily resident in Hong Kong and will have been so resident for at least one continuous period of not less than 7 years⁴.
- (e) the control and management of Fantastic TV will be bona fide exercised in Hong Kong, the majority of its directors described in (d) will actively participate in the direction of the company⁵.

² Section 8(3) of the Broadcasting Ordinance and section 2 of Schedule 4 to the Ordinance prohibit a domestic free television programme service licence to be granted to or held by a company which is the subsidiary of a corporation. Under section 2 of the Ordinance, "subsidiary" has the same meaning as in the Companies Ordinance.

³ Section 1(6) of Schedule 1 to the Broadcasting Ordinance provides that a person exercises control of a corporation if he is –

- (a) a director or principal officer of the corporation;
- (b) the beneficial owner of more than 15% of the voting shares in the corporation;
- (c) a voting controller of more than 15% of the voting shares in the corporation; or
- (d) a person who has the power, by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating that corporation or any other corporation, to ensure that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person.

Under section 21(1) of the Broadcasting Ordinance, a television programme service licensee and any person exercising control of the licensee shall be and remain a fit and proper person.

⁴ Under section 8(4)(a)(iv) of the Broadcasting Ordinance, a domestic free television programme service licence shall not be granted to or held by a company unless, except with the prior approval in writing of the Broadcasting Authority, the majority of the directors of the company and the majority of the principal officers of the company, including the principal officers of the company in charge of the selection, production or scheduling of television programmes, is each an individual who is for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of "ordinarily resident in Hong Kong" in section 2(1) of the Broadcasting Ordinance and has been so resident for at least one continuous period of not less than 7 years.

⁵ Under sections 8(4)(a)(i) to (iii) of the Broadcasting Ordinance, a domestic free television programme service licence shall not be granted to or held by a company unless –

- (i) the company complies with paragraph (b) of the definition of "ordinarily resident in Hong Kong" in section 2(1) of the Broadcasting Ordinance;
- (ii) the majority of the directors required under section 8(4)(a)(iv) of the Broadcasting Ordinance actively participate in the direction of the company;
- (iii) a quorum of every meeting of the directors of the company has a majority of directors who is each for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of "ordinarily resident in Hong Kong" in section 2(1) of the Broadcasting Ordinance and has been so resident for at least one

- (f) there will be no disqualified persons⁶ exercising control of Fantastic TV upon completion of the corporate restructuring as described above. i-CABLE, following the corporate restructuring, will hold less than 15% of the total voting shares in Fantastic TV and will not be a person exercising control of Fantastic TV within the meaning of “exercise control” under the Broadcasting Ordinance (please see Footnote 3).
- (g) there are no unqualified voting controllers⁷ holding, acquiring, exercising or causing or permitting to be exercised 2% or more of the total voting control of Fantastic TV⁸.
- (h) Fantastic TV is empowered under its Memorandum and Articles of Association to comply fully with the provisions of the Broadcasting Ordinance and the terms and conditions of the domestic free television programme service licence.

Financial soundness

Fantastic TV submits that the capital expenditure and operating expenditure in the first six years of operation are projected to be over \$1 billion in aggregate.

continuous period of not less than 7 years.

⁶ Generally, under sections 4 to 7 of Schedule 1 to the Broadcasting Ordinance, television programme service licensees, sound broadcasting licensees, advertising agencies, proprietors of newspapers printed or produced in Hong Kong, and all persons exercising control of them, as well as associates of the above, are all disqualified persons in relation to a domestic free television programme service licensee.

⁷ Under section 1 to Schedule 1 of the Broadcasting Ordinance, “unqualified voting controller” means a voting controller who is not a qualified voting controller. A qualified voting controller means, inter alia, a voting controller who—

- (i) in the case of an individual, is ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of “ordinarily resident in Hong Kong” in section 2(1) of the Broadcasting Ordinance and has been so resident for at least one continuous period of not less than 7 years;
- (ii) in the case of a corporation, is ordinarily resident in Hong Kong.

“Ordinarily resident in Hong Kong” means –

- (a) in relation to an individual, residence in Hong Kong for not less than 180 days in any calendar year, or residence in Hong Kong for not less than 300 days in any two consecutive calendar years;
- (b) in relation to a corporation, a corporation which satisfies the following –
 - (i) if the number of directors who actively participate in its direction –
 - (A) is 2, each is an individual;
 - (B) is more than 2, each of a majority of them is an individual, for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) and has been so resident for at least one continuous period of not less than seven years; and
 - (ii) the control and management of the company is bona fide exercised in Hong Kong.

