

立法會
Legislative Council

LC Paper No. CB(1)720/09-10
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/09

**Bills Committee on
Telecommunications (Amendment) Bill 2009**

**Minutes of the second meeting
held on Monday, 30 November 2009, at 3:30 pm
in the Chamber of the Legislative Council Building**

Members present : Hon Andrew LEUNG Kwan-yuen, SBS, JP (Chairman)
Hon LAU Kong-wah, JP
Hon Emily LAU Wai-hing, JP
Hon LEE Wing-tat
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

Members absent : Hon Timothy FOK Tsun-ting, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Cyd HO Sau-lan
Dr Hon Samson TAM Wai-ho, JP

Public officers attending : Agenda Item II

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

Mr Aaron LIU
Principal Assistant Secretary for Commerce and
Economic Development (Communications and
Technology)A

Ms Maisie CHENG, JP
Commissioner for Television and Entertainment
Licensing

Mr PO Pui-leong
Assistant Commissioner for Television and Entertainment
Licensing (Broadcasting)

Ms Monica LAW
Senior Assistant Law Draftsman
Department of Justice

**Attendance by
invitation**

: Agenda Item II

Citizens' Radio

Mr TSANG Kin-shing
Convenor

Mr PANG Yee-kwong
CEO

Wave Media Limited

Mr Albert CHENG, JP
Chairman

Mr Simon HEUNG
Technical Consultant

The Law Society of Hong Kong

Mr Nicholas CHAN Hiu-Fung
Member of Technology Committee

Hong Kong Journalists Association

Ms MAK Yin-ting
Chairperson

Civic Party

Mr Stuart LAU
Policy Champion of Civic Party

Hong Kong Human Rights Monitor

Mr KWOK Hiu-chung
Education Officer

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

Staff in attendance : Mr Bonny LOO
Assistant Legal Adviser 3

Miss Winnie LO
Assistant Legal Adviser 7

Ms Annette LAM
Senior Council Secretary (1)3

Ms May LEUNG
Legislative Assistant (1)6

Action

I. Confirmation of minutes of meeting

(LC Paper No. CB(1)455/09-10 -- Minutes of meeting held on
5 November 2009)

The minutes of the meeting held on 5 November 2009 were confirmed.

II. Meeting with deputations and the Administration

Meeting with deputations

1. Citizens' Radio
2. Wave Media Limited
(LC Paper No. CB(1)457/09-10(01) – submission)
3. The Law Society of Hong Kong
(LC Paper No. CB(1)188/09-10(02) – submission)
4. Hong Kong Journalists Association
(LC Paper No. CB(1)457/09-10(02) – submission)
5. Civic Party
(LC Paper No. CB(1)492/09-10(01) – submission)
6. Hong Kong Human Rights Monitor
(LC Paper No. CB(1)596/09-10(01) – submission)

Submission from deputation not attending the meeting

(LC Paper No. CB(1)596/09-10(02) -- Submission from Metro Broadcast
(English version only) Corporation Limited)

Meeting with the Administration

(LC Paper No. CB(1)457/09-10(03) -- List of follow-up actions arising
from the discussion at the meeting
on 5 November 2009

LC Paper No. CB(1)457/09-10(04) -- Administration's paper on
licensing of sound broadcasting
services and other related matters

LC Paper No. CB(1)457/09-10(05) -- Administration's response to issues
raised at meeting on 5 November
2009

LC Paper No. CB(1)457/09-10(06) -- Administration's paper on
development of digital audio
broadcasting in Hong Kong

File Ref: CTB(CR) 9/2/26 (06) Pt.4 -- LegCo Brief on Ocean Technology
Limited's application for sound
broadcasting licence to operate
community radio service

LC Paper No. LS15/09-10 -- Information note on how a licence
to provide a television programme
service is granted under the
Broadcasting Ordinance (Cap.
562) prepared by the Legal Service
Division of the Legislative
Council Secretariat

LC Paper No. CB(1)498/09-10(01) -- Administration's paper on
examples of licensing-related
provisions under other legislation

Other relevant papers

LC Paper No. CB(3)813/08-09 -- The Bill

LC Paper No. CB(1)187/09-10(01) -- Marked-up copy of the Bill prepared by the Legal Service Division

File Ref: CTB(CR)9/19/15 (09) Pt. 3 -- Legislative Council Brief on Telecommunications (Amendment) Bill 2009 issued by the Commerce and Economic Development Bureau

LC Paper No. LS2/09-10 -- Legal Service Division Report

LC Paper No. RP07/07-08 -- Research report on regulation of radio broadcasting services in selected places prepared by the Research and Library Services Division of the Legislative Council Secretariat on 5 June 2008)

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Admin 3. The Administration was requested to provide:

- (a) information on the availability and allocation of frequency spectrum in the Frequency Modulation (FM) Band (87MHz-108MHz) which was used by Hong Kong and the neighbouring regions for the provision of sound broadcasting services;
- (b) information on the number of radio channels (including territory-wide channels and localized channels) which could be supported in the FM Band having regard to the current technology and upon the launching of digitization of sound broadcasting; and
- (c) a detailed written response to the views made by the depositions on the Bill.

