

LEGISLATIVE COUNCIL BRIEF

Telecommunications Ordinance
(Chapter 106)

Applications for Sound Broadcasting Licences to Provide Digital Audio Broadcasting Services

INTRODUCTION

At the meeting of the Executive Council on 2 November 2010, the Council ADVISED and the Chief Executive ORDERED that –

- (a) on the recommendations of the Broadcasting Authority (BA) under section 13C(1) of the Telecommunications Ordinance (the Ordinance), the applications by Metro Broadcast Corporation Limited (Metro), Phoenix U Radio Limited (Phoenix U) and Wave Media Limited (Wave Media) for sound broadcasting licences under section 13B of the Ordinance to provide digital audio broadcasting (DAB) services for a validity period of 12 years should be approved in principle;
- (b) full use of one Band III multiplex should be made by allocating spectrum to the prospective DAB operators to provide 13 programme channels (three each for Metro and Phoenix U and seven for Wave Media) upon the grant of licences to them in due course and reserving spectrum for Radio Television Hong Kong (RTHK) to provide its DAB services; and
- (c) the sound broadcasting licences to be granted to Metro, Phoenix U and Wave Media should be prepared, with licensing conditions broadly along the lines set out in **Annex A**, and be submitted to the Chief Executive in Council (CE in Council) for approval when ready.

JUSTIFICATIONS

2. In December 2009, the CE in Council approved the development framework for the provision of DAB services in Hong Kong. In February 2010, the Government promulgated the framework and invited applications for sound broadcasting licences to provide DAB services via a Band III multiplex of a bandwidth of 1.5 MHz. Phoenix Radio Limited¹ applied on 29 April 2010 while Metro and Wave Media, on 30 April 2010. The Hong Kong Commercial Broadcasting Limited (CRHK) applied on 30 April 2010 but withdrew the application on 23 June 2010. Three applications remain outstanding. The key features of the three applications are in **Annex B**.

Licensing Regime for Sound Broadcasting Services

3. Part IIIA of the Ordinance sets out the licensing regime for sound broadcasting services (extracts at **Annex C**). In brief, an eligible corporation may apply for a licence to establish and maintain a sound broadcasting service and the BA has to consider such application and make recommendations thereon to the CE in Council if it is satisfied that the application has met the pre-requisite of availability and suitability in respect of the proposed spectrum as stipulated in section 13B(2) of the Ordinance. Having considered the BA's recommendations, the CE in Council may grant a licence to the applicant, subject to terms and conditions as it may specify.

Availability and suitability of spectrum

4. Based on the advice of the Telecommunications Authority (TA), the BA was satisfied that the Band III multiplex to be made available for DAB purpose is suitable for the provision of the proposed broadcasting services as set out in the applications of Metro, Phoenix U and Wave Media. As such, the prerequisite specified in section 13B(2) of the Ordinance concerning the availability and suitability of spectrum was met.

Compliance with Statutory Requirements

5. The BA has examined the applications in respect of their compliance with statutory requirements. Metro and Wave Media have submitted statutory declarations that they would comply with the various

¹ The name of the applicant was changed from "Phoenix Radio Limited" to "Phoenix U Radio Limited" in September 2010.

statutory requirements under the Ordinance. Phoenix U has proposed to carry out a corporate restructuring so as to comply with the non-subsidiary requirement under the Ordinance.

6. The BA considered that the applications are in compliance with the relevant provisions under the Ordinance, including those relating to Hong Kong residency requirement and non-subsidiary requirement. The applications of Metro and Phoenix U involve Disqualified Persons² (DP), and the BA, having regard to relevant factors³, considered that the CE in C may grant a DAB licence to Metro and Phoenix U respectively under the Ordinance without imposing any conditions relating to the DP and to the control exercised.

Licensing Criteria under Section 13C(4) of the Ordinance

7. In respect of the licensing criteria for consideration set out in section 13C(4) of the Ordinance for processing the applications and taking into account the submissions by the applicants and comments received from the public, the BA's assessment on the applications under these licensing criteria is set out below -

- (a) *Whether the applicant and all persons exercising control of the applicant are fit and proper persons*

All three applicants have submitted statutory declarations to the satisfaction of the BA that they and persons exercising control over them meet the criteria for being fit and proper persons.

² Under the Ordinance, Disqualified Persons (DP) are taken to mean the following –

- (a) an advertising agent;
- (b) a person who in the course of business supplies material for broadcasting by a licensee;
- (c) a licensee;
- (d) a person who in the course of business transmits sound or television material, whether in Hong Kong or outside Hong Kong;
- (e) a person who is (i) a domestic free television programme service licensee, or a domestic pay television programme service licensee, within the meaning of section 2(1) of the Broadcasting Ordinance; or (ii) an associate, within the meaning of that section, of a licensee referred in subparagraph (i); or
- (f) a person who exercises control of a corporation that is a person referred to in paragraph (a), (b), (c), (d) or (e)(i).

The Ordinance stipulates that the CE in C may grant a licence to a corporation that is a DP and the licence may contain such conditions relating to DP and to the control exercised by it as the CE in C may impose under section 13C.

³ These include the effect on competition in the relevant service market, extent to which audience will be offered more diversified programme choices, impact on the development of the broadcasting industry and the overall benefits to the economy. These are also factors for considering exemption of the DP requirement in respect of TV licences under the Broadcasting Ordinance.