⁸ Under section 20(1) of Schedule 1 to the BO, an Unqualified Voting Controller shall not without the prior approval of the BA hold or acquire 2% or more of the total voting control of a domestic free television programme licensee.

Fantastic TV plans to invest \$39 million on capital expenditure and \$968 million on programming (excluding capital expenditure) in the initial six years⁹.

Fantastic TV submits that i-CABLE will fully support Fantastic TV financially. As at 6 July 2010, i-CABLE's market capitalization has reached approximately \$2.2 billion. i-CABLE's total revenue for 2009 was approximately \$1.8 billion. According to Fantastic TV's submission, it is capable of bearing the financial risks of variations in the costs of establishing and maintaining the proposed service and in the revenue from advertisers.

Managerial and technical expertise

Fantastic TV submits that its management team will comprise qualified and experienced professionals of the broadcasting industry. A person with substantial experience in the local television industry will be appointed as the Chief Executive Officer and Head of Programming.

At the initial launch of service, Fantastic TV plans to enter into service agreements with i-CABLE and its relevant subsidiaries (which provide programme production, airtime sales or television and telecommunications services) to provide Fantastic TV with the necessary assistance at frontline or operational levels. Fantastic TV submits that it will set up its own team to support the free television operations in the medium and longer terms.

Fantastic TV submits that following the corporate restructuring as described above, the current Board of Directors of Fantastic TV, comprising Mr Stephen Ng Tin Hoi and Mr William Kwan Jut Ho, will be replaced by a new Board comprising seven (or a multiple of seven) directors to be nominated and appointed by i-CABLE and the two trustees in accordance with the Articles of Association of Fantastic TV.

Quality control and compliance

Fantastic TV submits that appropriate internal monitoring measures will be put in place to ensure that it will comply with all relevant laws, regulations and codes of conduct in providing the service. Fantastic TV plans to set up a monitoring team comprising the Manager, Programme Executive, Programme Officer and Assistant Programme Officer with relevant experience, knowledge and expertise in advising compliance matters.

According to Fantastic TV's submission, the Manager and Programme Executive will take part in production meetings. Workshops will be held regularly for production staff with a view to upholding and enhancing programming standards.

⁹ Fantastic TV submits that operating expenditure (excluding programming expenditure) in the first six years is projected at \$169 million.

The monitoring team will preview all local productions and acquired programmes prior to broadcast (except live events). Appropriate warnings will be assigned to television programmes if necessary and the relevant requirements for family viewing hours will be tightly observed. Moreover, advertising materials will be handled separately by the advertising compliance team.

2. PROGRAMMING INFORMATION

Programmes to be provided, by nature and number of channels and extent of local production

Fantastic TV submits that it aims to provide high quality entertainment and information programme choice to Hong Kong viewers.

Fantastic TV plans to operate a two-channel (Cantonese and English) domestic free television programme service in both analogue and digital formats.

According to Fantastic TV's submission, the Cantonese channel will be a general entertainment channel targeting mass audience, comprising news, finance, information, entertainment, children's programmes, sports and movies. Over 70% of prime-time programmes on the channel will be produced locally and substantially all prime-time programmes are first-run programmes.

The English channel, on the other hand, will emphasize acquired programmes including documentaries, lifestyle, news, information and financial programmes.

Fantastic TV submits that it plans to provide, in its digital programme service, standard definition television programmes but not high definition television programmes at the outset to enable maximum reach for the service.

Compliance with programming requirements

Fantastic TV submits that it will carry positive programmes¹⁰, Broadcasting Authority publicity materials, announcements in the public interest and television programmes (including RTHK programmes and educational programmes for schools) supplied by the Government as currently required for domestic free television programme service licensees.

¹⁰ The positive programme requirements comprise the minimum amount of news, documentary, current affairs programmes and programmes for children to be broadcast on each of the licensee's service, and programmes for young persons, senior citizens and art and cultures, to be broadcast on the licensee's Cantonese language service.

Fantastic TV submits that subtitling¹¹ will be provided in phases – initially on taped news programmes and gradually extended to live news programmes.

The daily operating hours of the service

Fantastic TV plans to provide 24 hours daily broadcasting¹².

3. TECHNICAL INFORMATION

Transmission mode to be employed

Fantastic TV plans to hire i-CABLE's Hybrid Fiber Coaxial ("HFC") network to transmit the proposed service to buildings. The proposed service signals will be transmitted in analogue I/PAL format and in digital terrestrial television ("DTT") format.

