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Panel on Information Technology and Broadcasting

Meeting on 19 February 2008

Background brief on issues relating to the provision of sound broadcasting services

Purpose

This paper provides a background of issues relating to the provision of sound broadcasting services with particular reference to the development of public access channels in Hong Kong. It also summarizes members' concerns about the subject.

The regulatory regime for sound broadcasting services

2. The licensing regime for sound broadcasting services is set out in Part IIIA of the Telecommunications Ordinance (TO) (Cap. 106). Section 13B of the TO stipulates that an eligible corporation may apply to the Broadcasting Authority (BA), in such form as the BA may determine, for a licence to establish and maintain a sound broadcasting service. Section 13C(1) requires the BA to consider applications made under section 13B and to make recommendations thereon to the Chief Executive (CE)-in-Council. Section 13C(2) provides that having considered BA's recommendations in respect of an application for the licence, the CE-in-Council may grant a licence to the applicant subject to the terms and conditions he may specify.

3. According to Section 8 of the TO, save under and in accordance with a licence granted by the CE-in-Council or with the appropriate licence granted or created by the Telecommunications Authority (TA), no person shall in Hong Kong or on board any ship, aircraft or space object that is registered or licensed in Hong Kong establish or maintain any means of telecommunications. Section 23 of the TO specifies that any person who, knowing or having reason to believe that a means of telecommunications is being maintained in contravention of the TO, transmits or receives any message by such means of telecommunications or performs any service incidental to the transmission by such means of telecommunications or takes delivery of any message sent thereby shall be guilty of

an offence and shall be liable on summary conviction to a fine of \$50,000.

Spectrum allocation for audio broadcasting services

4. At present, there are 13 radio channels in Hong Kong - three operated by Hong Kong Commercial Broadcasting Company Limited (HKCB), three by Metro Broadcast Corporation Limited (Metro) and seven by Radio Television Hong Kong (RTHK). All these sound broadcasting services are provided in analogue format in either the AM or FM frequency bands. The frequencies occupied by the 13 channels are at **Appendix I**.

Radio broadcasting in the AM frequency band

5. There are six radio channels broadcasting in the AM frequency band (one by HKCB, one by Metro and four by RTHK). According to OFTA, there are one vacant territory-wide channel and one vacant localized channel for broadcasting services in this band. The localized channel is limited to provide coverage at Shek Kong. These available channels may be assigned to licensed operators.

Radio broadcasting in the FM frequency band

6. There are seven radio channels broadcasting in the FM frequency band (two by HKCB, two by Metro and three by RTHK). According to the frequency allocation given by the International Telecommunication Union, the FM frequencies in the 87 – 108 MHz band are used by all jurisdictions in the world for the provision of sound broadcasting services. The VHF/FM Plan completed in the early 1980's by an independent consultant concluded that Hong Kong required seven hilltop sites, each of which transmitted sound broadcasting signals at different frequency channels of a bandwidth of about 200 kHz (i.e. 0.2 MHz). Taking into account the typical bandwidth of at least 1.4 MHz is required for a sound broadcasting service to achieve territory-wide coverage, a total of 9 MHz (i.e. about 43%) out of the 87 – 108 MHz band is being used by the seven existing FM channels in Hong Kong. According to the Administration, the remaining bandwidth (about 57%) cannot be further used by Hong Kong to increase the provision of FM services 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. To change the VHF/FM Plan, prior agreement among these three sides has to be reached.

Public access channels

7. In Hong Kong, only commercial sound and television (TV) licensees and RTHK are given the right to use frequency spectrum for operating broadcasting channels. As a matter of policy, the Government has not assigned any broadcasting spectrum for the use of the community or certain social groups.

8. Discussion on the introduction of public access channels in Hong Kong can be traced back to the findings of the Broadcasting Review Board appointed by the then Governor-in-Council in February 1984¹. One of the Board's recommendations was to test the feasibility of setting up local FM radio stations, to be run by local residents and the relevant district boards (now known as district councils), for serving new towns such as Tuen Mun, Shatin and Tsuen Wan. However, no further plan has been announced to pursue the proposed community-based stations.

