

**For discussion  
On 8 June 2015**

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

**Assignment of Broadcasting Spectrum to be Vacated  
by Asia Television Limited following Expiry of its  
Domestic Free Television Programme Service Licence**

**Purpose**

This paper briefs Members on the factors to which the Communications Authority (“CA”) shall have regard in deciding on the assignment of spectrum to be vacated by Asia Television Limited (“ATV”) as from 2 April 2016 following the expiry of its domestic free television programme service (“free TV”) licence for the provision of broadcasting services.

**Background**

2. On 1 April 2015, having regard to inter-alia the recommendations of the CA submitted pursuant to section 11(3) of the Broadcasting Ordinance (Cap. 562) (“BO”), the Chief Executive in Council (“CE in C”) decided not to renew ATV’s free TV licence and, for the purpose of complying with the requirement under section 8(1)(a) of Schedule 4 to the BO, to extend the term of ATV’s existing licence to 1 April 2016, i.e. 12 months after the notice of non-renewal of its licence was served on ATV.

3. Under its fixed carrier licence (“FCL”) issued by the CA under the Telecommunications Ordinance (Cap. 106) (“TO”), ATV is assigned two sets of analogue frequency channels, one digital multiplex of the single frequency network (“SFN”) coupled with half of the

capacity of one digital multiplex of the multiple frequency network (“MFN”)<sup>1</sup> in 470 – 806 MHz of the Ultra High Frequency (“UHF”) band for the provision of its licensed analogue and digital terrestrial television (“DTT”) services. ATV’s FCL will expire on 30 November 2018.

4. Following the CE in C’s decision as set out in paragraph 2 above, and having considered the representations from ATV, the CA exercised its power under section 32G(1) and 32H(3) of the TO and gave notice to ATV on 20 April 2015 on the withdrawal of the two sets of analogue TV channels, and 1.5 digital multiplexes assigned to ATV as from 2 April 2016. With the withdrawal of the spectrum assigned to ATV by 2 April 2016, 1.5 digital multiplexes<sup>2</sup> (“broadcasting spectrum”) would be available for re-assignment to other free TV licensees.

### **Factors to be Taken into Account by the CA in Deciding on Broadcasting Spectrum Assignment**

5. In deciding on the broadcasting spectrum assignment, the CA shall have regard to all relevant factors, including the objectives and provisions of the TO, the CA’s statutory duties, the prevailing free TV landscape, the Government’s Radio Spectrum Policy Framework (“SPF”) and the relevant policy considerations. These factors are set out in the ensuing paragraphs for Members’ reference.

### Provisions of the TO

6. Under section 32G(1) of the TO, the CA has the statutory duty to promote the efficient allocation and use of the radio spectrum as a public resource of Hong Kong. Section 32H(2)(c) of the TO empowers the CA to assign radio frequencies. The TO does not stipulate any

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<sup>1</sup> ATV does not require 1.5 Mbps capacity in the MFN for broadcasting its two standard-definition programme channels. As a temporary measure up to 30 November 2015, and in the interest of efficient use of spectrum as a public resource, such 1.5 Mbps capacity in the MFN is re-assigned by the CA to Television Broadcasts Limited for broadcasting its two programme channels in high-definition format.

<sup>2</sup> For the two sets of analogue frequencies to be withdrawn from ATV, the Government has indicated its intention to request Radio Hong Kong Television to utilise the frequencies to provide analogue TV services.

procedure or statutory timeline concerning application for the use of spectrum, or consideration thereof by the CA. As a condition in a free TV licence granted by the CE in C under the BO, the licensee shall apply to the CA for approval for any substantial change in the means of transmission or transmission arrangements.

7. While the CA is the spectrum assignment authority under the TO, the authority for granting, extending or renewing free TV licences rests with the CE in C under sections 10(1) and 11(1) of the BO. This division of statutory authority, whereby the CE in C decides whether or not to grant free TV licences and the CA decides the spectrum assignment, has meant that the process for broadcasting service licensing has always been broadcasting licence led, with spectrum assignment being an enabling and supplementary function. Indeed, since the introduction of free TV services in Hong Kong some 40 years ago, spectrum for the provision of broadcasting services has consistently been administratively assigned so as to ensure uninterrupted free TV services to the Hong Kong viewing public.

#### CA's Statutory Duties

8. The CA has a statutory duty under section 32G(1) of the TO to promote the efficient allocation and use of the radio spectrum. In performing its functions empowered by the TO, the CA also has statutory duties under the Communications Authority Ordinance (Cap. 616) ("CAO"), including the duty under section 4(4) of the CAO to promote competition in the communications market for the benefit of the industry and consumers.