Geographical coverage and service roll-out

Fantastic TV plans to roll out the proposed service within six months upon service launch to buildings which are already covered by i-CABLE's network¹³. In some buildings, households can only access Fantastic TV's proposed service after interconnection with building's in-building coaxial cable distribution system ("IBCCDS"). The remaining households will be covered by UHF frequencies released following the switch-off of analogue terrestrial television broadcasting.

Equipment and facilities required at the customer end

¹¹ The domestic free television programme service licensees are currently required to provide subtitling for all news, current affairs, weather programmes and emergency announcements on their analogue/simulcast digital channels. In addition, on the Cantonese channels, Chinese subtitles must be provided for programmes shown between 7:00pm and 11:00pm, and on the English channels, two hours per week of English programmes with educational value targeting teenagers shall carry English subtitles.

¹² Section 10 of Schedule 4 to the Broadcasting Ordinance provides that the minimum duration of each language television programme service shall not be less than 5 hours for each day.

¹³ Fantastic TV submitted that i-CABLE's HFC network now covers 2.15 million households (or 95% of Hong Kong households). However, in some buildings covered by i-CABLE's HFC network, the households concerned can only access Fantastic TV's service after interconnection of the i-CABLE's HFC network with the IBCCDS is completed.

Fantastic TV proposes to deploy three VHF channels and one UHF channel¹⁴ for distribution of the proposed free television service via IBCCDS and/or i-CABLE's network.

Buildings with i-CABLE's network and Building's own IBCCDS in place ("Dual System Buildings")

Fantastic TV submits the following : –

- (a) Residents who are connected to i-CABLE's network can receive the proposed service in analogue format by tuning their television to prescribed frequencies, or receive the proposed service in digital format via their own DTT set-top boxes or on integrated digital television sets.
- (b) Residents not connected to i-CABLE's network may receive the proposed service in analogue and/or digital formats via the building's IBCCDS, after interconnection between the building's IBCCDS and i-CABLE's network. In such cases, Fantastic TV will provide its television signals free of charge to buildings and will offer interconnection recommendations and guidelines if necessary.

Buildings with only i-CABLE's network in place ("Single System Building")

Fantastic TV submits that residents can receive the proposed service readily, without having to make interconnection.

4. OTHER INFORMATION

Commencement of service

Fantastic TV plans to commence the Cantonese and English channels within 6 months and 24 months respectively after the grant of licence.

Construction work required and its impact on the public, if any

Fantastic TV submits that neither construction work nor installation of new equipment in building ends is required. In case of Dual System buildings, however, IBCCDS owners need to install channel filter or channel converter for signal tapping from i-CABLE's network and signal injection to IBCCDS. The work involves (1) laying a coaxial cable from i-Cable HFC tap to Satellite Master Antenna Television (SMATV)/ Communal Aerial Broadcast Distribution (CABD)

¹⁴ They are C43 (390-398MHz), C44 (398-406MHz) and C45 (406-414 MHz) in the VHF band and E57 (758-766 MHz) in the UHF Band.

headend; (2) installing channel filter or channel converter at SMATV/CABD headend; and (3) injecting the filtered or converted signal to the SMATV/CABD network.

The benefit brought by the implementation of the proposal to the local industry, viewers/consumers and the economy as a whole

Fantastic TV submits that it is able to contribute to the Hong Kong society in the following ways: –

- (a) *Enhancing competition* – Fantastic TV submits that the granting of new licence to the applicant will introduce real competition into the free television market, which is constantly dominated by one of the two incumbent operators. The benefits to the viewing public will be more choices, better programming; and to advertisers, more platform choices to place their commercials.
- (b) *Creating job opportunities* – Fantastic TV submits that the establishment of a new free television station will create employment opportunities in various areas including content production, network operations, sales and marketing, and administration.
- (c) *No cost to the public* – Fantastic TV submits that, except minor technical cost for network connections (as mentioned under “Technical Information” above), no cost is incurred to the public as the proposed service will be delivered via an existing HFC network, which will be hired by Fantastic TV to transmit its service.
- (d) *Immediate Rollout* – Fantastic TV submits that since its programming and infrastructural service delivery system are readily available, a lengthy lead time for service launch is not required. The proposed service of the Cantonese channel can be rolled out within 6 months, covering over 2.15 million households (or 95% of the households) in Hong Kong, which would exceed the current coverage of DTT provided by the two incumbent operators.