(Post-meeting note: The information in respect of paragraph 3 were tabled at the meeting on 8 December 2009 and subsequently issued to members vide LC Paper Nos. CB(1)611/09-10(01) and (02) on 9 December 2009.)

III. Any other business

Date of next meetings

4. The Chairman reminded members that the third and the fourth meetings would be held on 10 December 2009 from 4:30 pm to 6:30 pm and on 22 December 2009 from 9:00 am to 11:00 am respectively.

(Post-meeting note: With the concurrence of the Chairman, the third meeting originally scheduled for 10 December 2009 was advanced to 8 December 2009 from 4:30 pm to 6:30 pm to avoid clashing with the anticipated continuation of the Council meeting. Members had been notified of the meeting arrangement vide circular LC Paper No. CB(1)563/09-10 issued on 3 December 2009.)

5. There being no other business, the meeting ended at 5:20 pm.

Council Business Division 1
Legislative Council Secretariat
21 December 2009

**Proceedings of the second meeting of
Bills Committee on Telecommunications (Amendment) Bill 2009
on Monday, 30 November 2009, at 3:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000044	Chairman	(a) Opening remarks by the Chairman (b) Confirmation of minutes of meeting held on 5 November 2009 (LC Paper No. CB(1)455/09-10)	
000045 – 000714	Chairman Citizens' Radio (CR)	Meeting with deputations Mr TSANG Kin-shing of CR gave a chronological account of the Ocean Technology Limited's application for a sound broadcasting licence to establish and maintain a community radio service known as CR, and the court case involving unlicensed broadcasting by CR. He called for a complete revamp of the Telecommunications Ordinance (TO) which he considered draconian and unconstitutional, in breach of the Basic Law and the Bill of Rights. He criticized the Government for trying to curb freedom of expression and thwart the opening up of airwaves for community participation in broadcasting.	
000715 – 001117	Chairman Wave Media Limited (WM)	Presentation of views (LC Paper No. CB(1)457/09-10(01))	
001118 – 001352	Chairman The Law Society of Hong Kong (LS)	Presentation of views (LC Paper No. CB(1)188/09-10(02))	
001353 – 001919	Chairman Hong Kong Journalists Association (HKJA)	Presentation of views (LC Paper No. CB(1)457/09-10(02))	
001920 – 002344	Chairman Civic Party (CP)	Presentation of views (LC Paper No. CB(1)492/09-10(01))	
002345 – 002714	Chairman Hong Kong Human Rights Monitor (HKHRM)	Presentation of views (LC Paper No. CB(1)596/09-10(01))	

Time marker	Speaker	Subject(s)	Action required
002715 – 003512	Chairman Administration	The Administration's response to deputations' views	The Administration to follow up as stated in paragraph 3(c) of the minutes.
003513 – 015021	Chairman Administration Mr LAU Kong-wah Ms Emily LAU Mr LEE Wing-tat Mr Ronny TONG Mrs Regina IP WM CR HKJA HKHRM LS	<u>Discussion on licensing criteria</u> HKJA's view as follows: (a) licensing criteria set out in section 13C subsection (4) which were subject to the discretion of the Chief Executive (CE)-in-Council were too vague and would therefore be open to abuse; (b) the Government should make reference to international standards and practices in drawing up clear, objective and concrete parameters for the grant of sound broadcasting licences; (c) licensing criteria under section 13C subsection (4) failed to satisfy the requirement to protect freedom of expression and speech enshrined in international human rights convention; and (d) the Government should reconsider its proposal and carry out a comprehensive review of the licensing system. HKHRM's view that the licensing criteria should be prescribed by law to safeguard freedom of expression and media diversity; Mr LAU Kong-wah and WM's view that the licensing criteria on financial soundness, management and technical capability of the licence applicant as well as quality of broadcasting services, etc., were reasonable and appropriate. The Administration's response as follows: (a) the set of licensing criteria was drawn up with reference to local experience in considering broadcasting licence applications as well as overseas best practices; (b) the objective of the Telecommunications (Amendment) Bill (the Bill) 2009 was to provide for legal certainty and to enhance transparency of the existing sound broadcasting licensing regime by prescribing the set of	