(b) *The opinion of the public*

In line with established procedures, the BA invited public views on the applications between 9 and 30 July 2010 and received 130 written submissions. While there are some individual views which are critical against the applications⁴, the BA is satisfied that most respondents support the applications on the grounds that the applicants have the capability to provide DAB services and that their proposals would provide more choices to the audience. The concerns raised in individual views, e.g. more variety of programmes and less simulcast of analogue programmes, could be addressed through appropriate licence conditions as well as the relevant provisions of the BA's codes of practice.

(c) *The applicant's financial soundness and ability to maintain, throughout the period for which the licence would be in force, the proposed broadcasting service*

The BA has no reason to doubt the applicants' financial strengths. The financial capability of Metro's shareholders is backed by Hutchison Whampoa Limited and Cheung Kong (Holdings) Limited, which had \$92 billion and \$11 billion cash respectively as at end 2009. Wave Media's shareholders are individually and collectively persons with strong and distinguished financial standing and the company has secured funding of \$105 million from its Class 'A' shareholders and plans to raise an additional amount of \$35 million from its Class 'B' shareholders. Phoenix Satellite Television Holdings Limited, which had over \$780 million in cash as at end 2009, will provide financial support for Phoenix U's provision of DAB services.

(d) *Whether the applicant has the necessary technical expertise and the relevant managerial skill to operate the proposed broadcasting service*

The board and/or the management of all three applicants have

⁴ The individual views which are critical against the applications are on the grounds that the proposed programmes repeat those on the existing analogue channels and hence not bringing more diversity and competition (against Metro), the proposed programmes in Putonghua are not suitable for Hong Kong (against Phoenix U), and that the applicant may be a political party with political agenda (against Phoenix U and Wave Media).

included experts with extensive experience in the broadcasting industry. The BA considers that they have the technical expertise and managerial skill to operate the proposed broadcasting services.

(e) *The variety, quantity and quality of programmes to be provided*

The three applicants propose to provide 13 round-the-clock DAB channels. This doubles the existing 13 channels broadcast in analogue format by CRHK, Metro and RTHK. The proposed DAB channels encompass a great variety of programme genres covering current affairs, financial news, music, lifestyle in Hong Kong and Guangdong, education, language learning, programmes for ethnic minorities, etc. The BA considers that the proposed channels will significantly broaden the audience's choice in terms of variety, quantity and quality of programmes to be provided.

(f) *The quality and technical viability of the proposed broadcasting services*

All three applicants propose to adopt DAB+ standard, which is a proven technology adopted in overseas countries like Singapore and Australia. One of the applicants, Wave Media, has been conducting trials on DAB technology since November last year with satisfactory results. Taking into account TA's technical advice, the BA is satisfied with the quality and technical viability of the proposed broadcasting services.

(g) *The speed of service roll-out*

All three applicants have proposed to launch service within 12 months after the licence is granted and transmission equipment installed and that the full scale of their services be rolled out by phases. The BA considers the applicants' phased approach in launching their services acceptable.

(h) *Where any construction work is to be carried out, the extent of any inconvenience that may be caused to the public by the work*

All the applicants plan to co-locate their DAB transmission facilities at the existing FM transmission stations, most of which are located in remote hilltops or rural areas. As such, any adverse impact on the public should be minimal.

- (i) *The benefits to the local broadcasting industry, the audience and the community as a whole*

All the applicants have submitted that their proposed services will widen the choice of programmes of the audience. The total investment involved in the proposed broadcasting services by the three applicants amounts to \$ 957.2 million in the first six years of operation, which will be a significant boost to the local sound broadcasting industry. The BA considers that the launch of the proposed DAB services will bring about positive gain to the community by increasing competition in the broadcasting market and increasing listeners' choice of programmes.

- (j) *The applicant's proposed arrangements to ensure compliance with the provisions of the Ordinance, any other applicable law and the terms and conditions that may be specified in the licence*

Metro has submitted that a dedicated department would be responsible for overseeing matters of compliance, and systems and procedures would be in place to ensure compliance. Wave Media has submitted that the Programme Director will assume the role of compliance officer to ensure compliance. Phoenix U has submitted that a Chief Editor will be appointed for vetting programmes on each channel. The BA is satisfied that all the applicants would have appropriate internal monitoring systems to ensure compliance with statutory and licensing requirements.

8. On the basis of the above assessment, the BA recommended, and the CE in C agreed, to grant approval-in-principle to the applications made by Metro, Phoenix U and Wave Media. Subject to discussion with the applicants on the detailed licence conditions, the licences to be granted to them will be prepared along the lines of Annex A and be submitted to the CE in C for approval.

Allocation of Multiplex Capacity

9. The three applicants have proposed to provide a total of 13 DAB programme channels and RTHK will also launch its DAB services in due course. Based on TA's advice and overseas experience and in accordance with the market-led principle, we will provide each sound broadcasting channel a data rate of 48 kilobits per second (kbps) to deliver MP3 sound quality based on DAB+ standard as proposed by all the applicants⁵.

10. The BA considers that the multiplex should be mainly used for provision of sound broadcasting channels and a common electronic programme guide (EPG) for all the DAB operators. The remaining capacity will then be allocated to the prospective DAB operators for the provision of programme associated data services. Having regard to the BA's recommendations, we will apportion the multiplex capacity to the operators on a bundled basis according to the proposed number of DAB channels that they will roll out so that they are free to adjust the capacity to be used for individual channel services within their bundle, e.g. to deploy more than 48 kbps to a music channel in order to enhance sound quality but less than 48 kbps to a non-music channel. We will adopt the same basis in reserving spectrum within the same Band III multiplex for RTHK to provide its DAB services as the public service broadcaster. RTHK, as the site manager of the FM transmission facilities, will take up a similar role in coordinating DAB transmission facilities.

