

商務及經濟發展局
通訊及科技科

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COMMUNICATIONS
AND TECHNOLOGY BRANCH
COMMERCE AND ECONOMIC
DEVELOPMENT BUREAU

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BY HAND and BY FAX

3 November 2015

Dr Hon Elizabeth QUAT, JP
Chairman, Panel on Information Technology
and Broadcasting,
Legislative Council
Room 606, Legislative Council Complex,
1 Legislative Council Road,
Central, Hong Kong

Dear *Chairperson,*

**Application by Phoenix U Radio Limited
for Termination of Sound Broadcasting Licence**

Phoenix U Radio Limited (Phoenix U Radio) was granted a sound broadcasting licence (the Licence) by the Chief Executive in Council on 22 March 2011 to provide digital audio broadcasting (DAB) services. On 17 September 2015, Phoenix U Radio wrote to the Secretary for Commerce and Economic Development, stating that Phoenix U Radio was seeking the approval of the Chief Executive in Council for the termination of the Licence.

I write to inform you that, at the meeting of the Executive Council on 3 November 2015, the Council advised and the Chief Executive ordered that the termination of the Licence should be approved with effect from 7 November 2015. I enclose at Annex a bilingual copy of the relevant Legislative Council brief and press release for your reference. Thank you for your attention.

With regards,

Yours sincerely,

Susie Ho

(Miss Susie HO)
Permanent Secretary for
Commerce and Economic Development
(Communications and Technology)

Encl.

c.c. Clerk to Panel
Chairman, Communications Authority

File Ref: CTB/A 220-5-5/3 (C)

LEGISLATIVE COUNCIL BRIEF

Application by Phoenix U Radio Limited for Termination of Sound Broadcasting Licence

INTRODUCTION

At the meeting of the Executive Council held on 3 November 2015, the Council ADVISED and the Chief Executive ORDERED that the termination of the sound broadcasting licence of Phoenix U Radio Limited (the Licence) should be approved with effect from 7 November 2015 by amending the period of validity of the Licence from 22 March 2011 to 21 March 2023 to 22 March 2011 to 6 November 2015.

JUSTIFICATIONS

Digital Audio Broadcasting Service

2. In February 2010, the Government promulgated the development framework for the provision of digital audio broadcasting (DAB) services in Hong Kong, and invited applications for sound broadcasting licences to provide DAB services (DAB licences). In November 2010, after considering the recommendations of the former Broadcasting Authority, the Chief Executive in Council granted approval-in-principle to the applications for DAB licences by Wave Media Limited (subsequently renamed as Digital Broadcasting Corporation Hong Kong Limited (DBC)), Metro Broadcast Corporation Limited (Metro), and Phoenix U Radio Limited (Phoenix U Radio) for a period of validity of 12 years. On 22 March 2011, the Chief Executive in Council granted DAB licences to DBC, Metro and Phoenix U Radio (DAB licensees) under section 13C(2) of the Telecommunications Ordinance (TO) (Cap. 106) for providing DAB services. Upon granting the DAB licences, spectrum capacity of one 1.5 MHz Band III multiplex was allocated to the DAB licensees to provide 13 DAB programme channels (three each for Metro and Phoenix U Radio and

seven for DBC). The remaining spectrum capacity was assigned to Radio Television Hong Kong (RTHK) for providing five DAB programme channels.

3. The DAB licences require the DAB licensees to formally launch their services within 18 months after the date of the grant of the DAB licences (i.e. on or before 21 September 2012). The DAB licensees and RTHK formally launched their services, by phases, starting from 2012. The number of DAB programme channels grew from 15 by the end of 2012 to 17 by the end of 2014.

Launch of Service of Phoenix U Radio

4. On 18 January 2012, Phoenix U Radio formally launched its DAB services with one sound broadcasting programme channel called "Phoenix U Radio Comprehensive Channel (鳳凰 U Radio 綜合台)", and formally launched its second programme channel called "Phoenix U Radio Music Channel (鳳凰 U Radio 音樂台)" on 18 October 2012. The launch of Phoenix U Radio's third programme channel had been postponed, and was not launched at the time of Phoenix U Radio submitted its application for termination of the Licence.

Request for Termination of Licence

5. On 17 September 2015, Phoenix U Radio wrote to the Secretary for Commerce and Economic Development, stating that Phoenix U Radio was seeking the approval of the Chief Executive in Council for the "surrender" of the Licence. Phoenix U Radio submitted that it had strong commitment to the development of DAB services. Notwithstanding the efforts it had made in the operation and promotion of DAB services, the lack of a critical mass of audience for Phoenix U Radio's DAB services made it difficult for Phoenix U Radio to attract advertisers. Phoenix U Radio found that there was no prospect of making the business model commercially viable.