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		<p>criteria under the law. The specification of the assessment criteria for making the licensing decision would enhance the transparency and legal certainty of the sound broadcasting licensing regime;</p> <p>(c) after the enactment of the Bill, the Broadcasting Authority would promulgate a set of guidelines under section 13CA(1) of the TO on how it would process sound broadcasting licence applications, having regard to the licensing criteria prescribed in the TO; and</p> <p>(d) a comprehensive review of the relevant ordinances would be carried out upon the establishment of a unified regulator.</p> <p>Deputations were invited to state their views in writing in respect of paragraphs 3(a) and (b) of the minutes and make suggestions on parameters for assessment as well as ways and means to strengthen the licensing criteria.</p> <p><u>Section 13C subsection (4)(b): "financial soundness and commitment to investment"</u></p> <p>LS's view that subsequent guidelines should be issued to spell out what factors would be taken into account when assessing "financial soundness".</p> <p>HKJA's suggestion that the criterion on financial soundness be rephrased to the effect that financial soundness should be commensurate with the applicant's proposed business plan.</p> <p>WM's view that financial soundness and the ability to maintain the throughput of the proposed commercial sound broadcasting service, the period for which the licence would be in force, were important. Investment up to \$50 million would be required for territory-wide digital audio broadcasting.</p> <p>CR's concern that the criterion on financial soundness would be used to preclude smaller community groups that were relatively less financially capable from being granted a licence to operate their own radio channels. According to past experience, CR operating at FM 102.8 would be able to provide territory-wide coverage at a cost of around \$1 million.</p> <p>The Administration explained that the criteria on financial soundness did not specify the minimum level of financial resources required other than stating that the applicant must demonstrate a commitment to invest sufficiently in the</p>	

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		<p>proposed project and must possess sufficient financial capability to invest to the level proposed. The financial requirement and related consideration would depend on the applicant's business proposal in respect of the scale, nature and programme content of the services to be provided, etc. The relevant criteria would not in any way specify any threshold whereby an applicant should meet before it would be granted a licence.</p> <p><u>Section 13C subsection 4(d): "the variety, quantity and quality of programmes to be provided"</u> <u>Section 13C subsection 4(h): "benefits to the local broadcasting industry, the audience and the community as a whole"</u></p> <p>HKJA's view as follows:</p> <p>(a) these criteria might be used to preclude small community groups from operating community-based radio stations or be construed as a tool to bar groups that held opposing views to the Government from obtaining a licence for sound broadcasting services; and</p> <p>(b) media diversity should be included as a criterion in considering a licence application and guaranteed by law so as to encourage a vibrant and diverse media environment and facilitate freedom of expression.</p> <p>CP's view that the extent to which the licence applicant could cater for the community's needs for programme diversity should be taken into consideration in determining whether to grant a licence.</p> <p>CR's view that these two criteria should be deleted from the Bill as they would curb freedom of expression and speech.</p> <p>The Administration's response as follows:</p> <p>(a) the criterion on "benefits to the local broadcasting industry, the audience and the community as a whole" did not in any way specify any threshold whereby an applicant must meet before it could be granted a licence. Its adoption would not rule out any licence applications (catering for the needs of specific social/ethnic/religious groups) from receiving a fair chance to be considered on its individual merits as in the case of other licence applications, including those providing for territory-wide radio broadcasting services;</p>	

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		<p>(b) under the criterion on "the variety, quantity and quality of programmes to be provided", proposals would be evaluated on factors, such as the appeal of the programming to audience, the quantity and quality of proposed programmes and the extent to which they would broaden audience's choice thereby addressing deputations' concern about media diversity, plurality of voices and freedom to express different points of view in programming; and</p> <p>(c) the existing cross-media ownership requirement under the Broadcasting Ordinance had already helped ensure media diversity.</p> <p><u>Section 13C subsection (5): "fit and proper person"</u></p> <p>LS's suggestion to consider (i) rephrasing section 13C subsection (4)(a) to the effect that the applicant corporation's fitness and properness should also be taken into account, and (ii) adding parameters such as the risk of the applicant corporation in money laundering, the nature of the business of the applicant corporation, the business record of the applicant corporation, etc, for evaluating the applicant corporation's fitness and properness.</p> <p>Mr Ronny TONG's view that section 13C subsection (5) was textually unclear and too vague with no concrete parameters for assessment.</p> <p>The Administration's response that the term "disqualified person" had been clearly defined under TO which also stipulated that the licence applicant must be a corporation.</p> <p><u>Appeal mechanism</u></p> <p>The Administration's view that judicial review was the established appeal mechanism. Aggrieved parties could seek judicial review against licensing decision made by the CE-in-Council.</p> <p>HKJA's view that the high cost of judicial review might deter aggrieved applicant from seeking relief. An independent appeal mechanism, other than judicial review, should be provided under the law for redress.</p> <p>Mr Ronny TONG's view that judicial review to rule on procedural matters should not be taken as an appeal channel.</p> <p><u>CE-in-Council vs independent body as licensing authority</u></p>	<p>The Administration to follow up as stated in paragraph 3(a) and (b) of the minutes.</p>

