



3 April 2014

The Communications Authority
c/o Office of the Communications Authority
20/F, Wu Chung House
213 Queen's Road East
Wan Chai
Hong Kong

Dear Sirs,

Renewal of Domestic Free TV Programme Service Licences of TVB & ATV

Further to a separate submission of even date to your Authority on issues pertaining to the public radio spectrum side of the captioned matter, we wish to submit the following views for your Authority's consideration in respect of the incumbent free TV operators' applications for licence renewal for the purpose of ensuring their better compliance.

Spectrum Squatting

1. The CA must be commended for effectively policing spectrum use and investigating into a recent case involving spectrum allocation between the incumbents without CA's prior knowledge and authorisation. Such conduct and action on the part of the incumbents amounted to unauthorised squatting, trading and profit-making of public radio spectrum being a scarce public resource against all relevant Government policies, regulatory frameworks and conditions in their broadcasting and carrier licences. One could hardly envisage any other possible breach that could be more serious as far as spectrum use is concerned.
2. We must however register our grave reservations firstly over the sanctions which amount to nothing more than a slap on the wrist for the incumbents, particularly TVB, as the fine would practically mean nothing when compared with the



enormous benefits, financial or otherwise, from the picture quality improvements. Secondly, we are greatly disappointed with CA's decision to rush to recognise and legitimise such a serious wrong and do so in such a back-to-back manner. The CA is in fact undermining its authority as regulator and setting a very bad precedent encouraging rather than discouraging such breaches in the future.

3. We do appreciate that the CA in reaching its decision might be concerned with possible public complaints against the channel in question reverting to its former, lower picture quality. However, the longer TVB is allowed to “squat”, the more difficult it is to resume the spectrum from the “squatter”.
4. On top of breaching their respective licences' conditions, such trading was not lawful and both operators should be required to disclose to the CA the consideration of the transaction and the CA has every right to recover that sum for and on behalf of the public.

Misuse of Public Radio Spectrum

5. Valuable radio spectrum should be used to serve local viewers catering for their unique needs, tastes and preferences only. Allowing users to use such frequencies for resale, sublicensing or direct retransmission purposes, particularly when it is entirely for commercial gain, should never have been allowed in the first place.
6. If any user assigned with frequencies is not investing in programming for operating its own channels, such frequencies should be resumed by the Government for more beneficial uses economically, socially and technologically in accordance with the SPF. Such user should not be allowed to carry third party channels acquired for direct retransmission.
7. If the authorities consider it a must to make available on local free TV certain Mainland channels for the general public for national education reasons or otherwise, the RTHK as public broadcaster would be the most suitable vehicle in this regard.



8. Simulcast on TVB's HD Jade and Jade channels is another example of radio spectrum misuse. As of today, there remains considerable amount of prime time programming simulcast on these channels. With today's very high DTT take-up rate, such simulcast is neither necessary nor justified. The CA should not allow TVB to continue with such practice which is in every way against the spirit of the SPF in terms of ensuring that radio spectrum could be well utilised at all times, not to mention the Government policy of promoting better and wider programming choice for local viewers.

Indirect Advertising

9. The CA takes public complaints rather seriously. Even inadvertent mistakes involving very minor factual or operational errors are often considered licence breaches. The same, however, is seldom applied to advertising prominently featured in the incumbents' various programmes which is anything but "indirect". Other than a recent case where an incumbent was fined for doing that, mere warnings and advisories were given in most cases.
10. We urge the CA to fully take into consideration that indirect advertising, particularly when it is deliberately done in a very "direct" manner, amounts to making available programming airtime being a scarce public resource for money-making purposes, which are otherwise allowed during specified commercial timeslots only. Although that incumbent was fined, the amount of which did not even measure up to its advertising revenue from such "indirect" advertising. The CA should investigate into it fully to ascertain the incumbent's full benefits from such breaches and set a more appropriate fine commensurate with its commercial gains and reflecting the seriousness of such deliberate violations.

Personal View Programmes

11. A recent CA decision regarding personal view programmes is yet another example of the CA rushing to legitimise wrongs committed by the incumbents. By so doing, the CA is actually giving them a free hand to continue with their



already much criticised and totally unacceptable behaviour through using programming airtime being a scarce public resource to further their own political/business agenda rather than serving public needs.

Yours faithfully,

For & On Behalf Of

S.Y.Wai

Vice President

External Affairs & Service Operations