

立法會
Legislative Council

LC Paper No. CB(1)1082/07-08
(These minutes have been seen
by the Administration)

Ref : CB1/PL/ITB/1

Panel on Information Technology and Broadcasting

Minutes of meeting
held on Tuesday, 29 January 2008, at 2:30 pm
in Conference Room A of the Legislative Council Building

- Members present** : Hon Albert Jinghan CHENG, JP (Chairman)
Hon Fred LI Wah-ming, JP
Dr Hon LUI Ming-wah, SBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Howard YOUNG, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Albert CHAN Wai-yip
Hon Ronny TONG Ka-wah, SC
- Member attending** : Hon LEUNG Kwok-hung
- Members absent** : Hon SIN Chung-kai, SBS, JP (Deputy Chairman)
Dr Hon David LI Kwok-po, GBM, GBS, JP
Hon Bernard CHAN, GBS, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
- Public officers attending** : Agenda Item IV
Mr Frederick MA, JP
Secretary for Commerce and Economic Development

Mrs Rita LAU, JP
Permanent Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Alan SIU, JP
Deputy Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Kevin CHOI
Principal Assistant Secretary for Commerce and
Economic Development (Communications and
Technology)A

Mr Danny LAU
Assistant Director of Telecommunications (Operations)

Agenda Item V

Mr Frederick MA, JP
Secretary for Commerce and Economic Development

Mrs Rita LAU, JP
Permanent Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Alan SIU, JP
Deputy Secretary for Commerce and Economic
Development (Communications and Technology)

Mr Kevin CHOI
Principal Assistant Secretary for Commerce and
Economic Development (Communications and
Technology)A

Mr MA Po-ho
Chief Telecommunications Engineer (Advisory and
Spectrum Management)
Office of the Telecommunications Authority

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (1)3

Staff in attendance : Ms Pauline NG
Assistant Secretary General 1

Ms Annette LAM
Senior Council Secretary (1)3

Ms Guy YIP
Senior Council Secretary (1)5

Ms May LEUNG
Legislative Assistant (1)6

Action

I. Confirmation of minutes of meeting

(LC Paper No. CB(1)659/07-08 -- Minutes of meeting held on 10 December 2007)

The minutes of the meeting held on 10 December 2007 were confirmed.

II. Information paper issued since last meeting

2. Members noted that no paper had been issued since the last meeting held on 14 January 2008.

III. Date of next meeting and items for discussion

(LC Paper No. CB(1)661/07-08(01) -- List of outstanding items for discussion)

LC Paper No. CB(1)661/07-08(02) -- List of follow-up actions)

Special meeting on 19 February 2008

3. Members noted that a special meeting would be held on 19 February 2008 from 4:30 pm to 6:30 pm to discuss the following items proposed by Panel members:

- (a) Policies relating to the regulation of radio broadcasting and the use of radiocommunications apparatus for the purpose of radio broadcasting; and
- (b) Progress update on the implementation of digital terrestrial television.

In respect of (a) above, members noted that a notice inviting submissions on the subject had been posted on the LegCo website and that the Secretary for Justice and representatives of Citizens' Radio had been invited to attend the meeting. Members requested the Secretariat to prepare a background brief on the subject and the Research and Library Services Division to conduct a research on the regulation of radio broadcasting in overseas places to facilitate discussion.

Secretariat

Regular meeting on 10 March 2008

4. Members noted that a regular meeting would be held on 10 March 2008 from 2:30 pm to 4:30 pm to discuss the following items proposed by the Administration:

- (a) Report on the Cyberport project; and
- (b) Provision of consumer information in relation to residential broadband use in Hong Kong.

(Post-meeting note: With the concurrence of the Chairman, an additional item, i.e." Follow-up on the allocation and expenditure by bureaux/departments under Capital Works Reserve Fund Head 710 Computerization from 2000-2001 to 2006-2007" proposed by Hon SIN Chung-kai would be added to the agenda for discussion at the next meeting. Members were duly informed of the above arrangement vide LC Paper No. CB(1)868/07-08 issued on 22 February 2008.)