9. In 1993, when the Government awarded the licence for domestic pay TV programme service to Cable TV² (formerly the Wharf Cable), one of the conditions was that Cable TV should make available to the Government at no charge the use of not more than three channels. This arrangement would ensure a platform for the broadcast of public affairs and educational programmes which might not be attractive to commercial broadcasters. Following a study by an inter-departmental working group, the Government decided not to pursue the setting up of dedicated government channels mainly due to cost considerations and the limited audience reach of pay TV services at that time. It also decided against making available the channels for public access, one reason being that such channels could be misused if they were not properly regulated.

An application for a sound broadcasting licence to operate community radio service

10. On 8 September 2005, the Ocean Technology Limited (the applicant) submitted an application to the BA, under section 13B of the TO, for a sound broadcasting licence to operate a non-commercial and non-profit making radio station known as "Citizens' Radio Station" to operate an FM community radio station covering individual communities at the initial stage. The applicant, Mr TSANG Kin-shing³, submitted that a team of experienced radio programme hosts, unionists and community leaders would manage the station and provide diversified programming; the technical support department would be responsible for operation of its radio station facilities; it planned to launch digital audio broadcasting by 2008; and being a non-profit making station, its main source of funding would be shareholder's contribution and public donation and no commercial advertisement would be allowed.

11. Having considered the recommendations made by the BA under section 13C(1) of the TO and the representations submitted by the applicant, the

¹ The Broadcasting Review Board was tasked to recommend the broadcasting policies to be adopted by the Government following the expiry of the commercial TV and radio licences in 1988 and 1989.

² The licences of the other two domestic pay TV programme service licensees, i.e. PCCW Media Limited and TVB Pay Vision Limited, do not contain this condition.

³ In his letter dated October 2005, Mr TSANG Kin-shing urged for the opening up of radio channels for the use of the community as a means to safeguard the freedom of speech. He also represented Citizens' Radio to attend the Panel's public hearings on the development of public service broadcasting in Hong Kong on 11 March 2006, 1 August 2006 and 29 June 2007. At these meetings, he called on the Administration to open up the airwaves for the provision of public access channels in Hong Kong.

CE-in-Council decided on 12 December 2006 that the application made by the applicant should be rejected. The factors which the CE-in-Council took into account before reaching the decision included the feasibility of the applicant's technical proposal on the use of radio frequency spectrum, and the management, financial and technical capability of the applicant to establish and maintain a sound broadcasting service.

12. Since then, questions have been raised by Members on whether the authorities had assessed if the TO has restricted the public's right to express views through different channels and hence possibly contravening the Hong Kong Bill of Rights Ordinance (Cap. 383) and the freedom of speech guaranteed under Article 27 of the Basic Law.

13. The Administration's stance is that freedom of speech is the cornerstone of stability and prosperity in Hong Kong which has always been upheld by the Government. However, when exercising the freedom of speech, members of the public should respect and abide by the laws of Hong Kong. The TO, which was formulated to provide for the licensing and control of telecommunications, telecommunications services, and telecommunications apparatus and equipment, is consistent with the Hong Kong Bill of Rights Ordinance and the Basic Law. The Administration pointed out that unauthorized broadcasting would cause interference to legitimate spectrum users and hence affect both public and private telecommunications and broadcasting services. On 9 December 2006, OFTA issued a press release to give a general warning to the public at large about Section 23 of the TO. A written warning was also issued to those suspected of violating the concerned provisions of the TO on the same day. The Administration has referred to the warnings by OFTA as a specific notice to everyone that after that day, anyone found involved in unauthorized broadcasting was liable to prosecution upon substantiation with sufficient evidence.