Members of the public may provide comments on Fantastic TV’s application to the Broadcasting Authority by **8 August 2010** by mail, fax or e-mail as follows: –

The Broadcasting Authority
c/o Television and Entertainment Licensing Authority
39th Floor, Revenue Tower
5 Gloucester Road
Wan Chai

Hong Kong

Fax Number: 2507 2219
2598 5509 (Confidential)

E-mail: ba@tela.gov.hk

All comments received will not be made in confidence unless specified otherwise. We may reproduce and publish the submissions received in whole or in part (except confidential information as marked) in any form without seeking the permission of or providing acknowledgement to the party making the submission.

9 July 2010
Secretary, Broadcasting Authority

Broadcasting Ordinance (Chapter 562)

Notice is hereby given that the Broadcasting Authority has received an application from the HK Television Entertainment Company Limited, a company duly incorporated in Hong Kong whose registered office is 39th Floor, PCCW Tower, Taikoo Place, 979 King's Road, Quarry Bay, Hong Kong, for a domestic free television programme service licence.

The particulars of the application in this Notice, as set out below, are provided by HK Television Entertainment Company Limited. Nothing in this notice shall affect or prejudice any powers, discretion and rights of the Broadcasting Authority or the Government.

1. COMPANY INFORMATION

Principal Shareholders

HK Television Entertainment Company Limited ("HKTVE") is a wholly-owned subsidiary of PCCW Interactive Media Holdings Limited ("PCCW Interactive") which in turn is a subsidiary of PCCW Limited ("PCCW")¹, a publicly listed company in Hong Kong under HKEx (Stock Code: 0008), through a series of four wholly owned companies². HKTVE submits that upon receiving an approval-in-principle to grant the licence by the Chief Executive in Council ("CE in C"), HKTVE will implement changes to the company's corporate and shareholding structure prior to the grant of licence. Following the restructuring, PCCW Interactive, a member of the PCCW Group, will own 15% of voting shares in HKTVE and a trustee will hold the remaining 85% of voting shares in HKTVE through a trust. Another trustee will hold 100% of non-voting shares (and 100% economic interest) in HKTVE on trust for the benefit of PCCW Interactive. According to HKTVE's submission, the two trustees will be private companies.

Compliance with Statutory Requirements

- (a) HKTVE submits that it is a company registered and incorporated in Hong Kong under the Companies Ordinance (Cap. 32) in 2010.
- (b) HKTVE submits that upon completion of the corporate restructuring as

¹ Two other subsidiaries of PCCW are currently holders of broadcasting licences under the Broadcasting Ordinance. They are PCCW Media Limited ("PCCW Media"), a domestic pay television programme service licensee, and Starbucks (HK) Limited ("Starbucks"), a non-domestic television programme service licensee.

² These companies are CAS Holdings No.1 Limited (BVI), HKT Group Holdings Limited (Cayman Islands), HKT Media Holdings Limited (Cayman Islands) and HKT Media (Cayman Islands) Limited.

described above, HKTVE will not be a subsidiary of a corporation as required by the Broadcasting Ordinance³.

- (c) HKTVE submits that the company and all persons exercising control of the company will be, and remain, fit and proper persons⁴.
- (d) HKTVE submits that the majority of the directors and principal officers of HKTVE, including the principal officer in charge of the selection, production or scheduling of television programmes, will be ordinarily resident in Hong Kong⁵ and will have been so resident for at least one continuous period of not less than 7 years⁶.
- (e) HKTVE submits that the control and management of HKTVE will be bona fide exercised in Hong Kong and the majority of its directors described in (d) will actively participate in the direction of the company⁷.

³ Section 8(3) of the Broadcasting Ordinance and section 2 of Schedule 4 to the Ordinance prohibit a domestic free television programme service licence to be granted to or held by a company which is the subsidiary of a corporation. Under section 2 of the Ordinance, “subsidiary” has the same meaning as in the Companies Ordinance.

⁴ Section 1(6) of Schedule 1 to the Broadcasting Ordinance provides that a person exercises control of a corporation if he is –

- (a) a director or principal officer of the corporation;
- (b) the beneficial owner of more than 15% of the voting shares in the corporation;
- (c) a voting controller of more than 15% of the voting shares in the corporation; or
- (d) a person who has the power, by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating that corporation or any other corporation, to ensure that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person.

Under section 21(1) of the Broadcasting Ordinance, a television programme service licensee and any person exercising control of the licensee shall be, and remain, a fit and proper person.

⁵ “Ordinarily resident in Hong Kong” means –

- (a) in relation to an individual, residence in Hong Kong for not less than 180 days in any calendar year, or residence in Hong Kong for not less than 300 days in any two consecutive calendar years;
- (b) in relation to a corporation, a corporation which satisfies the following –
 - (i) if the number of directors who actively participate in its direction –
 - (A) is 2, each is an individual;
 - (B) is more than 2, each of a majority of them is an individual,for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) and has been so resident for at least one continuous period of not less than seven years; and
 - (ii) the control and management of the company is bona fide exercised in Hong Kong.