IV. Public consultation on public service broadcasting including issues related to the future of Radio Television Hong Kong and the opening up of radio/TV channels for use of the community

(LC Paper No. CB(1)711/07-08(01) -- Executive Summary of the "Report on the Study of Public Service Broadcasting for Hong Kong" and the relevant extract on public access channels issued by the Panel in October 2006

LC Paper No. CB(1)711/07-08(02) -- Summary of recommendations in the "Report on Review of Public Service Broadcasting in Hong Kong" and the relevant extract on community broadcasting and public access broadcasting issued by the Committee on Review of Public Service Broadcasting in March 2007

LC Paper No. CB(1)711/07-08(03) -- Relevant newspaper cuttings)

Declaration of interest

5. The Chairman declared that he had put in an application for a commercial radio broadcast licence to operate an AM radio broadcast service. Noting that members had no objection to his chairing the discussion of this agenda item which might give rise to concern about conflict of interest or conflict of role, the Chairman continued to preside over the meeting.

6. Mr Albert CHAN declared that he was the director of the New Citizens' Radio.

Presentation by the Administration

7. At the invitation of the Chairman, Secretary for Commerce and Economic Development (SCED) briefed members on the reasons for the deferral in releasing the consultation paper on public service broadcasting (PSB) and the future of Radio Television Hong Kong (RTHK), the subject of which was originally scheduled for discussion at today's Panel meeting. He said that the recent litigation concerning Citizens' Radio had sparked off community concern and discussion about the opening up of radio/TV channels for use of the community. As the review of PSB and the related issues of the future of RTHK and community participation in broadcasting were highly sensitive and complex issues that had to be handled cautiously and dealt with together, more time was needed to prepare for a comprehensive consultation exercise. He said that the Administration was mindful of the concern of the public and RTHK's staff over the development of PSB in Hong Kong and the future of the RTHK. He assured members that a consultation paper would be released in due course to widely consult LegCo members, the public and other stakeholders as planned. He appealed to the staff of RTHK to keep up their professionalism in the continued provision of quality public broadcasting service.

8. Permanent Secretary for Commerce and Economic Development (Communications and Technology) (PSCED(CT)) briefed members on the Government's policy objectives on the release of spectrum for digital broadcasting and the review of Telecommunications Ordinance (TO) (Cap. 106) and Broadcasting Ordinance (BO) (Cap. 562). She said that the Administration's stance was that frequency spectrum was a valuable public resource that should be allocated fairly to ensure effective and efficient use. The Government was supportive of the introduction of digital broadcasting to increase spectrum efficiency and to make available more channel capacity, thereby enhancing the programming choice of the public. In this regard, spectrum in Band III and L Band had been reserved since 2000 for the development of digital audio broadcasting. Nevertheless, market response had not been positive and no operators had indicated interests in conducting technical trial test. In line with international trend on the use of digital broadcasting technologies for mobile reception and the inclusion of digital radio and datacasting as ancillary services to mobile television (TV), the Administration had launched a second round of consultation on the implementation framework for the development of mobile TV services in Hong Kong.

9. On the review of the TO and BO, PSCED(CT) said that in the light of technological advances and market convergence in the electronic communications sector, the Administration was mindful of the need to keep the regulatory regime updated to ensure that it remained conducive to the further development of the broadcasting and the electronic communications industries. A public consultation conducted in 2006 found a general consensus on the staged approach to first merge the Broadcasting Authority (BA) and the Telecommunications Authority (TA) to establish the Communications Authority (CA) as a unified regulator for effective, efficient and well coordinated regulation of the electronic communications sector.

The CA would then be tasked to review and rationalize the TO and BO jointly with the Administration.

10. PSCED(CT) also advised members on the sound broadcasting licensing mechanism as set out under Part IIIA of TO. Following a decision of the CE-in-Council, which was the licensing authority, the Administration would issue Legislative Council Briefs and press release to announce the decision in respect of an application for a sound broadcasting licence and the factors that had been taken into account in reaching the decision.

Admin 11. At members' request, the Administration undertook to provide the speaking notes of SCED and PSCED(CT) after the meeting.

(Post-meeting note: The speaking notes of SCED and PSCED(CT) had been circulated to members vide LC paper no. CB(1)766/07-08 issued on 4 February 2008.)

Discussion

Timeframe for consultation

12. Mr Ronny TONG expressed great disappointment over the delay in the release of the long-awaited consultation paper on PSB including issues related to the future of RTHK. He sought explanation on whether the delay was due to technical difficulties or policy consideration. He was concerned that the Administration would deprive the normal operation of RTHK by delaying the consultation indefinitely and queried as to how and why the development of PSB and the future of RTHK were related to the recent litigation concerning Citizens' Radio.