11. This will fully utilise the Band III multiplex released for efficient use of valuable spectrum resources and the build-up of a critical mass for the roll-out of DAB services.

Wave Media's Application to Surrender AM Licence and Waive the Performance Bond and Licence Fee

12. Wave Media was granted a 12-year sound broadcasting licence by the CE in Council on 11 November 2008 for the provision of Amplitude Modulation (AM) service. The licence requires that Wave Media shall establish and maintain an AM radio service within 24 months after grant of the licence (the Milestone). To ensure its compliance with the Milestone, Wave Media had submitted a duly issued performance bond in favour of the Government in the sum of \$2 million. In case Wave Media fails to achieve the Milestone, the Government may forfeit the bonded sum. A

⁵ DAB+ standard and the allocation of 48 kbps per DAB sound broadcasting channel are proposed by the three DAB applicants as well as RTHK. The standard and allocation adopted are also the same in Australia and Singapore.

licence fee is also payable upon the commencement of Wave Media's AM service or the second anniversary of the grant of the licence, whichever is the earlier.

13. Wave Media submitted on 22 September 2010 that despite its conscious efforts in establishing an AM broadcasting service, it had faced enormous resistance from Peng Chau residents in respect of the installation of an AM transmission station there. Consequently, Wave Media would not be able to meet the Milestone to launch an AM radio service by the deadline, i.e. 10 November 2010. Wave Media has submitted that, subject to the grant of the DAB licence, it would surrender its AM licence and focus on delivering DAB services. The BA acknowledges Wave Media's efforts and difficulties encountered in establishing the AM transmission station. It considers that Wave Media's provision of DAB services in lieu of AM radio services would benefit the audience and recommends that the CE in Council approve Wave Media's application to surrender the AM licence in exchange for the grant of a DAB licence. The CE in Council will review BA's recommendation and decide on the application of Wave Media to surrender its AM licence and to waive its compliance with the relevant performance bond and payment of licence fee upon the grant of a licence to Wave Media for providing DAB services.

Promotion of Territory-wide Adoption of DAB Services

14. DAB receivers are not widely sold in retail electrical appliance shops at present. With the launch of DAB services, we expect more models of DAB receiver to become available in the market and the competition may drive down the prices (a few hundred dollars per receiver at the moment). We will set up a DAB Steering Committee comprising members from Television and Entertainment Licensing Authority, the Office of the Telecommunications Authority, RTHK and the prospective licensees to oversee the implementation and sustainable development of DAB services, which include monitoring the network coverage and rollout, take-up of DAB (sales of DAB receivers), devising DAB publicity and promotion strategies, etc. We have held discussions with associations in the consumer electronics and automobile industries on how the DAB receiver market may cope with the launch of DAB services. We are also coordinating with relevant bureaux/departments to facilitate the successful launch of DAB in Hong Kong.

IMPLICATIONS OF THE PROPOSAL

15. The introduction of three sound broadcasting licensees to provide DAB services has economic, financial and civil service, sustainability and environmental implications as set out at **Annex D**. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The proposal has no productivity implications.

PUBLIC CONSULTATION

16. The BA published notices on 9 July 2010 at its website and in newspapers, setting out the details of the three applications and inviting members of the public to express their views on the applications by 30 July 2010. By the deadline, the BA received 130 submissions, as summarised in **Annex E**.

PUBLICITY

17. We will hold a press conference to brief the media and issue a press release. A spokesman will be available to answer media and public enquiries.

ENQUIRIES

18. For enquiries, please contact Mr Aaron Liu, Principal Assistant Secretary (A) for Commerce and Economic Development Bureau (Communications and Technology), at 2189 2236.

Communications and Technology Branch
Commerce and Economic Development Bureau
5 November 2010

**Key Conditions of
Digital Audio Broadcasting Licence**

(1) *Requirements applicable to DAB services*

Most of the requirements imposed on licensees for analogue broadcasting would be extended to the DAB operators. These relate to the need for a mid-term review of licences; the imposition of licence fees; Hong Kong resident requirement for the Chairman, Managing Director and the Directors; provision of service free of charge; hours of service; broadcast of announcements in the public interest and weather programmes / announcements provided by the Government and publicity materials of the BA; hours of broadcasting; advertising time limit; compliance with proposals submitted in the application and submission of performance bond which is tied to the launch of service.

(2) *Positive programme requirements*

DAB services are **not** subject to positive programme requirements (i.e. minimum requirement for programmes on specific genres such as arts and culture, or for specific target audience such as youth and elderly) to provide room and flexibility for the new DAB services to explore and flourish.

(3) *Language requirement*

To accord with the status of Hong Kong as a metropolitan city, we would require each DAB licensee to broadcast on its DAB channels an aggregate of at least 50 hours of non-Cantonese programmes per week.

(4) *Limit on amount of simulcast/non-first release FM programmes to be broadcast*

To ensure more effective utilization of the DAB multiplex and to provide greater programming variety, BA would require a DAB licensee –

- (a) not to use more than 50% of the total broadcast time of a DAB channel per week to provide simulcast of FM programmes; and
- (b) not to use more than 50% of the total broadcast time of a DAB channel per week to broadcast FM programmes released for the first time on a DAB channel,

unless the BA otherwise approves or determines.

