

立法會
Legislative Council

LC Paper No. CB(1)1612/05-06(02)

Ref. : CB1/SS/1/05

**Subcommittee on
Broadcasting (Revision of Licence Fees) Regulation 2006**

Background brief

Purpose

This paper set out the background of the fee revision proposal prescribed under the Broadcasting (Revision of Licence Fees) Regulation 2006 and summarizes the major deliberations by members of the Panel on Information and Technology and Broadcasting (ITB Panel) at the meeting on 6 April 2006 when it was consulted on the proposal.

Types of television programme service licence

2. The Broadcasting (Licence Fees) Regulation (the Regulation) provides that holders of television programme service licences under the Broadcasting Ordinance (BO) (Cap. 562) shall pay an annual licence fee. The fee levels are prescribed in Schedules 1 to 4 to the Regulation. The existing fees have taken effect since February 2001, reflecting the Television and Entertainment Licensing Authority (TELA)'s administrative costs of assisting the Broadcasting Authority (BA) in regulating the television industry.

3. There are four categories of television programme service licence under the BO. They are:

- (a) domestic free television programme service licence;
- (b) domestic pay television programme service licence;
- (c) non-domestic television programme service licence (this is primarily satellite television service uplinked from Hong Kong targeting the regional market. It is sub-divided into two types: Type A refers to free service, while Type B refers to subscription service); and

- (d) other licensable television programme service licence (it is subdivided into two types: Type A refers to television service provided for an audience of not more than 5,000 specified premises, while Type B refers to television service provided for hotel rooms).

4. The amount and structure of the fees differ, reflecting the differences in the nature of service and the costs of administering different licences. Most of the fees comprise a fixed fee and a variable fee calculated on a per subscriber/channel/hotel basis. The fixed fee reflects the costs incurred by general licence administration including the preparation and regular revision of codes of practice issued by the BA. The variable fee primarily reflects the costs of handling complaints, which is assumed to relate proportionally to the number of viewers served or the number of programme channels provided by a licensee, as the case may be.

Fee revision proposal

5. Based on the result of the costing exercise conducted by TELA recently, the Administration proposes to revise the licence fees prescribed in the Regulation. The existing and new fees are set out in **Appendix I**. The proposed revision in fees range from -24% to 13%. Details of the cost computations are set out in **Appendix II**. According to the Administration, some fees will be reduced due to reduction in general administrative costs as a result of improvement of efficiency and streamlining of work procedure. On the other hand, intensified competition in the television market and technological convergence in the communications industry have led to increased workload and complexity of regulatory issues. Very often, the BA needs to commission market and economic analyses as well as obtaining external legal and technical opinions in resolving regulatory matters, resulting in increase in administrative costs. In addition, from time to time, the BA needs to conduct benchmarking exercises to ensure that the regulatory practices are on a par with international best practices.

Consultation with Panel

6. The ITB Panel was consulted on the fee revision proposal at its meeting on 6 April 2006. Members noted that the two domestic free television programme service licensees and the three domestic pay television programme service licensees were opposed to the fee increase. The views expressed by the licensees and the Administration's responses are set out in **Appendix III**. Members present at the Panel meeting raised no objection to the proposal as it was in line with existing government policy on cost recovery for provision of services. The relevant extract of the draft minutes of the Panel meeting are in **Appendix IV**.

Subsequent development

7. The Broadcasting (Revision of Licence Fees) Regulation 2006 was tabled at the Legislative Council on 17 May 2006 and will come into operation on 7 July 2006.

8. The Hong Kong Cable Television Limited and PCCW Media Limited sent in their submissions on 13 May 2006 and 18 May 2006 respectively stating their objection to the proposed increase in licence fees. The two submissions are given in **Appendix V**.

9. At the House Committee meeting on 19 May 2006, Members agreed to form a Subcommittee to study the Broadcasting (Revision of Licence Fees) Regulation 2006.