13. On the reasons for the deferral in consultation, SCED said that the Government needed more time to consider all the issues in totality and stressed that there was no question of the Administration trying to deprive RTHK's normal operation. He said that the recommendations put forth by the Committee on the Review of PSB (Review Committee) chaired by Mr Raymond WONG had raised a wide range of issues including the governance structure, accountability and funding arrangements etc which required careful consideration. The future development of PSB in Hong Kong and the future of RTHK were sensitive and complex issues with wide ramifications for Hong Kong's broadcasting industry and far reaching cultural, social and financial implications. Moreover, issues of public concern arising from the recent legal proceedings against Citizens' Radio were PSB-related as they touched on not only the sound broadcasting licensing regime but also spectrum availability and utilization as well as the release of frequency spectrum for use of community channels. He explained that as seven out of the 13 existing radio channels were operated by RTHK, issues concerning effective spectrum utilization and the opening up of airwaves for community channels would more appropriately be considered in the context of the future of RTHK and the development of PSB in Hong Kong. To address all the issues comprehensively, more time was needed for in-depth discussion and deliberations within the

Administration to come up with a comprehensive set of proposals for public consultation. He highlighted that the Administration had yet to reach the stage at which policy decisions could be made and would widely consult the public and the legislature as planned.

14. Mr Ronny TONG remained unconvinced, saying that the setting up of a public service broadcaster though related to the issue of spectrum allocation, did not necessarily depend on it. Referring to the discontent publicly expressed by the Chairman and some members of the Review Committee over the delay in consultation, Mr TONG demanded that the Administration should come up with a timetable for the consultation to expeditiously address wide public concern about the future of RTHK and the development of PSB in Hong Kong. Sharing a similar view, Ms Emily LAU raised doubt on the Administration's sincerity to address the issue of the future of RTHK and criticized the Administration's inefficiency over the lack of progress in the development of PSB. She was gravely concerned that the bundling of PSB consultation, the future of RTHK and the opening up of airwaves for community radio stations with the legal proceedings against Citizens' Radio would hold up all the issues pending the outcome of the judicial review to determine the constitutionality of the TO.

15. In response, SCED reiterated that in view of the complexity and sensitivity of the issues involved, he was not in a position to commit to a timetable at the present stage. He nevertheless assured members that the consultation would not be shelved indefinitely and the Administration would make the best effort to finalize the consultation paper within a reasonable timeframe.

Transparency and fairness of the sound broadcasting licensing regime

16. Referring to the CE-in-Council's rejection of Citizens' Radio's application to operate a non-commercial and not-for-profit community radio service, and also to the recent application for a sound broadcasting licence involving an Executive Council (ExCo) member, Ms Emily LAU queried the fairness and transparency of the licensing regime under which the CE-in-Council had unchecked power to approve or reject applications for operating TV programme services or sound broadcasting services. Criticizing the licensing regime as operation without transparency depriving the public of the right to freedom of speech and expression that was guaranteed under the Hong Kong Bill of Rights Ordinance (Cap. 383) and the Basic Law, she called for an early review to enhance the fairness and transparency of the licence processing procedures.

17. Sharing a similar view, Mr Ronny TONG said that the constitutionality of the sound broadcasting licensing regime was disputed in view of the CE-in-Council's unfettered power and sole discretion in deciding whether or not to grant a licence, hence possibly contravening the Bill of Rights and the freedom of speech guaranteed under Article 27 of the Basic Law. Moreover, the criteria and requirements for licensing were not clearly prescribed in the TO and there was no provision for appeal against the decision of the CE-in-Council. Referring to the proposed licensing regime for mobile TV under the BO as set out in the

Administration's consultation paper (LC Paper No. CB(1)736/07-08(01)), he queried as to why the licensing of sound broadcasting could not be modeled on the licensing framework for mobile TV.

18. Condemning the present licensing regime as a draconian law of the colonial era, Mr LEUNG Kwok-hung queried the credibility of the licensing regime and criticized the lack of transparency in the decision process. He hit out at the absence of any legislative requirements for the CE to give reasons for or to publicly announce his decision. Noting that all members of the BA, the recommending body, were appointed by the CE, he was of the view that the CE-in-Council's unchecked power to grant or not to grant a licence had restricted the public's right to express views through different channels and had cornered members of the public to act in civil disobedience, and was therefore in breach of the Bill of Rights and the Basic Law. He maintained that the public's right to freedom of expression had been compromised by imposing a requirement on them to obtain a licence before they could commence radio broadcasting.