(5) *Programme associated data services*

Unlike the existing analogue services, DAB technology can support a variety of programme associated data services¹. Thus, we consider it necessary to define in the DAB licences the programme associated data services that are permitted. As far as technical aspects are concerned, programme associated data services may be transmitted in the form of text, still images and even moving images for display on a compatible DAB+ receiver. It should be noted that the transmission of moving images under a DAB+ platform may be treated as a form of mobile TV service which should be subject to licensing as a telecommunications service under the TO. The transmission of moving images will also consume a large amount of data capacity. A limit will be imposed on the refresh rate of any moving images at not faster than 1 picture per second. Furthermore, advertisement displayed on a receiver's screen through programme associated data services should not exceed 30% of the total time of display within a day.

(6) *Minimum capacity for sound channel*

We propose that the multiplex capacity be allocated to the operators as a bundle so that they can have the flexibility to adjust the capacity for individual sound broadcasting and

¹ Programme associated data services are ancillary services provided by the radio operators to transmit data incidental to the sound broadcasting services to the audience e.g. electronic programme guide (EPG), photos of singers, song lyrics, weather and stock information, etc.

data services within their bundle. In general, a lower data rate of some 32 - 40 kbps could yield good quality for speech using DAB+ standard and a higher data rate of some 48 kbps are required for music. To ensure an acceptable sound quality, we propose that the successful applicants should be required to use a capacity of no less than 32 kbps and 48 kbps for transmission of non-music and music programmes respectively.

(7) *Management of the licensee*

As a licensee needs to adopt effective management and control in order to ensure compliance with all the statutory and regulatory requirements, we propose to include a condition in the licence requiring that the management of the licensee shall not be performed by persons other than the directors, principal officers² and persons duly authorised by the licensee.

(8) *Sharing of a common multiplex*

As the DAB applicants and RTHK will be required to provide their DAB services through a common multiplex, we propose to include a condition in the licence requiring the licensee to cooperate with other users of the multiplex in the establishment and operation of the transmission network and to share the relevant cost, and that the Telecommunications Authority could intervene and adjudicate if mutual agreement cannot be reached. In practice, RTHK is the site manager for the existing hilltop sites and will be responsible for the co-ordination of the use of the DAB spectrum and equipment as it does with the current AM/FM services.

² “Principal officer”, in relation to a corporation, means –

- (a) a person employed or engaged by the corporation who, by himself or with one or more other persons, is responsible under the immediate authority of the directors of the corporation for the conduct of the business of the corporation; or
- (b) a person so employed or engaged who, under the immediate authority of a director of the corporation or a person to whom paragraph (a) applies, performs managerial functions in respect of the corporation.

Key Points of Applications to Provide Digital Audio Broadcasting (DAB) Services

	Metro Broadcast Corporation Limited (Metro)	Wave Media Limited (Wave Media)	Phoenix U Radio Limited (Phoenix U)
Date of submission	30 April 2010	30 April 2010	29 April 2010
1. Company Information			
1.1 Ownership	<ul style="list-style-type: none"> The issued share capital of Metro is held as to 50% by Hutchison Commercial Broadcasting Limited (a wholly owned subsidiary of Hutchison Whampoa Limited) and 50% by Newton City Limited (a wholly owned subsidiary of Cheung Kong (Holdings) Limited). 	<ul style="list-style-type: none"> The voting shares of Wave Media are held by nine Class ‘A’ shareholders, namely The Honourable Ronald Joseph Arculli (10%), Mr Albert Jinghan Cheng (20%), Mr Morris Ho Kwok Fai (6.66%), Mr Alan Hoo, S.C. (3.33%), Professor Arthur Li Kwok Cheung (10%), Dr The Honourable David Li Kwok Po (10%), the late Dr William Mong Man Wai¹ (10%), Dr Allan Wong Chi Yun (10%) and Mr Wong Cho Bau (20%). Wave Media plans to allot Class ‘B’ shares with no voting rights to a group of minority shareholders. 	<ul style="list-style-type: none"> Phoenix U is wholly-owned by Phoenix Radio Limited (Phoenix Radio). Phoenix Radio is indirectly wholly-owned by Phoenix Satellite Television Holdings Limited, a publicly listed company in Hong Kong.
1.2 Corporate	<ul style="list-style-type: none"> Metro is a company registered and incorporated in Hong Kong on 20 April 1990. 	<ul style="list-style-type: none"> Wave Media is a company formed and registered in Hong Kong on 2 February 2006. 	<ul style="list-style-type: none"> Phoenix U is a company formed and registered in Hong Kong on 24 September 2010.

¹ Dr William Mong Man Wai passed away on 21 July 2010. Wave Media has submitted that the late Dr Mong’s shares in Wave Media are under the custody of his estate, and therefore the shareholding structure of Wave Media remains unchanged.

