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Secretary for Information, Technology and Broadcasting  
(Attn : Mr. Eddie Mak (PAS(A)))  
Information, Technology and Broadcasting Bureau  
1/F Murray Building  
Garden Road  
Hong Kong

28 March 2000

**Urgent By Fax**  
Fax No. : 2511 1458

Total No. of Page(s): (3)

Dear Mr. Mak,

### **Broadcasting Bill**

I am scrutinizing the above Bill with a view to advising Members and should be grateful if you would clarify the following matters:

#### Clause 2(11)

Do the Broadcasting Authority ("BA") and the Telecommunications Authority ("TA") have to give reasons for forming an opinion? As the Administration has proposed a Committee Stage amendment ("CSA") to a similar provision in the Telecommunication (Amendment) Bill 1999 to specify that TA has a duty to give reasons for forming an opinion, will the same be proposed in this Bill?

#### Clauses 3, 4 and section 4(1) of Schedule 4

Are notices in the Gazette published under clause 3(2) and (5), clause 4 and section 4(1) of Schedule 4 subsidiary legislation? Will the Administration consider making express provision similar to clause 2(9) of the Bill to specify the nature of such notices?

Clause 16(2)(c)

Will the Administration consider replacing "generally accepted accounting practices" by "generally accepted accounting principles" in line with a CSA proposed to an equivalent term in the Telecommunication (Amendment) Bill 1999?

Clause 24(1) and (3)

Will the Administration consider specifying the scope of BA's functions in line with a CSA proposed to a similar provision (i.e. proposed section 35A) in the Telecommunication (Amendment) Bill 1999?

Clause 26

- (a) What factors will be considered by the BA when he considers whether it is in the public interest to disclose information? Will those factors be set out in the guidelines issued by the BA?
- (b) By virtue of clause 2(9)(e) of the Bill, a person who is required to provide information to the BA may not be compelled to produce any document which is subject to legal professional privilege. What about other privileged documents such as documents tending to criminate or expose a person to a penalty? In the Telecommunication (Amendment) Bill 1999, a CSA has been proposed to provide that a person who is required to supply information to the TA shall not be compelled to produce any documents which he could not have been compelled to produce in civil proceedings before the Court of First Instance. What is the rationale for confining the protection to documents subject to legal professional privilege in this Bill?
- (c) If information supplied to the BA contains personal data as defined in the Personal Data (Privacy) Ordinance (Cap. 486), do the provisions of Cap. 486 and the data protection principles therein apply to such data?

Clause 27 and section 19 of Schedule 9

In respect of a similar provision in the Telecommunication (Amendment) Bill 1999, a CSA has been proposed to provide that any financial penalty imposed must be proportionate and reasonable in relation to the failure or series of failures concerned giving rise to that penalty. Will the same be proposed in this Bill?

Section 13 of Schedule 4 and section 5 of Schedule 8

Under the Television Ordinance (Cap. 52), the amounts of licence fees and other fees and charges in respect of a particular year are prescribed by subsidiary legislation. Under the Bill, the annual licence fees and other fees will be specified in the licence instead of by subsidiary legislation. Please explain this departure from the existing policy. As you may be aware, under the Telecommunication (Amendment) Bill 1999, at least for carrier licences, the annual licence fees are to be prescribed by subsidiary legislation. Please, therefore, explain why the annual licence fees for all television programme service licences are proposed to be determined administratively.

I should be grateful if you would let me have your reply in both languages as soon as possible. In respect of the Chinese text of the Bill, I may have to write to you at a later stage, if necessary.

Yours sincerely,

(Connie Fung)  
Assistant Legal Adviser

c.c. Department of Justice (Attn: Mr. Geoffrey A Fox, SALD)  
LA