

BROADCASTING ORDINANCE (CHAPTER 562)

DIRECTION (SECTION 24(1))

To: NXTV Asia, Limited

Date: 2 September 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;

“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 Fees) 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;

“direction” has the same meaning as defined or specified in section 24(1) of the Ordinance.

Background

Relevant Provisions

Section 24(1) of the Ordinance provides that the Authority may 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 a prescribed Ordinance, any licence condition or any provision in a Code of Practice applicable to it. Section 23(2)(c) of the Ordinance provides that a licensee shall comply with any directions, orders, or determinations, under the Ordinance which are applicable to it.

2. 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.

3. 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.

The Authority's Direction Dated 1 April 2014

4. The fixed licence fee payable 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 of 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 the outstanding licence fee or submit the necessary returns by the stipulated deadlines.

5. Having considered the circumstances of the case, the Authority issued a direction to NXTV on 1 April 2014 requiring NXTV to (a) pay the outstanding licence fee; (b) submit the AC or SD for the licence year 2013/2014; and (c) submit the Annual Returns for the year of 2013, by 1 May 2014¹ (“the Direction of 1 April 2014”). As of today, NXTV has yet to comply with (b) and (c) above².

Submissions Requirements for the Licence Year 2014/2015

6. The submission of the AC or SD for the licence year from 20 April 2014 to 19 April 2015 (“the licence year 2014/2015”) was due on 20 May 2014. The submission of the Annual Returns for the year of 2014 was due on 1 April 2014. Despite repeated demands and requests sent to NXTV for the submission of the AC or SD for the licence year 2014/2015 and the Annual Returns for the year of 2014, NXTV has failed or refused to submit the necessary returns as of today.

The Authority’s Decision

7. Having considered the circumstances of the case, the Authority is of the view that NXTV’s failure or refusal to fully comply with the Direction of 1 April 2014 is in breach of section 23(2)(c) of the Ordinance and its failure or refusal to submit the AC or SD for the licence year 2014/2015 and the Annual Returns for the year of 2014 by the respective deadlines is in breach of Condition 9.2 of the Licence and sections 21(2) and 39(1) of the Ordinance.

8. Taking into account the severity, nature and duration of the breaches, the Authority decided that a financial penalty of \$100,000 should be imposed on NXTV for the breaches of the relevant provisions and licence condition.

¹ The Authority also imposed a financial penalty of \$50,000 on NXTV for the breach.

² NXTV has settled the outstanding fixed fee for the licence year 2013/2014 on 30 April 2014.

Direction

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

- (a) the AC or SD for the licence year 2013/2014;
- (b) the Annual Returns for the licence year of 2013;
- (c) the AC or SD for the licence year 2014/2015; and
- (d) the Annual Returns for the year of 2014

by **2 October 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.

(Elizabeth Tai)

for Communications Authority
2 September 2014