

**Notice Pursuant to Section 32H  
of the Telecommunications Ordinance  
(Chapter 106)**

**Interpretation**

In this Notice, unless the context otherwise requires,

“Authority” means the Communications Authority;

“BO” means the Broadcasting Ordinance (Cap. 562);

“CAO” means the Communications Authority Ordinance (Cap. 616);

“Carrier Licence” means the Fixed Carrier Licence No. 045 granted by the Authority to the Licensee under the TO;

“CE in C” means the Chief Executive in Council;

“Free TV Licensee” means the Domestic Free Television Programme Service Licensee licensed under the BO;

“Free TV Service” means the Domestic Free Television Programme Service licensed under the BO;

“Frequencies” means the frequencies assigned to the Licensee as specified in Schedule 2 and Schedule 3 of the Carrier Licence;

“Licensee” means Asia Television Limited;

“SPF” means the Radio Spectrum Policy Framework promulgated by the Government in April 2007;

“Statement” means the statement on minimum notice periods for variation or withdrawal of spectrum assignments issued by the then Telecommunications Authority on 31 January 2008;

“TO” means the Telecommunications Ordinance (Cap. 106);

“TV Licence” means the Domestic Free Television Programme Service Licence granted by the CE in C to the Licensee under the BO; and

“TV Service” means the Free TV Service of the Licensee licensed under the TV Licence.

## **Background**

The Licensee is licensed under the Carrier Licence to provide a public telecommunications service, the scope of which is described in Schedule 1 of that Licence, which includes transmission of television and associated sound and data signals for the TV Service, which is in turn licensed under the TV Licence. The Carrier Licence and the TV Licence will expire on 30 November 2018 and 30 November 2015 respectively.

2. On 1 April 2015, the CE in C decided not to renew the TV Licence. For the purpose of complying with the requirement under section 8(1)(a) of Schedule 4 to the BO, the CE in C also decided that the term of the TV Licence be extended to 1 April 2016. Accordingly, the Licensee shall cease broadcasting the TV Service starting from 2 April 2016.

3. As the Frequencies are assigned to the Licensee under the Carrier Licence to enable the Licensee to broadcast the TV Service, the Authority has come to the view that the Frequencies should be withdrawn following expiry of the TV Licence as from 2 April 2016 in pursuant to the following provisions of the TO and the CAO –

### Section 32G(1), TO

*The Authority shall promote the efficient allocation and use of the radio spectrum as a public resource of Hong Kong.*

Sections 32H(3) and (4), TO

*Section 32H(3) : Subject to subsection (4), the Authority may vary or withdraw frequencies, bands of frequencies or satellite orbital positions or parameters assigned, or vary the purposes for which and the conditions under which the frequencies, bands of frequencies or satellite orbital positions or parameters are to be used.*

*Section 32H(4) : The Authority may only exercise its authority under subsection (3) if the Authority has given reasonable notice of the intended variation or withdrawal to the licensee which has been assigned the relevant frequency, band of frequency or satellite orbital position or parameter.*

Section 4(4), CAO

*Without limiting any other matters to which the Authority may have regard, in performing its functions, the Authority must have regard to such of the following as appear to it to be relevant in the circumstances –*

.....

- (c) the promotion of competition and adoption of best practices in the communications market for the benefit of the industry and consumers;*

.....

In sum, under the TO, the Authority has the statutory duty to promote the efficient use of spectrum as a public resource of Hong Kong. In performing its functions, it is also required by section 4(4) of the CAO to have regard to the need to promote competition in the communications market for the benefit of the industry and consumers.

4. As the Frequencies are assigned to the Licensee for the purpose of enabling it to provide the TV Service, once the Licensee ceases to hold

the TV Licence, there are public interest reasons to withdraw from it the Frequencies and, save for those reserved for Government use, re-assign them to other Free TV Licensee(s) for the provision of Free TV Service(s) in a way which satisfies the Authority's duty to promote the efficient use of spectrum as a public resource of Hong Kong, which has regard to the promotion of competition in the communications market, and meets the objectives for spectrum management set out in the SPF.

5. Under the SPF, mobile or wireless carrier licensees would ordinarily be given not less than three years' notice for withdrawal of spectrum insofar as it is practicable in the circumstances. In the present circumstances the TV Licence will expire prior to the expiry of the Carrier Licence and the Frequencies assignment and therefore the Authority considers that it is appropriate to have regard to the fact that the Licensee no longer needs the Frequencies to perform its licence obligations following the expiry of the TV Licence when deciding what constitutes reasonable notice. This approach is supported by paragraph 6 of the Statement which makes it clear that it is for the Authority to decide what is a reasonable notice, that the period mentioned in the SPF is only for reference, and that the Authority is not legally bound to apply it.

### **Notification**

6. The Authority, in exercise of the power under sections 32G and 32H of the TO,

having duly noted that the CE in C has decided not to renew the TV Licence and that the Licensee will have to cease broadcasting the TV Service with effect from 2 April 2016;

having been satisfied that the Licensee has been afforded a reasonable opportunity to make representations on the Authority's provisional decision to withdraw the Frequencies following expiry of the TV Licence; and

having considered all representations made by the Licensee,

hereby exercises its power under sections 32G(1) and 32H(3) of the TO and gives notice to the Licensee on the withdrawal of the Frequencies which shall take effect from 2 April 2016.

7. This Notice will be made public.

( Miss Eliza Lee )  
for Communications Authority  
20 April 2015