	Metro Broadcast Corporation Limited (Metro)	Wave Media Limited (Wave Media)	Phoenix U Radio Limited (Phoenix U)
	<ul style="list-style-type: none"> Metro is not a subsidiary. 	<ul style="list-style-type: none"> Wave Media is not a subsidiary. 	<ul style="list-style-type: none"> Phoenix U is now a subsidiary but it has submitted that upon receiving an approval-in-principle, it will carry out a corporate restructuring to comply with the non-subsidiary requirement. After the proposed restructuring, Phoenix Radio will hold 15% of the voting shares and 100% of the non-voting shares of Phoenix U and two other independent individuals, namely Mr. Yang Chuen Liang, Charles and Mr. Wang Wen Huan will each hold 42.5% of Phoenix U's voting shares.
1.3 Fit and Proper persons	<ul style="list-style-type: none"> Metro and all persons exercising control of Metro are fit and proper persons. 	<ul style="list-style-type: none"> Wave Media and all persons exercising control of Wave Media are fit and proper persons. 	<ul style="list-style-type: none"> Phoenix U and all persons exercising control of Phoenix U are fit and proper persons.
1.4 Disqualified Persons (DPs)	<ul style="list-style-type: none"> There are no DPs exercising control of Metro. Metro holds a sound broadcasting licence for analogue service and is therefore a DP to hold another licence for providing DAB service. 	<ul style="list-style-type: none"> There are no DPs exercising control of Wave Media. 	<ul style="list-style-type: none"> Phoenix U has submitted that after the proposed restructuring referred to in 1.2 above, there will be two DPs exercising control of Phoenix U, namely Mr Yu Tung Ho, chairman of Phoenix U and Mr Shi Ning Ning, director and president of Phoenix U. Mr Yu and Mr Shi are DPs by virtue of their being persons exercising control of Phoenix Satellite Television Company Limited, a non-domestic television programme service licensee. Phoenix U has sought the CE in C's approval for the two DPs to exercise control of Phoenix U.

	Metro Broadcast Corporation Limited (Metro)	Wave Media Limited (Wave Media)	Phoenix U Radio Limited (Phoenix U)
1.5 Unqualified Persons (UPs)	<ul style="list-style-type: none"> There are no UPs holding voting shares of Metro. 	<ul style="list-style-type: none"> There are no UPs holding voting shares of Wave Media. 	<ul style="list-style-type: none"> There will be no UPs holding voting shares of Phoenix U.
2. Programming			
2.1 Proposed Channels and language	<ul style="list-style-type: none"> Metro plans to provide three DAB channels – <ul style="list-style-type: none"> (a) <u>Metro DAB Channel 1</u> The channel aims to provide for consumers of financial news and information. The programmes will be in Cantonese as well as Putonghua. The programmes will be self-produced primarily. (b) <u>Metro DAB Channel 2</u> A channel providing music of different genres. The language of broadcast is Cantonese, and Putonghua will be used in selected programmes. The programmes will be self-produced primarily. (c) <u>Metro DAB Channel 3</u> A lifestyle oriented channel addressing aspects of education, lifestyles, smart spending and harmonious society (ethnic groups). The language for the channel is Cantonese. The programmes will be self-produced 	<ul style="list-style-type: none"> Wave Media plans to provide no less than seven DAB channels – <ul style="list-style-type: none"> (a) 1st Stage- <ul style="list-style-type: none"> ▪ <u>Talk Radio</u> 1 channel mainly in Cantonese and 100% locally produced. ▪ <u>Ethnic Minorities Channel</u> 1 Channel mainly in English, Filipino and Indonesian and 94% locally produced. ▪ <u>24-hour Music Channel</u> Not less than 2 Channels mainly in Chinese and English and 100% locally produced. (b) 2nd Stage (Broadcast within 12 months of initial launch) <ul style="list-style-type: none"> ▪ <u>24-hour News & Market Update Channel</u> 1 channel mainly in Cantonese and 100% locally produced. ▪ <u>Leisure Life Channel</u> 	<ul style="list-style-type: none"> Phoenix U plans to provide three DAB channels – <ul style="list-style-type: none"> (a) <u>Phoenix Special U Radio(鳳凰精英 U Radio)</u> A Putonghua channel on current affairs, economy, finance, history and culture. All programmes will be locally produced. (b) <u>Phoenix Guangdong Hong Kong U Radio(鳳凰粵港通 U Radio)</u> A channel (around 70% Putonghua and 30% Cantonese) providing lifestyle information in Guangdong and Hong Kong. 80% programmes will be locally produced. (c) <u>Phoenix Putonghua & Music U Radio(鳳凰國語及音樂 U Radio)</u> A channel on Putonghua learning and music. Regarding the languages of the music programmes, the proportion will be around 65% Putonghua, 30% Cantonese and 5% English. 80% programmes will be

	Metro Broadcast Corporation Limited (Metro)	Wave Media Limited (Wave Media)	Phoenix U Radio Limited (Phoenix U)
	primarily.	1 Channel mainly in Cantonese and 100% locally produced. ▪ <u>Community Service Channel</u> 1 Channel mainly in Cantonese and 100% locally produced.	locally produced.
2.2 Proposed date of launch	<ul style="list-style-type: none"> Subject to readiness of the FM hilltop sites and appropriate arrangement for sharing of infrastructure, Metro plans to launch Metro DAB Channel 1 within six to nine months after grant of licence and provide DAB Channel 2 and DAB Channel 3 respectively 12 months and 24 months after initial launch. 	<ul style="list-style-type: none"> Subject to the timely installation of the transmission equipment, Wave Media targets to launch DAB service (comprising a Talk Radio channel, an Ethnic Minorities channel and five music channels) within ten months after grant of licence. Within 12 months after initial launch, three of the music channels will be turned into the 24-hour News & Market Update channel, the Leisure Life channel and the Community channel. 	<ul style="list-style-type: none"> Subject to the timely construction of transmission stations, Phoenix U plans to launch the first channel (Phoenix Special U Radio) six months after a licence is granted. The second channel (Phoenix Guangdong Hong Kong U Radio) and third channel (Phoenix Putonghua & Music U Radio) will be launched respectively six months and 12 months after initial launch.
2.3 Broadcasting Hours	<ul style="list-style-type: none"> 24 hours daily broadcasting. 	<ul style="list-style-type: none"> 24 hours daily broadcasting. 	<ul style="list-style-type: none"> 24 hours daily broadcasting.
3. Financial Information			
3.1 Proposed Investment	<ul style="list-style-type: none"> The estimated investment in the initial six years for launch of DAB services is 	<ul style="list-style-type: none"> The estimated investment in the initial six years for the launch of 	<ul style="list-style-type: none"> Phoenix U projects to incur an accumulative expenditure of \$203