⁶ Under section 8(4)(a)(iv) of the BO, a domestic free television programme service licence shall not be granted to or held by a company unless, except with the prior approval in writing of the Broadcasting Authority, the majority of the directors of the company and the majority of the principal officers of the company, including the principal officers of the company in charge of the selection, production or scheduling of television programmes, is each an individual who is for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of “ordinarily resident in Hong Kong” in section 2(1) and has been so resident for at least one continuous period of not less than 7 years.

⁷ Under sections 8(4)(a)(i) to (iii) of the Broadcasting Ordinance, a domestic free television programme service licence shall not be granted to or held by a company unless –

- (f) HKTVE submits that there will be two directors and three principal officers of HKTVE who are disqualified persons⁸ by virtue of their being persons under the Broadcasting Ordinance associated with PCCW Media, a domestic pay television programme service licensee, and Starbucks, a non-domestic television programme service licensee. Said persons have experience and expertise in the television and media industries, and are an invaluable resource to the applicant. HKTVE seeks the required prior approval from the CE in C under the Broadcasting Ordinance for the said persons to be directors and principal officers of HKTVE⁹.
- (g) HKTVE acknowledges that the four holding companies between HKTVE and PCCW (see footnote 2) are unqualified voting controllers¹⁰ and will need the approval of the Broadcasting Authority to hold, acquire, exercise or cause or permit to be exercised 15% of the total voting control of HKTVE¹¹. HKTVE seeks the requisite approval of the BA in the application. It is noted that these four holding companies are wholly owned by PCCW and that PCCW itself is a qualified voting controller.
- (h) HKTVE submits that HKTVE is empowered under its Memorandum and

-
- (i) the company complies with paragraph (b) of the definition of "ordinarily resident in Hong Kong" in section 2(1);
- (ii) the majority of the directors required under section 8(4)(a)(iv) actively participate in the direction of the company;
- (iii) a quorum of every meeting of the directors of the company has a majority of directors who is each for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of "ordinarily resident in Hong Kong" in section 2(1) and has been so resident for at least one continuous period of not less than 7 years.

⁸ Generally, under sections 4 to 7 of Schedule 1 to the Broadcasting Ordinance, television programme service licensees, sound broadcasting licensees, advertising agencies, proprietors of newspapers printed or produced in Hong Kong, and all persons exercising control of them, as well as associates of the above, are all disqualified persons in relation to a domestic free television programme service licensee.

⁹ Sections 3(2), 4(1) and 33(1) of Schedule 1 to the Broadcasting Ordinance provides that a domestic pay and non-domestic television programme service licensee, their controllers and associates of the above shall not exercise control of a domestic free television programme service licensee, and vice versa, unless the CE in C approves on public interest grounds.

¹⁰ Under section 1 to Schedule 1 of the Broadcasting Ordinance, "unqualified voting control" means a voting controller who is not a qualified voting controller. A qualified voting controller means, inter alia, a voting controller who—

- (i) in the case of an individual, is ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of "ordinarily resident in Hong Kong" in section 2(1) of this Ordinance and has been so resident for at least one continuous period of not less than 7 years;
- (ii) in the case of a corporation, is ordinarily resident in Hong Kong.

¹¹ Under section 20(1) of Schedule 1 to the BO, an unqualified voting controller shall not without the prior approval of the BA hold or acquire 2% or more of the total voting control of a domestic free television programme licensee.

Articles of Association to comply fully with the provisions of the Broadcasting Ordinance and the terms and conditions of the domestic free television programme service licence.

Financial soundness

HKTVE submits that the capital expenditure and operating expenditure in the first three years of operation are projected at over \$600 million¹². PCCW has submitted a formal document in which it indicates that it will provide full financial support to fund HKTVE's investment and operation.

PCCW is a listed company in Hong Kong with a market capitalization of \$15.5 billion as at 6 July 2010. The total revenue of the company was \$25 billion for 2009. According to HKTVE's submission, PCCW is financially sound and is well positioned to enable the applicant to carry out the business plan.

Managerial and technical expertise

HKTVE submits that its management team has proven managerial and technical expertise in both telecommunications and broadcasting. PCCW, through PCCW Media, has over 6 years of experience in operating a domestic pay television programme service network. The relevant expertise covers areas such as network planning, network operations, content production, content acquisition, customer care, quality control and compliance, marketing and contract and intellectual property management.