19. In response, SCED and PSCED(CT) pointed out that the licensing regime for sound broadcasting services was set out in Part IIIA of TO under which the CE-in-Council, having considered BA's recommendations in respect of an application for a licence, would make a decision on the application. PSCED(CT) said that following Citizens' Radio's application for a sound broadcasting licence to operate community radio service in 2006, the Administration had introduced new administrative arrangements to enhance transparency and to ensure fairness. Under the arrangements, an element of public engagement was included in the handling of new applications for sound broadcasting licences with reference to the TV licensing regime. Details of the applications would be released and information would be provided to enable the public or interested parties to submit their views to the BA. The BA's views would also be presented to the applicant for response so that the applicant could make representations in respect of the BA's analysis and recommendations. The applicant's representations together with the BA's analysis and recommendations would then be submitted to the CE-in-Council for a final decision. She emphasized that the processing of Citizens' Radio's application had followed the due process in which a decision was made by the CE-in-Council having regard to the views and recommendations made on the application from the BA and the representations submitted by Citizens' Radio in response to the BA's recommendations. As regards declaration of interests by ExCo members, she drew to members' attention that established mechanism had been in place for observance by ExCo members.

20. SCED disagreed that the present licensing regime was operation "without transparency" and said that the established licensing mechanism was transparent and fair. He said that although the licensing criteria were not prescribed in the TO, the laws in relation to the application for a sound broadcasting licence were all published and available to the public. Moreover, prospective applicants were provided with an "Information to be provided by sound broadcasting licence applications" upon request, and BA had issued a radio code of practice on technical requirements on sound broadcasting which was posted on the website for public

access. As such, all applicants were provided with means to know the technical, financial and management requirements for the application. As regards Citizens' Radio's application, he said that the BA had requested the Citizens' Radio to submit more information on its technical, financial and management capabilities to facilitate assessment of the application, and that Citizens' Radio had been informed by way of a letter of the factors that the CE-in-Council had taken into account in reaching the decision. Moreover, a Legislative Council Brief had been issued to inform LegCo members of the decision made in respect of the application. In this regard, the Chairman drew members' attention to the Legislative Council Brief (File Ref: CTB(CR)9/2/26(06)Pt.4) issued in December 2006 in respect of Citizens' Radio's application.

21. Mr LEUNG Kwok-hung remained unconvinced and queried whether there were any legislative requirements for making public the CE-in-Council's decision. In response, Deputy Secretary for Commerce and Economic Development (Communications and Technology) (DSCED(CT)) confirmed that there was an established mechanism for the Administration to announce decisions in relation to sound broadcasting licence applications. He said that under the relevant broadcasting legislation, the CE-in-Council was the licensing authority of domestic free/pay television programme services and sound broadcasting services, and the Administration would issue Legislative Council Briefs and press release to announce the decisions of the CE-in-Council in respect of the applications. At members' request, DSCED undertook to provide written information on the established mechanism after the meeting.

(Post-meeting note: The written information provided by the Administration had been circulated to members vide LC Paper No. CB(1)766/07-08 issued on 4 February 2008.)

Review of TO

22. Referring to the recent magistrate's ruling that the current licensing regime under the TO and the charges based upon a failure to comply with that regime were unconstitutional, Ms Emily LAU called on the Government to expedite the review of TO to keep it in line with public expectation.

23. In response, PSCED(CT) noted that the Magistrate, on the prosecution's submission, had suspended his ruling of unconstitutionality and had also overturned his decision to dismiss charges against Citizens' Radio and related persons. The Department of Justice (DoJ) would expedite its appeal against the ruling. She stressed that pending the outcome of the appeal, the Government had the responsibility to enforce the law and uphold the rule of law which was the cornerstone of Hong Kong's prosperity and success.

24. On the review of TO, PSCED(CT) said that with the blurring of the boundary between telecommunications and broadcasting due to media convergence and digitization, the Government had long taken the view that the existing arrangements of having separate regulators for broadcasting and for

telecommunications were no longer effective and had proposed the phased approach of setting up the CA as soon as possible to review the TO and BO and to rationalize the separate regimes under the TO and BO. She stressed that pending the review of TO and the making of legislative amendments, the Administration had, in relation to the application of the Citizens' Radio, taken timely administrative measures to introduce an element of public engagement in the decision making process and to provide for the applicant to make representation in response to BA's recommendation and the Administration's views. These measures would help ensure a fair hearing.

