

民主黨對
《2009年電訊(修訂)條例草案》的修訂建議

項目	修訂內容	修訂條文	註解	參考法例
1.	在條例中訂立「社區電台」的定義、確立申請營辦「社區電台」的機制，並為其訂立有別於商營電台的審批標準。	新增的 1A， 第 2 條、第 3 條	修訂的目的是為在法例中確立非商營、公眾可參與營辦的社區電台，開放大氣電波，並為申請該等社區電台牌照訂立更簡易的標準，方便讓公眾人士成功申請牌照。	英國《2004年社區電台命令》
2.	修訂條例，讓廣管局在發出商營或社區電台牌照、終止或恢復其牌照、更改其牌照內容或續牌時，必須舉行公聽會（除有違公眾利益例外）。	新增的 4A	修訂要求當局對牌照申請人或持有人作出重要決定時，必須舉行公聽會，增加當局考慮有關申請的過程的透明度，及讓市民大眾有機會就該等申請表達支持或反對意見，帶動社會及輿論討論及參與廣播事務。	加拿大《1991年廣播法令》
3.	修訂條例，提供上訴機制，讓公眾人士可針對行政長官會同行政會議就發出牌照、續牌等決定，向原訟法庭提出上訴。	新增的 5A	現行條例中，申請電台牌照被拒者，並無上訴機制，只能透過司法覆核推翻政府決定。修訂讓公眾人在不滿政府的決定時，可向法庭申請提出上訴。	加拿大《1991年廣播法令》
4.	更改電台廣播牌照的發牌人，讓廣管局同時接受、審批及發出電台牌照	處理中	在加拿大、澳洲、美國及英國，以及很多民主國家，發出電台牌照的機構均為獨立於政府的法定機構，使發牌制度更有公信力。	加拿大《1991年廣播法令》、澳洲《1992年廣播法令》、美國《1943年通訊法令》、英國《2003年通訊法令》

TELECOMMUNICATIONS (AMENDMENT) BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable Emily Lau Wai-hing

Clause

Amendment Proposed

new

(a) By adding immediately after clause 1 –

“1A. Interpretation

(1) Section 13A(1) of the Telecommunications Ordinance (Cap. 106) is amended by adding –

““community” (社區) means -

(a) the persons who live or work or undergo education or training in a particular area or locality, or

(b) persons who (whether or not they fall within paragraph (a)) have one or more interests or characteristics in common;

“community radio licence” (社區電台牌照) means a licence granted under section 13C of this Ordinance to provide a community radio service;

“community radio service” means service having the characteristics set out in 13A(4);”.

(2) Section 13A(1) of the Telecommunications Ordinance (Cap. 106) is amended by repealing ““licence” (牌照) means a licence granted under section 13C;” and substituting –

“licence” (牌照) means a licence (other than a community radio licence) granted under section 13C;” .

(3) Section 13A of the Telecommunications Ordinance (Cap. 106) is amended by adding –

“(4)(a) It is a characteristic of community radio services that they are services provided primarily -

- (i) for the good of members of the public, or of particular communities, and
- (ii) in order to deliver social gain,

rather than primarily for commercial reasons or for the financial or other material gain of the individuals involved in providing the service.

(b) It is a characteristic of every community radio service that it is intended primarily to serve one or more communities (whether or not it also serves other members of the public).

(c) It is a characteristic of every community radio service that the person providing the service -

- (i) does not do so in order to make a financial profit by so doing, and
- (ii) uses any profit that is produced in the provision of the service wholly and exclusively for securing or improving the future provision of the service, or for the delivery of social gain to members of the public or the community that the service is intended to serve.

(d) It is a characteristic of every community radio service that members of the community it is intended to serve are given opportunities to participate in the operation and management of the service.

(e) It is a characteristic of every community radio service that, in respect of the provision of that service, the person providing the service makes himself accountable to the community that the service is intended to serve.”.

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By repealing the section and substituting –

“2. Application for Licence

(1) Section 13B of the Telecommunications Ordinance (Cap. 106) is amended by repealing “for a licence to establish” and substituting –

“for a licence or a community radio licence to establish”.

(2) Section 13B of the Telecommunications Ordinance (Cap. 106) is by renumbering it as section 13B(1)

(3) Section 13B is amended by adding—

“(2) An application made under subsection (1) may be entertained only if the Broadcasting Authority, after consulting the Telecommunications Authority, is satisfied that—

(a) the frequency in the radio spectrum that the applicant proposes to use is available as at the date of the application; and

(b) that frequency is suitable for use in providing the proposed broadcasting service.

(3) If the Broadcasting Authority is not satisfied as to any of the matters specified in subsection (2)(a) and (b), it must inform the applicant in writing of this fact.” .

3

By adding immediately after subsection (2) –

“(3) Section 13C is amended by adding –

- (7) Having considered the recommendations made under subsection (1) in respect of an application for a community radio licence to establish and maintain a broadcasting service, the Governor in Council may grant a community radio licence to the applicant and such licence shall, without prejudice to this Ordinance or the Broadcasting Authority Ordinance (Cap 391), be subject to the payment of such fee, royalty or other charge whatsoever, whether annual or otherwise, and to such terms and conditions as the Governor in Council may specify in the licence.
- (8) Without prejudice to the generality of subsection (7), a community radio licence may include a condition that the Broadcasting Authority may suspend the licence.
- (9) In exercising the discretion whether to grant a community radio licence under subsection (7), the Chief Executive in Council must have regard to the following matters—
 - (a) the ability of each of the applicants for the community radio licence to maintain, throughout the period for which the licence would be in force, the service which he proposes to provide;
 - (b) the extent to which any such proposed service would cater for the tastes and interests of persons living in the area or locality for which the service would be provided, and, where it is proposed to cater for any particular tastes and interests of such persons, the extent to which the service would cater for those tastes and interests;
 - (c) the extent to which any such proposed service would broaden the range of programmes available by way

of local services to persons living in the area or locality for which it would be provided, and, in particular, the extent to which the service would cater for tastes and interests different from those already catered for by local services provided for that area or locality; and

- (d) the extent to which any application for the licence is supported by persons living in that area or locality.”.

TELECOMMUNICATIONS (AMENDMENT) BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable Lee Wing-tat

Clause

Amendment Proposed

new

(a) By adding immediately after clause 4 –

“4A. Section added

The following is added –

“13P. Hearings

- (1) Except where otherwise provided, The Broadcasting Authority shall hold a public hearing in connection with
- (1) the issue of a licence or a community radio licence;
 - (2) the suspension or revocation of a licence or a community radio licence; and
 - (3) the making of a direction under section 36B.
- (2) The Broadcasting Authority shall hold a public hearing in connection with the amendment or renewal of a licence unless it is satisfied that such a hearing is not required in the public interest.
- (3) The Broadcasting Authority may hold a public hearing, make a report, issue any decision and give any approval in connection with any complaint or representation made to the Broadcasting Authority or in connection with any other matter within its jurisdiction under this Ordinance if it is satisfied that it would be in the public interest to do so.””.

TELECOMMUNICATIONS (AMENDMENT) BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable Lee Wing-tat

Clause

Amendment Proposed

new

(a) By adding immediately after clause 4 –

“5A. Section added

The following is added –

“14A. Appeal to the Court of First Instance

An appeal lies from a decision or order to issue, amend or renew a licence or a community radio licence of the Governor in Council to the Court of First Instance on a question of law or a question of jurisdiction if leave therefor is obtained from that Court on application made within one month after the making of the decision or order sought to be appealed from or within such further time as that Court under special circumstances allows.”.