Council Business Division 1
Legislative Council Secretariat
29 May 2006

Appendix I

Proposal for Revision of Licence Fees under the Broadcasting (Licence Fees) Regulation

Licence Category	Existing		Proposed	
	Fixed Fee	Variable Fee	Fixed Fee	Variable Fee
Domestic Free TV Programme Service Licence	\$3,811,000	\$1,566,000 per programme channel	\$4,308,900 (+13%)	\$1,421,600 per programme channel (-9%)
Domestic Pay TV Programme Service Licence	\$1,371,000	\$4 per subscriber	\$1,533,000 (+12%)	\$4 per subscriber (No change)
Type A Non-domestic TV Programme Service Licence (free service)	\$56,600	N.A.	\$56,400 (-0.4%)	N.A.
Type B Non-domestic TV Programme Service Licence (pay service)	\$69,600	\$4 per subscriber	\$74,000 (+6%)	\$4 per subscriber (No change)
Type A Other Licensable TV Programme Service Licence (for an audience of not more than 5,000 specified premises)	\$224,000	\$4 per subscriber	\$171,200 (-24%)	\$4 per subscriber (No change)
Type B Other Licensable TV Programme Service Licence (for hotels)	\$15,200	\$5,400 per hotel	\$16,800 (+11%)	\$5,400 per hotel (No change)

(Source: Annex B to LegCo Brief (File Ref: CTB/B/203/14(05)VI).)

COST COMPUTATION
Television and Entertainment Licensing Authority
Annual Television Programme Service Licence Fees
under Broadcasting (Licence Fees) Regulation
Unit Cost at 2005-06 Price Level
Domestic Free Television Programme Service

	Fixed	Variable
	\$	\$
Staff cost	3,508,653	2,162,212
Departmental expenses	306,564	354,295
Accommodation cost	219,472	161,716
Depreciation	6,488	NA
Central administrative Overheads	267,646	164,937
Total Cost	4,308,823	2,843,160
Estimated number of programme channels per licence for 2005-06		2 programme channels
Unit cost at 2005-06 prices	\$4,308,900	\$1,421,600 per programme channel
Proposed licence fee formula under the Regulation		\$4,308,900 + \$1,421,600 per programme channel
Computed Licence fee		\$7,152,100

Domestic Pay Television Programme Service

	Fixed	Variable
	\$	\$
Staff cost	1,138,496	1,686,709
Departmental expenses	233,719	907,288
Accommodation cost	69,634	194,164
Depreciation	4,325	NA
Central administrative Overheads	86,846	128,665
Total Cost	1,533,021	2,916,825
 Total number of subscribers of domestic pay TV service		 828 631 subscribers
 Unit cost at 2005-06 prices	 \$1,533,000	 \$4 per subscriber
 Proposed licence fee formula under the Regulation	 \$1,533,000 + \$4 per subscriber ¹	

¹ The variable fee of \$4 per subscriber to domestic pay TV programme service remains unchanged.

Non-Domestic Television Programme Service

	Type A Non-Domestic (Free) Licence Fee	Type B Non-Domestic (Pay) Fixed	Variable
	\$	\$	\$
Staff cost	43,205	55,629	10,879
Departmental expenses	5,947	6,425	1,556
Accommodation cost	2,635	3,426	730
Depreciation	1,298	4,325	NA
Central administrative Overheads	3,296	4,243	830
Total Cost	56,380	74,049	13,994
Estimated number of subscribers per licence			3 333 subscribers
Unit cost at 2005-06 prices	\$56,400	\$74,000	\$4 per subscriber
Proposed licence fee formula under the Regulation	\$56,400	\$74,000 + \$4 per subscriber ²	

² The variable fee of \$4 per subscriber to non-domestic pay TV programme service remains unchanged.