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		<p>HKJA and CR held the view that there was a lack of transparency in the decision making process. They objected to the discretionary power of the CE-in-Council. HKJA and CR held the view that a decision on whether to grant a sound broadcasting licence should not be subject to the CE-in-Council's sole unfettered discretion, and should be made by an independent licensing body instead.</p> <p>Referring to the overseas practice whereby most regulatory authorities for the broadcasting sector of the member states of the European Union were appointed by the member states' parliament or by the head of state following parliamentary recommendation, HKJA urged the Government to consider having members appointed by CE to an independent licensing body by way of nomination by the Legislative Council.</p> <p>The Administration's response as follows:</p> <ul style="list-style-type: none"> (a) for transparency, licence applicants were informed of the reasons for refusal to grant a licence in accordance with the established mechanism; (b) the purpose of the proposed section 13C(4) was merely to provide for the matters that the CE-in-Council must have regard to when exercising its discretion; and (c) the reference to "discretion" under Clause 3 of the Bill only referred to the existing authority of the CE-in-Council under section 13C(2) of the TO. The Bill did not seek to expand the CE-in-council's existing power. <p>HKHRM's view that the additional matters to which the CE-in-Council must have regard in exercising the discretion whether to grant a licence should be set out clearly and should not be left to the sole discretion of the CE-in-Council.</p> <p>The Administration explained that the specification of additional matters must be published by way of Gazette which would be tabled at the Legislative Council.</p> <p><u>Community broadcasting</u></p> <p>HKJAs' and CR's views as follows:</p> <ul style="list-style-type: none"> (a) given the additional spectrum to be released by digitization, the Administration should not use spectrum scarcity as an excuse to reserve the airwaves 	

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		<p>only for commercial big players;</p> <p>(b) the Administration should open up airwaves for social/ethnic/religious groups to operate their own community-based radio stations covering a particular locality or region and provide platforms for different sectors of the community and non-governmental organizations to express diverse views;</p> <p>(c) participation in programmes with RTHK as programme host was not genuine community/public access broadcasting; and</p> <p>(d) financial and technical assistance should be provided by the Government to assist community groups and ethnic minorities in programme production.</p> <p>The Administration responded that RTHK would be provided with appropriate resources to develop as an all-round public service broadcaster to serve the community. Part of its airtime would be dedicated for community broadcasting. Apart from participation in RTHK's programmes, community groups could also produce programmes of their own. A Community Broadcasting Involvement Fund would be set up to provide financial support and technical assistance to facilitate community groups to participate in broadcasting and content productions.</p> <p><u>Radio broadcasting in the Frequency Modulation (FM) Band</u></p> <p>Discussion on the availability of frequency spectrum in the FM frequency Band (87MHz - 108MHz) was held for the provision of sound broadcasting services in Hong Kong, having regard to the current technology, future digitization, Hong Kong's small geographical area and hilly nature, frequency coordination with the Mainland, Macao and other neighbouring jurisdictions to avoid radio interference and the standards set by the International Telecommunications Union.</p> <p>CR's view that a bandwidth of 0.2MHz could carry one radio channel. The FM frequencies in the 88MHz - 108MHz could support up to 100 independent channels without interference.</p> <p>The Administration advised that within the currently available analogue frequency spectrum, Hong Kong currently had seven territory-wide FM channels and seven</p>	

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		<p>territory-wide AM channels. All of them had been allocated and were currently being taken up by RTHK and three commercial sound broadcasting licensees for the provision of territory-wide services.</p> <p>Members invited CR and WM to state their views in writing on the availability of frequency spectrum in the FM frequency Band for the provision of sound broadcasting services.</p> <p><u>Development of digital audio broadcasting (DAB) in Hong Kong</u></p> <p>In response to deputations' call for expediting the development of DAB services in Hong Kong so as to free up spectrum for the introduction of public access channels, the Administration advised that subject to the outcome of the public consultation being conducted by the Commerce and Economic Development Bureau and the established mechanism governing the allocation of new resources, RTHK would be allocated appropriate resources and frequency spectrum to expand its scope of service, including the provision of dedicated digital television and radio channel. Territory-wide DAB services was estimated to be rolled out in phases in a period of around three to five years.</p>	
015022 – 015540	Chairman	Dates of next meetings	