	Metro Broadcast Corporation Limited (Metro)	Wave Media Limited (Wave Media)	Phoenix U Radio Limited (Phoenix U)
	\$134.2 million, comprising capital investment of HK\$20.7 million and operating expenses of HK\$113.5 million.	DAB service is HK\$620 million, comprising capital investment of HK\$78 million and operating expenses of HK\$542 million.	million for the first six years, comprising capital investment of HK\$13 million and operating expenses of HK\$190 million.
3.2 Financial Capability	<ul style="list-style-type: none"> The shareholders of Metro will provide sufficient financial resources to support its launch of DAB services. 	<ul style="list-style-type: none"> The sum of \$140 million Shareholders' loan² will fund all of the financial requirements. 	<ul style="list-style-type: none"> The Phoenix group will provide full financial support to Phoenix U.
4. Technical and transmission arrangements			
4.1 DAB Standard	<ul style="list-style-type: none"> DAB+ 	<ul style="list-style-type: none"> DAB+ 	<ul style="list-style-type: none"> DAB+
4.2 Transmission and coverage	<ul style="list-style-type: none"> Metro proposes to co-locate DAB transmitters with the existing seven FM hilltop sites. Initial coverage is provided by the transmission from Mount Gough which serves mainly the urban area of Kowloon and Hong Kong Island. Territory-wide coverage can be provided with the completion of the other six hilltop sites within three years. Metro requests the setup of a working DAB committee led by the Government to address issues on 	<ul style="list-style-type: none"> DAB transmitters will be co-located with the existing FM transmission stations. Full (~90%) coverage can be achieved on service launch if no construction work is required in all hilltop sites, and all equipment and installation are in place on time. 	<ul style="list-style-type: none"> Phoenix U proposes to provide territory-wide coverage. The transmission stations will be located at the hilltop sites. Phoenix U plans to hire the DAB network constructed by other operators.

² Wave Media submits that Class 'A' shareholders have agreed to provide a total shareholders' loan of \$105 million. It is planned that the aggregate amount of shareholders' loan to be provided by Class 'B' shareholders could amount to \$35 million.

	Metro Broadcast Corporation Limited (Metro)	Wave Media Limited (Wave Media)	Phoenix U Radio Limited (Phoenix U)
	sharing of transmission facilities, prepare detailed coverage planning, define details of DAB standard, define a practical time table for all broadcasters to follow, determine the choice of transmission equipment and construction method and evaluate environmental impact.		
5. Preferred Period of Validity of Licence	<ul style="list-style-type: none"> Metro prefers a licence period of 12 years in respect of the provision of DAB service. 	<ul style="list-style-type: none"> Wave Media expects the validity of the licence is 12 years. 	<ul style="list-style-type: none"> 12 years.

Extracts from the Telecommunications Ordinance (Cap. 106)

**PART IIIA
SOUND BROADCASTING LICENCES**

13B. Application for licence

(1) Any corporation complying with section 13F may apply to the Broadcasting Authority in such form as the Broadcasting Authority may determine, for a licence to establish and maintain a broadcasting service. (Amended 3 of 2010 s. 2)

(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. (Added 3 of 2010 s. 2)

(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. (Added 3 of 2010 s. 2)

13C. Grant of licence

(1) If, in relation to an application made under section 13B, the Broadcasting Authority is satisfied as to the matters specified in section 13B(2), it must consider the application and make recommendations thereon to the Governor in Council. (Amended 3 of 2010 s. 3)

(2) Having considered the recommendations made under subsection (1) in respect of an application for a licence to establish and maintain a broadcasting service, the Governor in Council may grant a

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.

(3) Without prejudice to the generality of subsection (2), a licence may include-

- (a) (Repealed 62 of 1996 s. 2)
- (b) a condition that the Broadcasting Authority may suspend the licence.

(4) In exercising the discretion whether to grant a licence under subsection (2), the Chief Executive in Council must have regard to the following matters-

- (a) whether the applicant and all persons exercising control of the applicant are fit and proper persons;
- (b) the opinion of the public;
- (c) the applicant's financial soundness and ability to maintain, throughout the period for which the licence would be in force, the proposed broadcasting service;
- (d) whether the applicant has the necessary technical expertise and the relevant managerial skill to operate the proposed broadcasting service;
- (e) the variety, quantity and quality of programmes to be provided;
- (f) the quality and technical viability of the proposed broadcasting service;
- (g) the speed of service roll-out;

- (h) where any construction work is to be carried out, the extent of any inconvenience that may be caused to the public by the work;
- (i) the benefits to the local broadcasting industry, the audience and the community as a whole;
- (j) the applicant's proposed arrangements to ensure compliance with the provisions of this Ordinance, any other applicable law and the terms and conditions that may be specified in the licence;
- (k) any other matter prescribed under subsection (6).
(Added 3 of 2010 s. 3)

(5) In determining whether a person is a fit and proper person for the purposes of subsection (4)(a), account must be taken of-