Type A Other Licensable Television Programme Service

Type A Other Licensable (for not more than 5 000 specified premises)

	Fixed	Variable
	\$	\$
Staff cost	135,002	12,846
Departmental expenses	4,360	4,069
Accommodation cost	8,602	872
Depreciation	12,976	NA
Central administrative Overheads	10,298	980
Total Cost	171,238	18,767

Estimated number of subscribers per licence of 5 000 subscribers

Unit cost at 2005-06 prices \$171,200 \$4 per subscriber

Proposed licence fee formula under the Regulation $\$171,200 + \$4 \text{ per subscriber}^3$

3 The variable fee of \$4 per subscriber to Type A other licensable TV programme service remains unchanged.

Type B Other Licensable Television Programme Service

Type B Other Licensable (for hotel)

	Fixed	Variable
	\$	\$
Staff cost	13,929	4,544
Departmental expenses	423	173
Accommodation cost	891	305
Depreciation	519	NA
Central administrative Overheads	1,063	347
Total Cost	16,824	5,369

Unit cost at 2005-06 prices \$16,800 \$5,400 per hotel

Proposed licence fee formula
under the Regulation \$16,800+ \$5,400 per hotel⁴

⁴ The variable fee of \$5,400 per hotel provided with Type B other licensable TV programme service remains unchanged.

(Source: Annex C to LegCo Brief (File Ref: CTB/B/203/14(05)VI).)

**Subcommittee on
Broadcasting (Revision of Licence Fees) Regulation 2006**

**Major views expressed by television programme service licensees
on the proposed increase in licence fees and the Administration's responses**

(Position as at 23 May 2006)

Views expressed by licensees	Administration's responses
<p>1. The fee review should be withheld and revisited in the context of the Government's proposal for a rationalized broadcasting regulatory regime and the merger of the Broadcasting Authority (BA) and the Telecommunications Authority (TA).</p>	<p>The licences fees are charged and reviewed based on the principle of cost recovery. While the licence fee charging mechanism may undergo review in future, the Administration should follow the cost-recovery principle in determining the licence fee unless and until the existing mechanism is modified. At the present moment, the Administration does not consider it necessary or appropriate to change the fee charging mechanism.</p>
<p>2. The administrative costs relating to the investigation into non-compliance with licence conditions should be recovered either from the offenders via fines or forfeitures, or from the complainants who made frivolous and vexatious complaints.</p>	<p>The licences fees are charged and reviewed based on the principle of cost recovery. While the licence fee charging mechanism may undergo review in future, the Administration should follow the cost-recovery principle in determining the licence fee unless and until the existing mechanism is modified. At the present moment, the Administration does not consider it necessary or appropriate to change the fee charging mechanism.</p>

Views expressed by licensees	Administration's responses
3. The fees for domestic free television programme service licence should be reduced, having regard to the substantial costs of carrying government programmes and announcements in the public interest (APIs) and contribution to the digitization of terrestrial television by the domestic free television programme service licensees.	The relevant licensees agreed to the licence conditions that require them to broadcast APIs and implement digital terrestrial television when they accepted their licences.
4. The proposed fee increases are higher than the general Consumer Price Index (CPI) and will impose additional financial burden on them in the current business environment characterized by increasing competition and high operating costs. In addition, the fee increases run counter to the trend in the telecommunications market where the licence fees have been reduced.	The fee charging mechanism is based on the principle of cost recovery and not linked to the CPI. The mild fee increases would not impose any significant burden on the licensees since they only constitute a very small proportion of the operating costs of the licensees. Furthermore, comparing the fees of broadcasting licences with those of telecommunications licences is unwarranted, because the regulatory regimes and costing structure applied to the two sectors are different.
5. TELA's increases in administrative costs could be offset by the anticipated growth in future revenue arising from projected rise in the number of licences and subscribers.	Revenue increases arising from the rise of the number of licences and subscribers, if any, will be reflected in future costing exercises.

(Source: Extract from paragraphs 16 to 18 of LegCo Brief (File Ref: CTB/B/203/14(05)VI).)