25. Ms Emily LAU said that despite the release of the public consultation paper in early 2006 on the proposed merger of BA and TA, no progress had been reported so far. She criticized the Administration for procrastination in reviewing the TO and said that there was reason to believe that the Administration's intention was to amend the TO only after it had lost the legal battle in the Court of the Final Appeal. She urged the Administration to provide a timetable for the review, saying that there was no reason to hold up the long-awaited review pending the outcome of the appeal and that the Administration should not leave everything to the court's ruling. Sharing a similar view, Mr Ronny TONG said that a review of the TO was not directly related to the court's ruling on the appeal, and the Administration had insulted the intelligence of the public and LegCo members, trying to use judicial procedures as a means to achieve political objectives. Ms Emily LAU and Mr Ronny TONG maintained that the TO and the outdated licensing regime should be reviewed and revamped as soon as possible regardless of the outcome of the legal proceedings.

26. Mr LEUNG Kwok-hung and Mr Albert CHAN queried the Administration's sincerity in reviewing the TO and the licensing regime and expressed great disappointment over the lack of progress. Mr LEUNG Kwok-hung considered it a remiss of the Administration for not making policy review and legislative amendment, and challenged the principal officials to resign in the event that the Administration lost the legal battle over the appeal.

27. In response, PSCED(CT) stressed that the Administration had no intention of holding up the review of TO and BO. She said that as the appeal against the magistrate's ruling was underway, it was not appropriate for the Administration to make any comment on the specifics of the case. She stressed that it was essential that the constitutionality of the TO be clarified to provide a clear direction for a basis for drawing up the mechanism of the licensing regime and for defining the jurisdiction of the licensing authority. SCED reiterated that the Administration was committed to a review and would endeavour to formulate the implementation plan as soon as practicable. He assured members that the Administration would keep in view the policy and relevant legislation from time to time, taking into account the advancement in broadcasting technologies and rising community expectation.

Opening up airways for public access channels

28. Mr Albert CHAN and Mr LEUNG Kwok-hung were gravely disappointed that public access channels were not yet introduced in Hong Kong despite more than 20 years' of discussions dating back to late 1980s. They opined that the Administration, due to political consideration, was reluctant to open up airwaves for use of the community, in fear of the Mainland Government and dissenting public voices.

29. On spectrum availability and allocation, PSCED(CT) advised that the provision of existing radio services in Hong Kong, comprising 13 FM and AM radio channels (three operated by Hong Kong Commercial Broadcasting Company Ltd (HKCB), three by Metro Broadcast Corporation Ltd (the Metro) and seven by RTHK), had already exhausted the frequency capacity in the FM band (87MHz-108MHz). She said that given the universal coverage requirements and Hong Kong's small geographical area with hilly terrain and high density of tall buildings, spectrum regulation was essential to ensure no frequency interference in the provision of territory-wide reception at an acceptable standard. Taking into account the typical bandwidth required and used by the seven existing FM channels in Hong Kong to achieve territory-wide coverage, the remaining bandwidth could not be further used to increase the provision of FM service due to the need to avoid interference among the FM sound broadcasting services, aeronautical services, and navigational facilities in Hong Kong, Macau and the Guangdong Province. As such, no more FM frequencies with territory-wide coverage were available for community radio channels. She added that the Administration was in fact making its best efforts to tackle a number of complaints over interference and substandard reception quality in certain parts of the territory. SCED said that frequency spectrum was a valuable community resource for which a spectrum policy was required for effective and efficient use. He reiterated that the Administration would do its job well to ensure that the Government spectrum policy would take into account the needs of the community in the light of technology development and public expectations.