- (a) the business record of the person;
- (b) the record of the person in situations requiring trust and candour;
- (c) the criminal record in Hong Kong of the person in respect of offences under the laws of Hong Kong involving bribery, false accounting, corruption or dishonesty; and
- (d) the criminal record in places outside Hong Kong of the person in respect of conduct that, if done in Hong Kong, would constitute or form part of the criminal record in Hong Kong of the person as mentioned in paragraph (c). (Added 3 of 2010 s. 3)

(6) The Chief Executive in Council may, by order published in the Gazette, prescribe additional matters to which the Chief Executive in Council must have regard in exercising the discretion whether to grant a licence under subsection (2). (Added 3 of 2010 s. 3)

13CA. Broadcasting Authority may issue guidelines

(1) The Broadcasting Authority may issue and publish by notice in the Gazette, for the guidance of corporations seeking to become licensees, guidelines not inconsistent with this Part, indicating the manner in which it proposes to perform its functions under sections 13B(2) and 13C(1), including the criteria for making recommendations and other relevant matters it proposes to consider.

(2) The Broadcasting Authority must consult the Telecommunications Authority before issuing a guideline under this section relating to technical standards that corporations seeking to become licensees should meet.

(Added 3 of 2010 s. 4)

...

13F. Competence of licensees

A licence may be granted to or held only by a corporation that is-

- (a) a company formed and registered in Hong Kong under the Companies Ordinance (Cap 32);
- (b) not a subsidiary;
- (c) empowered under its memorandum of association to comply fully with the provisions of this Ordinance and the terms and conditions of its licence.

13G. Disqualified persons

(1) Subject to subsection (2) and section 13H(2)(b), no disqualified person, other than a person in respect of whom the reason for his being a disqualified person was disclosed in the application for a licence, shall exercise control of a corporation that is a licensee.

(2) Notwithstanding subsection (1), the Governor in Council may grant a licence to a corporation-

- (a) that is a disqualified person;
- (b) in respect of which a disqualified person exercises control; or
- (c) that is a disqualified person and in respect of which a disqualified person exercises control,

and the licence may contain such conditions relating to the disqualified person and to the control exercised by him as the Governor in Council may impose under section 13C.

13H. Increase of control by disqualified persons

(1) Subject to subsection (2), no disqualified person who exercises control of a corporation that is a licensee shall augment the basis of such control-

- (a) by augmenting the percentage of voting shares in the corporation which he holds as the beneficial owner thereof; or
- (b) by a change of the office held by him in the corporation.

(2) On the application of a licensee that is a corporation the Governor in Council may, if he is satisfied that the public interest so requires, permit-

- (a) the licensee to augment the basis of the control of the corporation exercised by a disqualified person; or
- (b) the licensee to enable a disqualified person to exercise control of the corporation.

13I. Unqualified persons

- (1) The aggregate of the voting shares in a licensee to or in which unqualified persons have, directly or indirectly, any right, title or interest, shall not at any time exceed 49% of the total number of voting shares in the licensee.
- (2) Subsection (1) applies to voting shares in a licensee where the voting rights carried by such shares are for the time being exercisable as regards any question or other matter whatsoever which may be determined by a poll at general meetings of the licensee.
- (3) For the purposes of this section a person shall be an "unqualified person" (不合資格的人) unless-
 - (a) he is a person who is for the time being ordinarily resident in Hong Kong and has at any time been resident for a continuous period of not less than 7 years; or
 - (b) that person is a company that is ordinarily resident in Hong Kong.
- (4) For the purposes of this section, a corporation established or incorporated by Ordinance shall be regarded as being a company that is ordinarily resident in Hong Kong if (but only if) for the time being-
 - (a) every person who takes an active part in the management of the corporation, or if there are more than 2 such persons each of a majority of those persons, is for the time being ordinarily resident in Hong Kong and has at any time been resident for a continuous period of not less than 7 years; and
 - (b) the management of the corporation is bona fide exercised in Hong Kong.

- (5) For the purposes of this section, where any one or more of 2 or more persons having a joint right, title or interest to or in voting shares is or are unqualified persons, then the unqualified person or persons shall be regarded as having the entire right, title or interest to the exclusion of any other person.

ECONOMIC IMPLICATIONS

The introduction of new players will increase competition in the sound broadcasting market and enhance the development of the industry. The associated increase in capital investment and activities will help the industry to develop new broadcasting technology and nurture more broadcasting talents. The community will benefit from a wider choice of higher quality programmes as well as better services.

FINANCIAL AND CIVIL SERVICE IMPLICATIONS

2. The new licensees will have to pay an annual licence fee calculated on a full-cost recovery basis. It is subject to the number of channels in operation and an annual adjustment based on the index of Government consumption expenditure. A costing exercise is being conducted and the exact licence fee will be set out in the licence. For reference, the two incumbent licensees each operates three analogue channels and currently pays an annual licence fee of \$3.55 million. The estimated capital investment for the DAB transmitting facilities amounts to approximately \$40 million which will be shared among the commercial DAB licensees and RTHK.

3. There will be additional workload arising from the administration of the new licences and handling of relevant complaints. Such workload will be absorbed by the Office of the Telecommunications Authority and the Television and Entertainment Licensing Authority.

SUSTAINABILITY IMPLICATIONS

4. The proposal will bring about positive gain to the broadcasting industry of Hong Kong by promoting competition and increasing the programme choices of the audience. It is conducive to the sustainability principle of achieving a competitive and prosperous market-based economy to meet the aspirations of the public.