Members' views and concern

Review of TO

14. The Panel has all along considered that there is a need to review the TO to keep it in line with public expectation on spectrum utilization. Despite the fact that a public consultation paper was issued in early 2006 on the proposed merger of BA and OFTA, no progress has been reported so far. It is also not clear whether the new regulator, namely the Communications Authority (CA), would review and rationalize the TO and the Broadcasting Ordinance (Cap. 562) in a direction which would meet public needs.

15. The Panel has noted that the Magistrate hearing the case on 8 January 2008 concerning unlicensed broadcasting by Citizens' Radio ruled that the current licensing regime under the TO and the charges based upon a failure to comply with that regime were unconstitutional. As a consequence of the ruling, he dismissed all the charges against the defendants. The Panel has also noted that the Magistrate reviewed his decision to dismiss the charges and accepted the

prosecution's submission that he had been wrong to dismiss the charges at that stage and accordingly overturned that decision. The Magistrate adjourned the case to 11 February 2008 so as to allow the prosecution to appeal his constitutionality ruling. He also accepted the prosecution's submissions that the constitutionality ruling be suspended so as not to have legal effect in the meantime and to maintain the status quo. On 11 February 2008, the Magistrate further extended the suspension of his ruling, which the Government will proceed on the appeal to the High Court, until 11 March 2008.

Transparency and credibility of the licensing regime

16. Citizens' Radio's application for a sound broadcasting licence was the first time that the BA had received an application for a sound broadcasting licence other than those made in response to invitation for applications by the Government. Following the criticism on the lack of transparency in the decision process, the Administration announced that new administrative arrangement to enhance transparency has been introduced. Under the arrangement, an element of public participation would be included in the process of licensing consideration, especially in the handling of new applications for sound broadcasting licences, having regard to the TV licensing regime. Under the new licensing process, in relation to applications for sound broadcasting, details of the applications would be released and the information be provided to enable the public or the interested parties to submit their views to the BA. The BA's views would be presented to the applicant for a response so that the applicant could make representations in respect of the BA's analysis and recommendations. The representations together with the BA's analysis and recommendations would then be submitted to the CE-in-Council for its final decision. The Government would then issue a LegCo Brief and press release to announce the final decision on the licence application.

Opening up the airwaves for public access channels

17. The Panel is aware of calls on the Government to open up radio and TV channels for the use of the community or certain social groups as their broadcasting platforms. During the public hearings conducted on the development of public service broadcasting (PSB) in Hong Kong, the Panel noted the support from some concern groups and academics for the development of public access channels in Hong Kong. The Panel has stated in its report on the development of PSB in Hong Kong published in October 2006 that the Government should examine the demand for opening up additional channels for a public purpose. The Panel notes that the existing frequency spectrum assigned for broadcasting has not been fully utilized in Hong Kong, and considers that there should be more informed public discussion so as to achieve a better understanding on various aspects of the subject.

18. On 8 February 2006, the Council passed a motion to urge the Government to ensure that, in developing PSB in Hong Kong, it shall, inter alia, open up public access channels at an early date so as to allow public participation. The Government, however, has maintained the stance that there is no need to set up public access channels in Hong Kong. Its view is that given Hong Kong's small geographical area and relatively homogeneous population, the community is

already well-served by the existing diversity of broadcasting services. Moreover, new media such as the Internet could also provide effective platforms for multi-media services for special interest groups.

Digitization to achieve more efficient use of spectrum

19. On the technology front, there is general consensus that digitization increases spectrum efficiency and makes available more channel capacity, thereby removing the technical constraints on increasing the number of radio and TV channels. The Panel however noted from the Consultation Paper on Digital Broadcasting: Mobile TV and Related Issues issued in January 2007 that the international experience in the rollout of digital audio broadcasting (DAB) was not entirely positive. According to the Administration, some Nordic countries had, for example, decided to terminate or pull back further investment in DAB in 2005. The international focus appeared to have shifted to the inclusion of digital radio and datacasting as ancillary services to mobile TV. The Administration therefore recommended that instead of providing DAB services on their own, Hong Kong should put DAB and indeed other services such as datacasting as ancillary services to mobile TV services. In its Second Consultation on Development of Mobile TV Services published on 29 January 2008, OFTA proposed to allocate one multiplex in UHF Band and two multiplexes in Band III for deployment of broadcast-type mobile TV services in Hong Kong. It further proposed to adopt a pro-mobile TV approach whereby at least 50% of the transmission capacity of the allocated multiplexes should be used to carry mobile TV content, while the remaining capacity could be used to provide other ancillary services, such as DAB and datacasting. The consultation period will end on 28 April 2008.