**Extract from the draft minutes of meeting
of the Panel on Information Technology and Broadcasting on 6 April 2006**



III Revision of broadcasting licence fees

LC Paper No. CB(1)1191/05-06(03) -- Information paper provided by
Administration

3. At the invitation of the Chairman, the Principal Assistant Secretary for Commerce, Industry and Technology (Communications and Technology) PASCIT(CT)) briefly introduced the paper on its proposal to revise the licence fees prescribed in the Broadcasting (Licence Fees) Regulation (the Regulation) (Cap. 562A). Under the Regulation, holders of television programme service licences under the Broadcasting Ordinance (Cap. 562) were required to pay an annual licence fee. The existing fees had taken effect since February 2001, reflecting the Television and Entertainment Licensing Authority (TELA)'s administrative costs of assisting the Broadcasting Authority (BA) in regulating the television industry. Based on the principle of cost recovery, which had been an established government policy for years, and a recent costing exercise conducted by TELA at the 2005-06 price level, the Administration proposed to revise the various licence fees. The Administration planned to table the Broadcasting (Licence Fees) (Amendment) Regulation setting out the proposed fees at the Legislative Council meeting on 17 May 2006 for negative vetting, with a view to effecting them on 7 July 2006.

4. Ms Emily LAU said that as fee increases were likely to be unwelcomed, the Administration should conduct adequate consultation on the charging mechanism and the proposed fee revisions. She asked whether any strong objection to the fee revisions had been received. In response, the Assistant Commissioner for Television and Entertainment Licensing (Broadcasting) (ACTEL(B)) advised that

the Administration had already conducted a consultation exercise to explain to all existing licensees the reasons for proposing the fee revisions and sought their views on the matter. Feedbacks from the two domestic free television programme service licensees and the three domestic pay television programme service licensees had been received. Their views objecting to the proposed fee increases were set out in paragraph 14 of the Administration's paper.

5. In response to members' queries, ACTEL(B) gave the Administration's response to the views as follows :

- (a) On the licensees' suggestion of withholding the implementation of the proposed fee revisions until a decision on the merger of BA and the Telecommunications Authority was made, the Administration considered that as the proposed merger was still undergoing public consultation and a decision had yet to be made, delaying the fee revisions would render it impossible for the achievement of full cost recovery in a timely manner.
- (b) On the suggestion that the administrative costs relating to investigation into non-compliance with licence conditions should be recovered either from the offenders via fines or forfeitures, or from the complainants who made frivolous and vexatious complaints, it should be noted that under the existing public finance arrangement, the fines imposed by BA and paid by offenders would go to the General Revenue. They could not be used to offset the costs of providing the services by TELA. Moreover, there were practical difficulties in determining whether a complaint was frivolous or vexatious to justify the imposition of a fine on the complainant. In fact, many complaints, though unsubstantiated, were not frivolous or vexatious.

- (c) On the proposal that the fees for domestic free television programme service licence should be reduced in view of the substantial costs of carrying government programmes and announcements in the public interest (APIs) and contribution to the digitization of terrestrial television by the domestic free television programme service licensees, the Administration noted the licensees' concern, but pointed out that they agreed to the licence conditions when they accepted their licences.
- (d) The proposed fee revisions did not bear any direct relationship with Consumer Price Index movements as the fees were reviewed and determined on the long-established principle of cost recovery for government services.
- (e) It was difficult to ascertain whether increases in TELA's administrative costs could be offset by anticipated growth in future revenue arising from the projected rise in the number of licences and subscribers. As seen in the past few years, the business environment had been characterized by increasing competition, which had in turn created heavier workload for the BA in regulating the market and resulted in higher administrative costs.

6. The Chairman expressed support for the principle of cost recovery for provision of government services. In reply to the Chairman's question, ACTEL(B) said that with the implementation of the proposed fee revisions, full cost recovery could be achieved in respect of administering of the licences. He added that while some licensees had objected to the proposed fee increases, the licensees in general agreed to the principle of cost recovery. The Administration considered that the proposed fee increases were modest and would not become a huge financial burden on the licensees.

7. On behalf of Members of the Democratic Party, the Chairman expressed support for the proposed fee revisions. The Deputy Chairman also stated his support and remarked that the existing fees were too low. He said that it was reasonable for the television programme service licensees to pay higher fees since they were able to operate with good profits. He would like to see more resources being provided to TELA to enhance its capacity to investigate into complaints. Ms Emily LAU said that she would not object to the introduction of the proposed subsidiary legislation and that if necessary, a subcommittee could be formed to further consider the proposal.