Authority for Termination of Licence

6. Under section 46 of the Interpretation and General Clauses Ordinance (Cap. 1), where an Ordinance confers upon a person a power to grant a licence, that person also has the power to, among other things, amend or withdraw the licence. Hence, in this case, any premature

termination of the Licence, otherwise than by way of revocation in accordance with Condition 13 of the Licence and section 21 of the Broadcasting (Miscellaneous Provisions) Ordinance (Cap. 391), can be made by the Chief Executive in Council on terms and conditions prescribed or accepted by him. This can be achieved by the amendment to the Licence. The Chief Executive in Council and Phoenix U Radio may mutually agree to amend the terms and conditions of the Licence. In this regard, Phoenix U Radio has indicated its agreement to the amendment to the Licence and the termination of the Licence taking effect from 7 November 2015.

7. Although the Licence is granted with a period of validity of 12 years, the Government should not impose unnecessary exit barrier in the case of Phoenix U Radio who found that there was no prospect of making the business model commercially viable. Nevertheless, the Government should ensure that Phoenix U Radio has performed its obligations and discharged its liabilities that have accrued under the Licence before the Chief Executive in Council approves the termination of the Licence. We have sought the views of the Communications Authority (CA) on the obligations and liabilities accrued by Phoenix U Radio under the Licence in terms of (a) outstanding financial penalty; (b) outstanding licence fee; (c) compliance with the milestones in the performance bonds; (d) compliance with service requirements; and (e) compliance with the Six-year Investment Plan.

8. The CA, noting that Phoenix U Radio has launched two programme channels but failed to launch its third programme channel in accordance with its committed milestone, recommended the calling of a bonded sum of \$1 million under a performance bond the company submitted to the Government to secure the launch of its third programme channel. Apart from that, the CA considered that there were no outstanding obligations and liabilities accrued under Phoenix U Radio's licence. Based on the CA's views, the CE in Council therefore approved the termination of the licence of Phoenix U Radio with effect from 7 November 2015. Meanwhile, the Government will take follow-up action in relation to the performance bonds submitted by Phoenix U Radio to the Government.

IMPLICATIONS

9. In terms of financial implications, the termination of the Licence will mean that Phoenix U Radio will no longer be required to pay the licence fee from 2016 to 2023 under Condition 11 of the Licence. This will bring about a reduction in the projected revenue of the OFCA Trading Fund, including \$3,377,310 for the next licence year from 28 December 2015 to 27 December 2016 and the licence fees in subsequent years, which would otherwise be adjusted annually based on the index of Government consumption expenditure (as required under the Licence). As to economic implications, the exit of Phoenix U Radio is unlikely to entail any significant impact on the overall economy. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal has no productivity, civil service, environmental, family, gender or sustainability implications.

PUBLICITY

10. We will issue a press release on 3 November 2015.

ENQUIRIES

11. For enquiries, please contact Mr Edward TO, Principal Assistant Secretary for Commerce and Economic Development (Communications and Technology) A at 2810 2708.

Communications and Technology Branch
Commerce and Economic Development Bureau
November 2015

Chief Executive in Council approves termination of sound broadcasting licence of Phoenix U Radio

The Government announced today (November 3) that the Chief Executive (CE) in Council approved the termination of the sound broadcasting licence of Phoenix U Radio Limited (Phoenix U Radio) with effect from November 7 (Saturday).

Upon CE in Council's approval, the sound broadcasting licence of Phoenix U Radio will be amended to end on November 6, 2015.

A spokesman for the Commerce and Economic Development Bureau said, "Phoenix U Radio wrote to the Secretary for Commerce and Economic Development on September 17 to seek CE in Council's approval to surrender its sound broadcasting licence due to difficulties in operations.

"According to the application of Phoenix U Radio, the company found no prospect of making its business model commercially viable."

The spokesman added, "We have sought the views of the Communications Authority (CA) on the obligations and liabilities accrued by Phoenix U Radio under its licence. The CA, noting that Phoenix U Radio has launched two programme channels but failed to launch its third programme channel in accordance with its committed milestone, recommended the calling of a bonded sum of \$1 million under a performance bond the company submitted to the Government to secure the launch of its third programme channel. Apart from that, the CA considered that there are no outstanding obligations and liabilities accrued under Phoenix U Radio's licence. The CE in Council therefore approved the termination of the licence of Phoenix U Radio with effect from 7 November 2015. Meanwhile, the Government will take follow-up action in relation to the performance bonds submitted by Phoenix U Radio to the Government."

Upon cessation of Phoenix U Radio's service at late night of November 6, re-configuration and maintenance works of the DAB

multiplex network has to be carried out from 2:00 am to 6:00 am on November 7 and the DAB service will be affected during that period. Individual operators will make suitable announcements nearer the time. It is expected that the DAB service will resume normal before 6:00 am on November 7.

Ends/Tuesday, November 3, 2015

NNNN