

BROADCASTING ORDINANCE (CHAPTER 562)

DIRECTION (SECTION 24(1))

To: NXTV Asia, Limited

Date: 1 April 2014

Interpretation

In this Direction, unless the context otherwise requires,

“NXTV” means NXTV Asia, Limited, a holder of the Licence;

“Authority” means the Communications Authority (successor of the Broadcasting Authority);

“Licence” means the other licensable television programme service licence issued by the Authority under the Ordinance;

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

“Regulation” means the Broadcasting (Licence Fee) Regulation (Cap. 562A);

“fixed licence fee” has the same meaning as defined or specified in section 3(a) of Schedule 4 to the Regulation;

“AC or SD” means a certificate made by the auditor of the licensee or a statutory declaration as specified in Condition 9.2 of the Licence;

“Annual Returns” has the same meaning as defined or specified in sections 21(2) and 39(1) of the Ordinance.

Background

Section 13(1) of Schedule 4 to the Ordinance stipulates that a domestic free television programme service licensee shall pay annually to the Authority a prescribed licence fee and such other fees as may be prescribed. Section 2 of Schedule 7 to the Ordinance stipulates, among

others, that section 13 of Schedule 4 shall apply to an other licensable television programme service licensee as it applies to a domestic free television programme service licensee.

2. Section 3(a) and Section 5(1)(b) of Schedule 4 to the Regulation provide that NXTV shall pay to the Authority the annual fixed licence fee of \$16,800 not later than 14 days after the commencement of the licence year. Under Condition 7.1 of the Licence, NXTV shall pay to the Authority every year during the period of validity such licence fee in advance as may be prescribed.

3. Under Condition 9.2 of the Licence, NXTV shall submit to the Authority a certificate made by the auditor of NXTV or a statutory declaration made by a director, a company secretary or a principal officer of NXTV stating the names, addresses and number of hotels containing one or more hotel rooms to which its service is provided as at each anniversary date of the commencement date of the Licence within 30 days of each such anniversary.

4. Section 21(2) of the Ordinance stipulates that NXTV shall, on or before the 1st of April of each year, provide information in the specified form to the Authority to enable the Authority to establish and verify whether NXTV or a person exercising control of NXTV is a fit and proper person. According to section 39(1) of the Ordinance, NXTV shall submit to the Authority on or before the 1st of April of each year, a return in the specified form showing the names and places of residence of the directors and principal officers of NXTV and indicating whether or not those directors and principal officers are for the time being ordinarily resident in Hong Kong and have been so resident for at least one continuous period of not less than seven years.

5. The fixed licence fee payable by NXTV for the licence year from 20 April 2013 to 19 April 2014 (“the licence year 2013/2014”) was due on 4 May 2013. The submission of the AC or SD was due on 20 May 2013 for the licence year 2013/2014. The submission for the Annual Returns was due on 1 April 2013 for the year of 2013. Despite repeated demands and requests sent to NXTV for the settlement of the fixed licence fee and submission of the AC or SD and the Annual Returns, NXTV has failed or refused to pay or submitted the necessary returns as of today.

6. Having considered the circumstances of the case, the Authority is of the view that NXTV's failure or refusal to pay the fixed licence fee and submit the AC or SD and the Annual Returns by the respective deadlines is in breach of Conditions 7.1, and 9.2 of the Licence, section 13 of Schedule 4 to the Ordinance, sections 21(2) and 39(1) of the Ordinance, and sections 3(a) and 5(1)(b) to the Regulation.

7. Taking into account the severity, nature and duration of the breaches, the Authority decided that a financial penalty of \$50,000 should be imposed on NXTV for the breaches of the relevant provisions and licence conditions.

8. Section 24(1) of the Ordinance empowers the Authority to issue directions in writing to a licensee requiring it to take such action specified in the notice as the Authority considers necessary in order for the licensee to comply with any requirement under, among others, a prescribed Ordinance or any licence condition applicable to it.

Direction

9. The Authority, in exercise of its power under section 24(1) of the Ordinance, hereby directs NXTV to-

- (a) pay the fixed licence fee of \$16,800;
- (b) submit the AC or SD; and
- (c) submit the Annual Returns

by **1 May 2014**. Failure to comply with this Direction may result in the Authority imposing further sanctions on NXTV including suspension or revocation of the Licence in accordance with the Ordinance.

10. This Direction will be published on the Authority's website: www.coms-auth.hk in accordance with section 24(3) of the Ordinance.

(Miss Eliza Lee)
for Communications Authority
1 April 2014