HKTVE submits that it will enter into a contract with PCCW-HKT Telephone Limited and Hong Kong Telecommunications (HKT) Limited to construct and operate the transmission network for the proposed service and with PCCW Media for carriage of the proposed service over the existing broadband network. HKTVE will outsource its broadcasting operations to PCCW Media and rent studio equipment/facilities from PCCW Media in whole or in part.

According to HKTVE's submission, the Board of Directors of the company shall comprise not more than four directors. Currently, the Directors appointed are Ms Susanna Hui Hon Hing and Mr Alexander Anthony Arena.

Quality control and compliance

HKTVE submits that it will adopt appropriate quality and compliance control standards and procedures to ensure compliance with all relevant laws, regulations and codes of practice in providing the service, and will engage the services of

¹² The applicant has requested that a breakdown on the capital expenditure and programming expenditure be treated as commercially sensitive information and as such, is not disclosed.

suitably skilled and experienced persons to conduct and oversee the quality control and compliance processes.

A team of experienced Standards and Practice staff will be responsible for ensuring that the broadcast standards of HKTVE will be in full compliance with the relevant regulations and codes of practice. Internal monitoring system and work flow will be designed to ensure that proper checks-and-balance procedures will be observed.

2. PROGRAMMING INFORMATION

Programmes to be provided, by nature, and number of channels and extent of local production

HKTVE aims to create a new viewing experience and provide an alternate choice of entertainment for general and niche viewers.

HKTVE's Cantonese channel will be a general entertainment channel comprising news, finance, current affairs, documentary, lifestyle, travel, variety show, arts and culture, sports, music and movie programmes as well as programmes for seniors, children and young persons. The English channel, if required (please see below), will endeavour to bring a taste of Hong Kong to English-speaking viewers by providing subtitling and audio language options (e.g. Putonghua and/or English) to cater for different viewing preferences of the community, as well as niche language programmes to cater to the needs of ethnic minority groups and multi-lingual speakers.

HKTVE plans to locally produce general and financial news, current affairs, music, food and travel, and other lifestyle programmes for prime-time slots during its first year of operation.

HKTVE plans to provide, on the Cantonese channel, high definition television programmes and, on the English channel (if provided), standard definition television programmes.

HKTVE has indicated that it will carry Broadcasting Authority publicity materials, announcements in the public interest and television programmes (including RTHK and educational programmes for schools) supplied by the Government as required for domestic free television programme service licensees¹³.

¹³ The current domestic free television programme service licensees are required to include Broadcasting Authority publicity material to promote knowledge and understanding of the activities and functions of the Broadcasting Authority, and such material in the public interest provided by the Government as directed by the Broadcasting Authority.

The Broadcasting Authority is empowered under the current licences to direct a domestic free television programme service licensee to broadcast programmes (such as RTHK programmes) supplied by the Government, subject to the daily and weekly caps on the channels prescribed in section 3 of Schedule 4 to the Broadcasting

As to subtitling, HKTVE has requested that the BA not to impose any requirements in view of the government policy of light-handed and market driven regulation. In the alternative HKTVE suggests that the BA not to impose any subtitling obligations on it until it has achieved a specified market share. HKTVE submits that any subtitling obligation be limited to two hours per day for its Cantonese channel and two hours per week for its English channel (if provided)¹⁴.

The daily operating hours of the service

HKTVE plans to provide, on its Cantonese channel, 24 hours daily broadcasting, and, on its English channel (if provided), 8 hours daily broadcasting¹⁵.

English language channel

HKTVE requests that its licence should not include a requirement to provide an English language service¹⁶. Such a requirement is not statutory and precedent exists for not requiring an English service (i.e. Commercial Television's licence). Specifically, HKTVE requests not to be required to provide a second language (i.e. English language) service since doing so would adversely affect its ability to provide competitive Cantonese programming which is its first priority and the first priority of the community. At present, there are two free English television channels and over 80 English channels provided by the pay television licensees. In addition, the Internet has now become a major source of free English language programming. There is already a great deal of English language options for viewers today and there is no strong market evidence demonstrating the need for another English language service. HKTVE therefore submits there is no convincing basis to require it to provide an English language channel which will be loss making and adversely affect its ability to compete with the free television incumbents in Hong Kong.

If the above request cannot be granted after due consideration by the Broadcasting

Ordinance.

The Broadcasting Authority is empowered under section 19 of the Broadcasting Ordinance to require a domestic free television programme service licensee to include in its television programme service, without charge, any ETV programmes for schools supplied by the Government.