Latest Position

20. Following the recent incident on unlicensed broadcast by Citizens' Radio leading to the prosecution of a number of persons for breaching the provisions in TO, some members of the Panel expressed concern about the Administration's policy in enforcing the concerned provisions selectively. As such, the Panel has requested the Administration to brief members on the prevailing policies relating to the regulation of radio broadcasting and the use of radiocommunications apparatus for the purpose of radio broadcasting at the special meeting to be held on 19 February 2008. The Department of Justice is also requested to brief members on the prosecution policy relating to illegal broadcasting and the breaching of the relevant provision in the TO.

Relevant papers

21. A list of relevant papers is at **Appendix II**.

Frequency table for analogue radio broadcasting

Station Name	AM Frequency (kHz)	FM Frequency (MHz)
HKCB CR1	--	88.1 - 89.5
HKCB CR2	--	90.3 - 92.1
HKCB CRE	864	--
RTHK1	--	92.6 - 94.4
RTHK2	--	94.8 - 96.9
RTHK3	567	--
RTHK4	--	97.6 - 98.9
RTHK5	783	--
RTHK6	675	--
RTHK Putonghua	621	--
Metroinfo	--	99.7 - 102.1
Metro Finance	--	102.4 - 106.3
AM1044 Metro Plus	1044	--

Appendix II

List of relevant papers

Committee	Paper	LC Paper No.
October 2005	✧ Submission from Citizens' Radio	CB(1)93/05-06(01)
Council meeting on 8 February 2006	✧ Motion on "Policy on public service broadcasting"	Hansard
Meeting of Panel on Information Technology and Broadcasting (ITB Panel) on 11 March 2006	✧ Submission from Citizens' Radio ✧ Minutes of meeting	CB(1)1035/05-06(03) CB(1)1951/05-06
Meeting of ITB Panel on 6 April 2006	✧ Administration's paper : Spectrum Allocation for FM Broadcasting ✧ Minutes of meeting	CB(1)1191/05-06(04) CB(1)1600/05-06
Meeting of ITB Panel on 1 August 2006	✧ Submission from Citizens' Radio ✧ Minutes of meeting	CB(1)2075/05-06(01) CB(1)2309/05-06
9 October 2006	✧ Report on Study of Public Service Broadcasting for Hong Kong	Issued vide LC Paper No. CB(1)2308/05-06
9 December 2006	✧ Press release by the Office of the Telecommunications Authority	http://www.info.gov.hk/gia/general/200612/09/P200612090155.htm
12 December 2006	✧ LegCo Brief on "Application for a Sound Broadcasting Licence to Operate Community Radio Service"	File Ref: CTB(CR) 9/2/26 (06) Pt.4
Meeting of ITB Panel on 6 February 2007	✧ Administration's paper : Consultation on Digital Broadcasting: Mobile TV and Related Issues ✧ Minutes of meeting	CB(1)853/06-07(05) CB(1)1297/06-07

Committee	Paper	LC Paper No.
Meeting of ITB Panel on 29 June 2007	✧ Submission from Citizens' Radio	CB(1)1993/06-07(01)
	✧ Minutes of meeting	CB(1)2450/06-07
Council meeting on 12 December 2007	✧ Oral question on "Enforcement of Telecommunications Ordinance"	Hansard
Meeting of ITB Panel on 29 January 2008	✧ Speech made by the Administration	LC Paper No. CB(1)766/07-08 (02) and (03)