9. The CA would need to bear in mind these statutory duties in deciding on the broadcasting spectrum assignment.

#### Free TV Landscape

10. Given the CE in C's decision announced on 1 April 2015, the term of ATV's existing licence will expire on 1 April 2016 and the broadcasting spectrum currently held by it will be available for re-

assignment as from 2 April 2016. On 1 April 2015, having regard to the recommendations of the CA, the CE in C decided to grant a free TV licence to HK Television Entertainment Company Limited (“HKTVE”) for a term of 12 years, on the basis of inter-alia the use of a fixed network to transmit its free TV service as per the proposal of HKTVE in its licence application. HKTVE is required to broadcast, within 12 months from licence grant, i.e. by 31 March 2016, a 24-hour Chinese channel, and within 24 months from licence grant, i.e. by 31 March 2017, a 16-hour English channel. Following the licence grant, HKTVE has applied to the CA under its licence for permission to use spectrum as an additional mode of transmission. On 12 May 2015, having regard to the recommendations of the CA, the CE in C decided to renew the spectrum-based free TV licence of Television Broadcasts Limited (“TVB”) for another 12 years from 1 December 2015 to 30 November 2027.

11. As at the date of this Panel paper, other than the above free TV licensees, there are three applications for free TV licences, from Fantastic Television Limited (“Fantastic TV”)<sup>3</sup>, Hong Kong Television Network Limited (“HKTV”)<sup>4</sup> and Forever Top (Asia) Limited (“Forever Top”) respectively, which are under processing by the CE in C or the CA. These three applicants have indicated interest to be assigned spectrum for provision of their proposed free TV services.

12. As the free TV landscape is evolving, the CA will take into account the latest developments when deciding on broadcasting spectrum assignments on a case by case basis.

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<sup>3</sup> In October 2013, the CE in C has approved in principle the application of Fantastic TV for a free TV licence.

<sup>4</sup> This refers to the free TV licence application submitted by HKTV in April 2014, which was the second application submitted by the applicant.

On 31 December 2009, HKTV (formerly City Telecom (HK) Limited) submitted its first free TV licence application to the former Broadcasting Authority (“BA”). The former BA processed the application in accordance with the BO and established procedures, and submitted its recommendation to the CE in C on 13 July 2011. On 15 October 2013, the Government announced that the CE in C decided to refuse HKTV’s application. On 6 January 2014, HKTV applied for leave to apply for judicial review against the CE in C’s decision to refuse its application. On 24 April 2015, the Court of First Instance handed down its judgement in quashing the CE in C’s decision and remitting it back to the CE in C for re-consideration. On 19 May 2015, the CE in C decided to lodge an appeal against the judgement earlier handed down by the Court of First Instance on the judicial review case.

## Radio Spectrum Policy Framework

13. In April 2007, the Government promulgated the SPF which identifies the Government's policy considerations in relation to spectrum management. The SPF states that Hong Kong's spectrum policy and management aims to, inter-alia, facilitate the most economically and socially efficient use of spectrum with a view to attaining maximum benefit for the community. The SPF also sets out, as a guiding principle of spectrum management, that the Government's policy inclination is to use a market-based approach wherever the CA (or the former Telecommunications Authority ("TA") before the establishment of the CA) considers that there are likely to be competing demands from providers of non-Government services, unless there are overriding public policy reasons to do otherwise, in which case the CA should publish such public policy reasons.

14. Through a statement issued in April 2007, the former TA undertook that, in exercising his statutory powers under the TO, the TA would give due regard to the SPF to the extent that there were no inconsistencies with the objectives and provisions of the TO.

15. Following the SPF, the CA will make an assessment of the potential competing demand and conduct an analysis of the appropriate spectrum assignment mechanism before deciding on the final approach it should adopt to assign the broadcasting spectrum.

## Policy Views

16. The Commerce and Economic Development Bureau ("CEDB") is responsible for inter-alia telecommunications and broadcasting policies in Hong Kong. CEDB provides to the CA its views on policies, concerns and factors as considerations that the CA may take into account in discharging its spectrum assignment responsibilities under the TO.

17. In November 2013, CEDB provided its policy views on the arrangements for the frequency spectrum in the 1.9 – 2.2 GHz band upon expiry of the existing frequency assignments for the provision of third generation (“3G”) mobile services. CEDB also provided its policy concerns in April 2015 on the spectrum arrangement for the provision of free TV service in view of the expiry of the existing assignment in November 2018 in connection with TVB’s free TV services. Those policy views and concerns were taken into account by the CA when making spectrum management decisions under the TO in the context of 3G spectrum arrangements on 15 November 2013 and when re-assigning spectrum to TVB on 12 May 2015 respectively. Similarly, the CA will take the policy views and concerns from CEDB into consideration in the re-assignment of broadcasting spectrum to be vacated by ATV following expiry of its free TV licence.

## **Conclusion**

18. The CA shall have regard to all relevant factors including those set out in paragraphs 6 to 17 above in coming to a decision on the assignment of broadcasting spectrum to eligible free TV licensees as soon as possible prior to the availability of the broadcasting spectrum to be vacated by ATV as from 2 April 2016.

**Office of the Communications Authority**  
**June 2015**