8. Summing up, the Chairman said that the Panel had no strong objection to the fee revisions proposed by the Administration.

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附錄 V
Appendix V

CABLE TV

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13 May 2006

The Hon. Mrs. Rita Fan Hsu Lai-tai, GBS, JP
President
Legislative Council
8 Jackson Road, Central
Hong Kong

By fax & by hand
(Fax no. 2877 9600)

Dear Mrs. Fan,

Broadcasting (Revision of Licence Fees) Regulation 2006


By its letter dated 12 May, the Administration told us that the above regulation would be tabled at the Legislative Council for negative vetting on 17 May.

We would like to draw Members' attention to the fact that the television industry has reservations about the proposed revision. Detailed grounds for HKCTV's objection, which have been forwarded to the Administration, are replicated on the attached.

We should be most grateful if Members of the Council would take account of our concerns in deliberating the above regulation.

Thank you.

Yours sincerely,
Hong Kong Cable Television Limited



Desmond S.H. Chan

Encl.



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**HKCTV's Objection to the Proposed Increase of
License Fees for Television Programme Service Licences**

1. Since 1997, all industries have been suffering from the economic doldrums. The pay TV industry is of no exception. Unlike some of its relating sectors whose licence fees or other government charges have been reduced (more than once in some cases) during this difficult period of time¹, the pay TV industry has not received similar assistance.
2. Following the increase in competition on various fronts (including contents and people) in the pay TV market, the investments in and costs for running our business have been rocketing. Despite the recent improvement of economy, it is unlikely that our financial burden would abate in near future given the competition has shown no sign of abating.
3. We understand from the Administration that the proposed fee increase is attributable to the competition and firewall complaints. We have difficulty in accepting this contention. The competition provisions in the Broadcasting Ordinance and the firewall provisions in the licences of TVB and Galaxy were put in place in July 2000, roughly 7 months before Cap. 526A took effect. Logically, the Government must have taken account of the costs of implementation of the competition and firewall provisions when devising the new charging formula under Cap. 526A, to ensure that the licence fees collected (especially the fixed fee component) are large enough to cover these implementation costs.
4. The Government has announced its plan to set up a single, lean and skilled, and responsive regulator overseeing the entire electronic communications sector, and to examine whether the regulator should further reduce its monitoring and rule-making role, keeping regulation to a minimum with greater focus on ensuring fair competition in the converging communications market. Naturally, this plan will significantly bring down the overall regulatory costs. Thus, to save the trouble of re-adjusting the licence fees in near future, the proposed increase of licence fees should be withheld pending the study of the regulatory convergence.

¹ Please see the attached Appendix for examples of fee reduction.



Examples of Reduction of Licence Fees/ Government Charges

Telecom Sector

May 1999	PRS licence fee reduced from \$75 to \$55 per station
May 2000	PRS licence fee reduced from \$55 to \$30 per station
May 2002	PRS/ PNETS/ mobile carrier licence fee reduced from \$30 to \$24 per station
May 2003	Fixed carrier annual licence fee reduced from \$1m to \$0.5m
May 2004	Fixed carrier annual licence fee reduced from \$0.5m to \$0.2m PRS/ PNETS/ mobile carrier licence fee reduced from \$24 to \$20 per station
May 2005	PRS/ PNETS/ mobile carrier licence fee reduced from \$20 to \$18 per station

Film Sector

Jan 2002	Five fee items relating to the release of films reduced by 3% to 77.6% under the Film Censorship Regulations
June 2005	Licence fees for producing special effects in film production and entertainment programmes reduced by 7.1% to 10.7%



Stuart Z. Chiron
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By Fax 2509 0775 and by Post

The Honourable Ms Miriam Lau Kin-ye, GBS, JP
The Chairman
House Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

18 May 2006

Dear Ms Lau,

Broadcasting (Revision of Licence Fees) Regulation 2006

We have been informed of the HKSAR Government Administration's intention to table the licence fee increase proposal for domestic pay television programme service for negative vetting on 17 May 2006.