¹⁴ The Broadcasting Authority is empowered under the existing licences to direct a domestic free television programme service licensee to provide subtitling.

¹⁵ Section 10 of Schedule 4 to the Broadcasting Ordinance provides that the minimum duration of each language television programme service shall not be less than 5 hours for each day.

¹⁶ The current domestic free television programme service licensees are required under Conditions 2.1 and 2.2 of the First Schedule to the licences to provide both Cantonese and English channels, and any other language services as may be imposed by the Broadcasting Authority from time to time.

Authority, HKTVE plans to operate a two-channel (Cantonese and English) domestic free television programme service.

Compliance with programming requirements

HKTVE requests that its licence should not include requirements as to the following:

- (a) Wholly of Hong Kong origin – The existing domestic free television programme service licences as negotiated by the incumbents contain provisions which require a licensee to provide a certain amount of programming that is “wholly of Hong Kong origin” although that condition does not require programmes to be actually produced in Hong Kong¹⁷. HKTVE will broadcast a substantial amount of programming that is wholly of Hong Kong origin and actually produced in Hong Kong. However, as a new entrant in the free television market, HKTVE seeks as its first priority the flexibility to create programming that is attractive to viewers without constraints, HKTVE submits that this will maximise HKTVE’s ability to successfully compete in the market for the benefit of Hong Kong viewers. In addition, HKTVE sees no basis for such a requirement in view of the Government policies favouring light handed regulation, competition and market driven results. HKTVE suggests that past practice is not a good reason in 2010 to impose costly requirements on a new entrant that are no longer relevant. HKTVE considers that the market will drive licensees to provide programmes that are relevant and attractive, and this can only be done in significant part via locally produced programming.
- (b) Other programming requirements – the existing domestic free television programme service licences as negotiated by the two incumbents contain provisions with specified minimums of minutes or hours that the two incumbents must broadcast of various programme genres¹⁸. HKTVE will

¹⁷ Section 5.1 of the First Schedule of the licences states that: For the purposes of this Licence “wholly of Hong Kong origin” means:

- (a) produced
- (i) in substance and in form in Hong Kong; or
 - (ii) by the Licensee, by any employee of the Licensee, by any company or employee of any company which, in relation to the Licensee, is a subsidiary company within the meaning given by section 2(1) of the Broadcasting Ordinance, or by any other independent production company engaged by the Licensee in or outside Hong Kong; and
- (b) the Broadcasting Authority is satisfied that it is produced primarily for the Hong Kong market.

¹⁸ The positive programme requirements comprise the minimum of news, documentary, current affairs programmes, and programmes for children to be broadcast on each of the licensee’s services, and programmes for young people, senior citizens and on arts and culture, to be broadcast on the licensee’s Cantonese language service.

The current domestic free television programme service licensees are required under Conditions 5.1, 6.1, 7.1 and 10.1 of the First Schedule to the licence to provide, on the Cantonese and/or English channels, the following programmes that are wholly of Hong Kong origin –

broadcast a broad range of programmes as noted above. This includes general news, financial news, current affairs, documentaries, children's and young persons, seniors, lifestyle, travel, sports, general entertainment, and arts and culture. HKTVE submits that its programming hours devoted to these topics will meet or exceed those of the incumbent operators. Nevertheless, as a matter of principle it considers that there is no reason to have such licence conditions imposed on it as a new entrant. HKTVE submits that it is the Government policy to be light handed and to support market driven outcomes. HKTVE seeks as its first priority the flexibility to create positive programming that is attractive to viewers without constraints so that it may best compete with the incumbent operators. HKTVE would suggest that past practice is not a good reason in 2010 to impose costly requirements on a new entrant that are no longer relevant, which will limit competition and harm viewers. HKTVE considers that the market will drive licensees to provide programmes that meet the diverse needs of users.

3. TECHNICAL INFORMATION

Transmission mode to be employed

HKTVE will provide free television service in the form of digital terrestrial television ("DTT"), given that Hong Kong is now well on the way towards analogue switch-off. Both standard and high definition television will be supported. The service will also support multi-language, electronic programme guide and interactivity capabilities. HKTVE requests to carry its DTT service via channel 62, a spare territory-wide Ultra High Frequency ("UHF") channel, until 2015 and thereafter return it to the Government if requested. To ensure that viewers are able to enjoy a seamless and continuous service, HKTVE will then apply for or otherwise obtain radio frequencies released following the switch-off of the analogue television services in Hong Kong.