ENVIRONMENTAL IMPLICATIONS

5. The transmitters of new DAB networks will be co-located at the existing FM hilltop transmission stations. Civil engineering works at these hilltop sites will be of a small-scale and confined within the site boundary of existing FM infrastructure. Nevertheless, these activities may pose some potential impacts to the environment (such as construction waste) and the licensees shall follow the relevant statutory requirements including those under the Environmental Impact Assessment Ordinance (Cap. 499).

**Summary of Public Views on
Digital Audio Broadcasting Licence Applications**

A total of 130 written submissions from 129 individuals and a group were received during the consultation period from 9 July to 30 July 2010. The views collected are summarised as follows-

Corporate Requirements

- The applications should comply with the statutory requirements, including restrictions on cross-media ownership.

Programming

- DAB services should enhance sound quality of music programmes and provide entertainment for Filipinos and Indonesians.
- Frequency capacities should be reserved for the broadcast of BBC World and other foreign radio programmes.
- As an international city, Hong Kong should have a bilingual channel like the former FM Select (“精選 104”) about a decade ago.
- DAB service providers should be subject to the existing regulatory framework so as to prevent provision of vulgar programmes and excessive advertisements.
- The Government should encourage production of creative programmes on civic and national education by the new licensees.
- The DAB licensees should be required to provide a certain amount of news and current affairs programmes. The DAB services should broadcast not less than four minutes of news and financial news per hour.
- Programmes should not carry political propaganda. There is also concern that the additional channels might be used as political tools.
- The DAB operators should provide information about the programmes to be broadcast (including the names and broadcasting time) every two hours.
- The DAB channels should broadcast information about typhoon and

other weather warning signals issued by the Hong Kong Observatory.

- The DAB service providers should broadcast road traffic information provided by the Transport Department on New Year's Eve, Lunar New Year and other major festivals.

Language

- While the DAB licensees should provide services mainly in Cantonese since it is the most commonly-used language in Hong Kong, they should also be encouraged to broadcast English and Putonghua programmes.

Technical Feasibility and Service Rollout

- The government and three applicants should sponsor the public to purchase equipment for reception of DAB services.
- There is concern about the price of DAB receivers. The services should be easily received by the audience.
- In addition to audio programmes, the DAB licensees should endeavour to provide value-added services (such as electronic programme guide and lyrics) supported by DAB technology.
- The Government should provide necessary assistance to facilitate construction of DAB transmitters so that the licensees could launch services as soon as possible.
- The applicants should expedite their network rollout to achieve territory-wide coverage.
- The Government should grant a licence only if the applicant is able to provide the proposed service as soon as possible. Moreover, the Government should complete processing of the applications as soon as possible so as to enable early launch of services.

Financial Capability

- There is doubt as to whether the proposed investments are sufficient.
- The Government should consider subsidising new radio stations in providing DAB services.

The DAB Applications

Comments on the three applications

- Licences should be granted to all the applicants so as to enhance the quality of broadcasting industry, promote competition and enable the applicants to provide more and better choices to Hong Kong people using a more advanced technology.

Comments on the application of Metro Broadcast Corporation Limited (Metro)

- 105 respondents support Metro's application and 11 object to it. Their reasons are set out below –

Support for the application

- Metro has the experience, capability and financial resources to provide DAB service.
- The proposed programmes are diversified, of educational value and suitable for the general public.
- Allocation of DAB frequency capacity to Metro would enable Metro to expand its service in addition to its existing AM and FM broadcasting.

Objection to the application

- Metro is an existing broadcaster and its DAB service might not bring more diversity and competition. Metro will not provide 100% new programmes on the DAB channels.
 - Metro does not plan to make substantial investment in its DAB service
- Metro should avoid using the term “樂活” to describe the Metro DAB Channel 3 as this might create an impression that the Channel promotes hedonism and consumerism.

Comments on the application of Wave Media Limited (Wave Media)

- 97 respondents support Wave Media's application and 18 object to it. Their reasons are set out below –

Support for the application

- Wave Media has the capability to provide DAB service.
- Wave Media has sincerity and vision to provide a platform for free expression of views and promotion of social harmony. Its proposed programmes are comprehensive and suitable for the general public.
- As the DAB technology is more advanced than the AM technology, Wave Media's plan to apply for a new licence is reasonable.

Objection to the application

- Wave Media lacks experience in the production of broadcasting programmes.
- There is doubt as to whether Wave Media is a political party.
- Wave Media should consider providing more music programmes in order to make best use of DAB technology which can support CD-quality music.
- Wave Media should consider providing an English channel on 24-hour news and financial programmes.
- Wave Media should consider providing DAB+ receivers to senior citizens who live alone free of charge.

Comments on the application of Phoenix U Radio Limited (Phoenix U)

- 105 respondents support Phoenix U's application and 12 object to its application. Their reasons are set out below –

Support for the application

- Phoenix U has the capability, experience and financial resources

to provide DAB services. Phoenix TV has a track record in producing good programmes.

- The proposed programmes are good and suitable for the general public.
- Phoenix U can leverage its operational experience in places outside Hong Kong to provide different types of programmes.
- Phoenix U's proposal to provide DAB service will increase local employment opportunity.

Objection to the application

- The proposed service does not contain sufficient Cantonese programmes and are therefore not suitable for Hong Kong, a city speaking mainly Cantonese.
- Phoenix U may have a political agenda.
- There are too many disqualified persons exercising control of Phoenix U.
- Phoenix U's application for exemption from the "non-subsidiary" requirement under the Telecommunications Ordinance should not be granted.