We would like to highlight that PCCW has serious concerns about the proposed 11.8% licence fee increase and have indeed forwarded our comments to the Administration. A summary of our key concerns is replicated per the attached. PCCW would be most grateful if the Honourable Members of the Council would take into account our concerns in the deliberation of the licence fee increase proposal. We would respectfully request that the proposal not to be passed and that a sub-committee be set up to review the justifications for the licence fee increase.

Thank you.

Yours sincerely,


Stuart Chiron
Director of Regulatory Affairs

Att'd 2 pages

cc. The Honourable Mr Sin Chung-kai, JP (Fax 2121 0420)



Summary of PCCW's objection to the Proposed Licence Fee Increase for Domestic Pay Television Programme Service Licence

1. **Other Market Benchmarks**

PCCW notes that the licence fee in the telecommunications industry has not been increased for more than 10 years. For the fixed line services, the quantum of the licence fee has remained unchanged since 1995 whereas for the mobile service licence, the licence fee has been reduced by 73% since 1995¹.

It is therefore not uncommon for the liberalised industry to benefit from decreasing regulatory costs on a per licensee basis in the form of reduced licence fee. Again, this would suggest that any licence fee increase needs to be fully described and supported with firm data and clear evidence.

2. **Income from licensees**

The proposed licence fee increase is inconsistent with the growth of licence revenues, and should not occur. Whilst the number of domestic pay TV licensees has remained the same in 2004 and 2005, the number of subscribers, on which the variable fee is payable, has increased from 1,000,000 to the market estimate of 1,200,000 bringing Television and Entertaining Licensing Authority (TELA) / Broadcasting Authority (BA) an additional income of \$800,000 in 2005. It is forecasted that the pay television market will continue to grow thus increasing the associated income of TELA/BA.

3. **Consumer Price Index ("CPI")**

CPI provides a barometer of inflation and is very often used as a benchmark factor for public bodies' fee/charge increase. The composite CPI records a modest increase of only 1.7% on all items from the period November 2004 to November 2005. The proposed licence fee increase of 12% is therefore significantly higher than the general CPI. If the CPI were to be used, the first requirement would be for TELA/BA to fully and convincingly explain why licence fees were not decreased for the recent period when the CPI was negative. It would be irrational to use this indicator only when it supports a proposed action.

4. **Penalty Charges**

PCCW notes that whilst the number of complaints registered with TELA/BA increased in 2005, the quantum of the penalty has remained small even for licensees who repeatedly commit licence breach. This leniency undermines the deterrence effect of the penalty and indirectly increases the unnecessary additional workload arising from compliance investigation.

¹ The annual PMRS/Mobile licence fee has been reduced several times since 1995 as follows: Schedule 3 to the Telecommunications (Carrier Licences) Regulations (Cap. 106V) - Part 3 Mobile Carrier Licences Other Than Mobile Carrier (Restricted) Licence

	1995	1999	2000	2002	2004
First 200 mobile station (\$)	15,000	11,000	6,000	4,800	4,000
Additional 100 mobile station (\$)	7,500	5,500	3,000	2,400	2,000

The current licence fee has been reduced by 73% as compared with that in 1995.

03/02/06



5. **Transparency**

PCCW notes that an internal costing exercise has been conducted by TELA prior to the tabling of this licence fee increase proposals to the broadcasting licensees. However no detailed information has been provided in the proposal (eg. licence fee and other sources of income, increased expenditure, additional workload, level of increased manpower, external consultancy fee etc.) to facilitate PCCW to understand the full justifications for the proposed fee increase. In the name of transparency and reasoned decision making, PCCW would ask that all this material and data be released to the public.

Based on the foregoing, PCCW is of the view that the domestic pay television programme service licence fee should be reduced. Any proposal to increase the fees should be fully supported and vetted in a transparent proceeding.

- End -