HKTVE submits that it will use the current broadband network of PCCW Media's domestic pay television programme service (i.e. "now TV") to supplement its DTT coverage.

Geographical coverage and service roll-out

HKTVE submits that subject to negotiation with the other operators on sharing the

-
- (a) documentary programmes (30 minutes per week on each channel);
 - (b) current affairs programmes (30 minutes per week on each channel);
 - (c) children's programmes (30 minutes daily on the Cantonese channel only); and
 - (d) arts and culture programmes (15 minutes per week on each channel).

use of hilltop sites designated for DTT, HKTVE plans to roll out the DTT network and achieve near universal coverage for the proposed service within 5 years of launch.

PCCW Media's broadband network covers about 2 million households (about 90% of total Hong Kong households) of which over 1 million are now PCCW Media subscribers. PCCW Media's geographical coverage will therefore be substantial.

Proposed service coverage milestones¹⁹

HKTVE commits to cover: –

- (a) not less than 70% of Hong Kong households within 12 months after service commencement;
- (b) not less than 80% of Hong Kong households within 24 months after service commencement; and
- (c) not less than 90% of Hong Kong households within 36 months after service commencement.

Equipment and facilities required at the customer end

Viewers will need to have an appropriate DTT set-top box for receiving the digital television signal. The set-top box will provide digital interface (i.e. high-definition multimedia interface ("HDMI")) and analogue interface (i.e. composite video) for connection to television set. nowTV subscribers can make use of the nowTV set-top box for reception of HKTVE signals.

4. OTHER INFORMATION

Commencement of service

HKTVE plans to commence the Cantonese and English (if provided) channels within 12 months and 18 months respectively after the grant of licence.

Construction work required and its impact on the public, if any

HKTVE submits that minimum construction work at hilltop sites would be required assuming that it reaches an agreement with the other free television operators on sharing the use of hilltop sites. The construction work will involve

¹⁹ HKTVE submits that the proposed milestones are contingent upon its negotiation with the other operators on sharing the use of hilltop sites without any significant delay.

laying optical cables to hilltop sites or setting-up of microwave links in addition to indoor installation work for hilltop premises.

On the other hand, HKTVE would also expect the Government to grant the applicant suitable land on hilltops designated for DTT broadcasting under the same terms for the incumbent operators. HKTVE will construct its broadcasting towers and associated facilities.

HKTVE submits that no construction work is required to provide service over the broadband network.

The benefits brought by the implementation of the proposal to the local industry, viewers/consumers and the economy as a whole

HKTVE submits that it is able to contribute to Hong Kong in the following ways: –

- (a) *Enhancing competition and benefits to viewers* – PCCW Media’s track record in the domestic pay television market ensures that a broad range of viewers will be benefited from the entry of a new competitor who broadcasts informative and entertaining programmes. General entertainment, sports, news, finance, current affairs, documentaries, lifestyle, travel, movies, etc. will all cater to the viewing needs of the community. HKTVE will not simply copy the incumbents in delivering programmes to the Hong Kong community. Viewers will be substantially benefited from the state-of-the-art technology, innovation, service quality, customer care and programmes of the proposed service.
- (b) *Delivery of a well-financed and innovative service* – The experience and expertise of PCCW and PCCW Media in the management and operation of television broadcasting service in Hong Kong are directly applicable and transferable to the applicant. The financial support of PCCW to the applicant will ensure the availability of the required funding necessary to support the proposed service.
- (c) *Unique programming mix* – HKTVE submits that its Cantonese channel will ride on the proven track record of PCCW Media’s flagship news and information programmes.
- (d) *All providers will be motivated* – HKTVE submits that its entry with funding and experience will encourage the existing operators and other new entrants to improve their services.
- (e) *Creating job opportunities* – HKTVE submits that several hundreds of skilled jobs will be created or maintained in the creative and content sectors. At the

same time the entry by HKTVE will help maintain Hong Kong as the regional broadcasting hub.

Members of the public may provide comments on HKTVE's application to the Broadcasting Authority by **8 August 2010** by mail, fax or e-mail as follows: –

The Broadcasting Authority
c/o Television and Entertainment Licensing Authority
39th Floor, Revenue Tower
5 Gloucester Road
Wan Chai
Hong Kong

Fax Number: 2507 2219
2598 5509 (Confidential)

E-mail: ba@tela.gov.hk

All comments received will not be made in confidence unless specified otherwise. We may reproduce and publish the submissions received in whole or in part (except confidential information as marked) in any form without seeking the permission of or providing acknowledgement to the party making the submission.

9 July 2010
Secretary, Broadcasting Authority