30. Mr Albert CHAN said that despite claims of Hong Kong being one of the most advanced and free economies, the Administration should be ashamed of itself for backwardness in terms of sound broadcasting. Noting that several phone-in-talk show programmes had been axed, he said that the lack of forums for community groups to express their views had led to the unlicensed broadcasting of set-ups like the Citizens' Radio. He pointed out that the current licensing regime which focused mainly on financial consideration was against the world trend whereby community channels in a number of overseas economies had received government subsidy. Noting that with the exception of North Korea, Hong Kong was the only place where there were only two commercial broadcasters providing radio broadcasting services, Mr CHAN criticized the Government of using the restrictive licensing regime to suppress free speech and deprive the public's right to freedom of expression. He demanded for a timetable for the opening up of radio/TV channels for use of the community, saying that frequency spectrum was valuable public resource that should be returned to the people to safeguard freedom

of speech and expression. Echoing Mr CHAN, Ms Emily LAU urged the Administration to expedite the opening up of community channels so that not only the rich conglomerates but also those financially less affluent civic groups could have platforms to express their views.

31. In response, SCED disagreed that freedom of expression in Hong Kong was on the decline and maintained that the Administration had all along upheld the public's freedom of speech and expression which was the cornerstone of Hong Kong's stability and prosperity. He said that channels were open for the people of Hong Kong to express their views, including criticisms against the Government. He said that the existing broadcasting services, which included 13 publicly-funded or/and commercial radio channels, had catered for the public's diverse needs for different broadcasting services. Moreover, new media such as the Internet could provide effective platforms for multi-media services for special interest and community groups. He assured members that the Administration would take note of members' views and the community's expectations in mapping out the way forward and would strive for excellence in the best interests of the public.

V. Consultation on the implementation framework of mobile television services and development of digital audio broadcasting in Hong Kong
(LC Paper No. CB(1)661/07-08(03) -- Paper provided by the Administration)

LC Paper No. CB(1)736/07-08(01) -- Administration's paper for the
(*tabled at the meeting and* second consultation on the
subsequently issued on development of mobile television
30 January 2008) services

LC Paper No. CB(1)741/07-08 -- Administration's paper for the
(*tabled at the meeting and* second consultation on the
subsequently issued via e-mail on development of mobile television
30 January 2008) services (power-point presentation
materials))

Presentation by the Administration

32. At the invitation of the Chairman, Principal Assistant Secretary for Commerce and Economic Development (Communications and Technology)A (PAS(CT)A) gave a power-point presentation on the second round of consultation conducted by the Commerce and Economic Development Bureau (CEDB) and the Office of the Telecommunications Authority (OFTA) on the development of mobile television (mobile TV) services in Hong Kong. The consultation would last for three months until 28 April 2008. PAS(CT)A said that mobile TV, combining mobility and TV to provide multimedia service anywhere anytime, exemplified media convergence and opened up opportunities for more content and programming choices for the viewing public. Hong Kong was taking the lead in the adoption of Internet Protocol Television technology with over one million

subscribers. Cable and satellite TV services in Hong Kong were digitized and digital terrestrial television service was officially launched in December 2007. While third generation mobile telephony technology and mobile phones were already capable of receiving multimedia contents streamed to them (known as "streaming-type mobile TV"), point-to-multipoint broadcasting technologies for mobile reception (known as "broadcast-type mobile TV") was developing rapidly in overseas market. The broadcast-type mobile TV was more spectrum efficient when broadcasting audio-visual content to mobile devices, but involved allocation of additional frequency spectrum. During the first consultation on mobile TV in early 2007, the majority of the respondents supported an early introduction of mobile TV services in Hong Kong and a number of broadcasting and telecommunications operators had expressed interest in rolling out mobile TV services. The consultation exercise sought to firm up the implementation framework of mobile TV services which was expected to be announced in mid 2008, to be followed by the making of the necessary subsidiary legislation under the Telecommunications Ordinance (TO) (Cap. 106). The Telecommunications Authority (TA) aimed to auction the relevant frequency spectrum and proceed with the licensing of the mobile TV services in the first half of 2009. PAS(CT)A highlighted the main proposals as follows:

- (a) On spectrum availability, two multiplexes in Band III capable of carrying a maximum of six mobile TV channels (assuming using the T-DMB technology), and one multiplex in UHF Band capable of carrying a maximum of 20 mobile TV channels (assuming using the DVB-H technology), were proposed to be deployed primarily for the development of point-to-multipoint broadcast-type mobile TV services.
- (b) On spectrum allocation, a pro-mobile TV approach was proposed to be adopted. At least 50% of the transmission capacity in Band III and UHF Band should be used to carry mobile TV content, while the remaining capacity could be used for other ancillary services, e.g. digital audio broadcasting, datacasting, etc to facilitate the development of digital radio.
- (c) On spectrum assignment, spectrum identified in (a) above was proposed to be assigned through auction, subject to simple pre-qualification criteria (no ownership or cross-holding restrictions), appropriate rollout obligations, and the payment of spectrum utilization fees.
- (d) On licensing arrangements, to foster the growth of mobile TV having regard to international practices and the need to protect public morals and children, a light-handed approach was proposed for licensing and regulating mobile TV content by way of two options: either to license and regulate mobile TV as a new category of TV programme service through amendment to the Broadcasting Ordinance (BO) (Cap. 562), or to regulate mobile TV by general laws and self-regulatory codes of

practice promulgated by the industry.

- (e) On geographical coverage, it was proposed that mobile TV services should provide territory-wide coverage similar to conventional free-to-air broadcasting services.
- (f) On the use of hilltop transmission sites, the sharing of the facilities was proposed to be subject to mutual agreement through commercial negotiation, but the TA had the power to intervene and adjudicate if mutual agreement could not be reached.

Discussion

Use of hilltop transmission sites and associated facilities

33. Noting the scarcity of suitable transmission sites due to the hilly terrain of Hong Kong, Mr Howard YOUNG expressed concern about the use of hilltop transmission sites and associated facilities for the provision of mobile TV services. He enquired whether individual broadcasting and telecommunications operators had to set up their own relay stations at hilltop transmission sites or the existing transmission sites and the facilities thereon could be commonly shared for the rollout of mobile TV services. He remarked that for environmental reasons and cost efficiency, shared use of these scarce resources should be encouraged. In response, Permanent Secretary for Commerce and Economic Development (communications and Technology) (PSCED(CT)) and Deputy Secretary for Commerce and Economic Development (Communications and Technology) (DSCED(CT)) said that in view of the scarcity of hilltop transmission sites, the Government took the view that the existing sites and facilities thereon should be used effectively and efficiently to meet the needs of the community for telecommunications, broadcasting and other services, including mobile TV. It was proposed that the sharing of these sites and facilities was subject to mutual agreement through commercial negotiations, failing that the TA had the power to intervene and adjudicate. They said that as not all hilltops in Hong Kong were suitable for developing into a transmission sites, the network of the existing hilltop transmission stations and associated facilities of the two free-to-air broadcasters which practically covered most parts of the territory could be shared for the provision of mobile TV services in the future. New entrants could rent the existing sites to roll out their mobile TV services in line with their business plans.

Development of digital audio broadcasting in Hong Kong

34. While noting the rapid development of mobile TV services, Mr Albert CHAN expressed disappointment over the lack of progress in the development of digital audio broadcasting (DAB). He said that despite years of discussion and increasing public demand for the opening up of airwaves for community channels, digitalization of radio broadcasting remained stagnant. In the light of competing demand for frequency spectrum, he was concerned whether the future development of digital radio would be significantly restricted by the deployment of frequency

spectrum for mobile TV services. He was gravely concerned that the Administration had a hidden agenda of using the scarcity of spectrum as an excuse to further thwart the development of digital broadcasting.

35. In response, DSCED(CT) assured members that there was no cause for worry. He stressed that the Government's broadcasting policy objectives were to enhance programming choice of the public and to facilitate the introduction of innovative broadcasting services. He reiterated that as mentioned by PSCED(CT) in her opening remarks, frequency spectrum in Band III and L Band had been reserved for the development of digital broadcasting since 2000. However, market response had not been positive and no operators had indicated interests in conducting technical trial test. He pointed out that under the proposed spectrum allocation, while at least 50% of transmission capacity in Band III and UHF Band proposed for release for mobile TV services was required to carry mobile TV content, the remaining transmission capacity could be used to provide other ancillary services including digital radio. As such, it was the Government's intention to take the opportunity of developing mobile TV services to also facilitate the roll out of DAB. He said that DAB services either as a stand-alone service or as value-added services ancillary to mobile TV by sharing the same frequency band were subject to the existing sound broadcasting licensing regime under the TO.

36. In this connection, Mr Albert CHAN enquired about the number of digital radio channels/stations that could be supported by the frequency spectrum proposed to be released. In reply, DSCED(CT) explained that the two 1.5MHz multiplexes in Band III could provide up to a maximum of six broadcast-type mobile TV channels or 14 CD-quality digital radio channels. PAS(CT)A elaborated that out of the four multiplexes currently reserved in Band III, two multiplexes were recommended for release to provide mobile TV services of which no more than half of the transmission capacity could be used for other ancillary services including digital radio. The remaining two multiplexes were reserved for other services including digital audio services depending on market demand and technological development. Moreover, eight multiplexes in L Band were also capable of providing mobile TV services or digital broadcasting services. Public's views on the use of L Band was invited in the consultation exercise.

37. Noting that the existing three radio broadcasters, namely RTHK, HKCB and the Metro were already operating 13 radio channels, Mr Albert CHAN was concerned that if the three radio broadcasters all switched to digital radio broadcasting, the only one channel left could hardly meet the need of new market entrants. He queried whether the Government really had the intention of opening up airwaves and reserving frequency spectrum for the setting up of community channels. In response, PSCED(CT) explained that the analogue broadcasting of the existing 13 channels in the frequency band of 87MHz-108MHz was different from digital audio broadcasting in Band III (174MHz-230MHz). As such, switching to digital audio broadcasting could in theory vacate the existing 13 FM channels.

38. Mr Albert CHAN remained unconvinced. Noting that there was no restrictions to operating both FM radio channels and digital radio, he maintained that it was very likely that the existing three sound broadcasters would continue to retain the FM channels, thus allowing no room for the development of community channels. While acknowledging that an operator could apply to operate both FM channels and digital radio, PSCED(CT) reiterated that frequency spectrum in Band III and L Band had been reserved for the development of digital broadcasting since 2000 and yet none of the existing commercial sound broadcasters had indicated interests in providing digital services.

The assignment of spectrum and the levy of spectrum utilization fee through auction

39. Referring to the Government's proposal to assign the multiplexes in Band III and the UHF Band and levy the spectrum utilization fee (SUF) through auction, Mr Albert CHAN said that to base the spectrum assignment mechanism mainly on financial consideration was the Administration's tool to curtail people's freedom of expression. He was concerned that small organizations wishing to operate community channels would not have the financial means to meet the high licence fee of \$3 million. Noting that community channels were not required to pay a licence fee in a number of overseas jurisdictions, Mr CHAN called for a comprehensive review of the fee structure to facilitate the development of community channels and return the airwaves to the people. In this regard, the Chairman drew to members' attention that RTHK, being a major public service broadcaster, had been operating seven out of the 13 radio channels currently available and was not required to pay a licence fee.

40. Ms Emily LAU considered that the assignment of frequency spectrum through auction and the universal coverage requirement were advantageous to big financial conglomerates and would create entry barrier for financially less viable groups. She was of the view that the proposed spectrum assignment and licensing regime had failed to cater for the needs of community/minority groups and non-profit making organizations in developing community channels for expression of diverse public views. On rollout obligations, she maintained that territory-wide coverage was not necessary for community channels which might be locality-specific or targeting at particular groups of audience.

41. On spectrum management, PSCED(CT) said that under the Spectrum Policy Framework published by the Government in April 2007, a market-led approach would be adopted where there was competing demand for spectrum from providers of non-government services and in principle, SUF would be applicable to all non-government use of spectrum. She said that auction was widely accepted as a fair and efficient method for allocation of frequency spectrum and was in line with the established Spectrum Policy Framework. Referring to the auction for 3G services and CDMA2000 in the past, she highlighted that it was an established practice in Hong Kong to auction off spectrum.

42. Ms Emily LAU was disappointed that while the opening up of radio/TV channels for use of the community was bundled with the public consultation on public service broadcasting, the current consultation on the development of mobile

TV services and DAB services had not addressed the needs for the development of community channels in the interests of community/minority groups. She doubted the Administration's sincerity in opening up airwaves for expression of public views.

43. In response, SCED and PSCED(CT) said that the subject of public access channels could be considered in the context of the development of digital broadcasting. Public's views on the setting up of community channels, funding arrangements, channel governance and management as well as expression of interests from non-government providers were welcome during the consultation scheduled to end in April 2008.

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44. Ms Emily LAU maintained that it was not clear from the consultation paper that public's views on public access channels were invited under the current consultation. She requested the Administration to put in an additional paper on the development of community radio channels for non commercial minority/community groups and non-profit making organizations for public consultation. SCED noted her suggestion for further consideration.

VI. Any other business

45. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 1
Legislative Council Secretariat
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