

**Statement of the Communications Authority**

**The Approach to the Assignment of Broadcasting Spectrum  
to be Withdrawn from  
Asia Television Limited following Expiry of its  
Domestic Free Television Programme Service Licence**

**31 July 2015**

**PURPOSE**

Having regard to inter-alia the recommendations of the Communications Authority (“CA”) submitted under section 11(3) of the Broadcasting Ordinance (Cap. 562) (“BO”), the Chief Executive in Council (“CE in C”) decided on 1 April 2015 not to renew the domestic free television programme service (“free TV”) licence of Asia Television Limited (“ATV”) and, for the purpose of complying with the requirement under section 8(1)(a) of Schedule 4 to the BO, to extend the term of ATV’s existing licence to 1 April 2016, i.e. 12 months after the notice of non-renewal of its licence was served on ATV.

2. Following the CE in C’s decision, and having considered the representations from ATV, on 20 April 2015, the CA exercised its power under sections 32G(1) and 32H(3) of the Telecommunications Ordinance (Cap. 106) (“TO”) to give notice to ATV on the withdrawal of all the frequencies assigned to ATV following expiry of its free TV licence, comprising two sets of analogue frequency channels, one digital multiplex of the single frequency network (“SFN”) coupled with half of the capacity of one digital multiplex of the multiple frequency network (“MFN”) in 470 – 806 MHz of the Ultra High Frequency (“UHF”) band. Other than the two sets of analogue frequency channels that are reserved for Government use<sup>1</sup>, one digital multiplex of the SFN and half of the capacity of one digital multiplex of the MFN (viz. 1.5 digital multiplexes, or “broadcasting spectrum”) will be available for re-assignment from 2 April 2016.

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<sup>1</sup> For the two sets of analogue frequency channels to be withdrawn from ATV, the Government has requested Radio Television Hong Kong (“RTHK”) to utilise the frequencies to broadcast in analogue format to bridge any service gap upon expiry of ATV’s free TV licence until switching off analogue TV broadcasting (targeted in 2020).

3. This Statement promulgates the decision of the CA to adopt an administrative approach to assign to free TV licensees the broadcasting spectrum to be withdrawn from ATV for the provision of their licensed free TV services.

4. This Statement also promulgates the decisions of the CA as regards the applications from Television Broadcasts Limited (“TVB”) and HK Television Entertainment Company Limited (“HKTVE”) respectively for spectrum assignment.

## **ASSIGNMENT ARRANGEMENTS FOR BROADCASTING SPECTRUM**

5. In considering the assignment arrangements for the broadcasting spectrum to be withdrawn from ATV, the CA must give due regard to all relevant factors, including the provisions of the TO and the Communications Authority Ordinance (Cap. 616) (“CAO”), its statutory duties, the prevailing free TV landscape, the Radio Spectrum Policy Framework (“SPF”) promulgated by the Government in 2007 and the policy views of the Commerce and Economic Development Bureau (“CEDB”) as set out in the **Appendix**.

### **Legislative and Policy Framework**

6. On the legislative framework, under section 9(1) of the BO, a free TV licence applicant shall submit its application to the CA, and the CA shall, in accordance with section 9(2) of the BO, consider its application and make recommendations thereon to the CE in C. Under section 10(1) of the BO, the CE in C may, after considering the CA’s recommendations, grant a free TV licence subject to conditions as he thinks fit specified in the licence.

7. Under section 11(2) of the BO, a free TV licensee shall submit to the CA an application for the extension or renewal of its licence not less than 24 months before the expiry of the period of validity of a licence. Under section 11(3) of the BO, the CA shall, not later than 12 months before the expiry of the period of validity of a free TV licence, submit recommendations to the CE in C in relation to the extension or non-

extension or renewal or non-renewal of the licence, and where appropriate, the associated conditions. Under section 11(1) of the BO, the CE in C may, during the validity of a free TV licence, extend or renew the licence.

8. Under section 32G(1) of the TO, the CA has the statutory duty to promote the efficient allocation and use of the radio spectrum as a public resource of Hong Kong. Section 32H(2)(c) of the TO empowers the CA to assign radio frequencies. The TO does not stipulate any procedure or statutory timeline concerning applications for the use of spectrum, or consideration thereof by the CA. As a standard condition in a free TV licence, the licensee shall apply to the CA for approval for any substantial change in the means of transmission or transmission arrangements.

9. Section 4(4) of the CAO stipulates that the CA, in performing its functions, must have regard to several specified factors, including the promotion of competition in the communications market for the benefit of the industry and consumers<sup>2</sup>, if it considers such factors to be relevant in the circumstances.

10. According to the above legislative framework, while the CA is the spectrum assignment authority under the TO, the authority for granting, renewing or extending free TV licences under the BO rests with the CE in C. This division of statutory authority, whereby the CE in C decides whether or not to grant, renew or extend free TV licences and the CA decides the spectrum assignment, has meant that the process for broadcasting service licensing has always been broadcasting licence led, with spectrum assignment being an enabling and supplementary function. Since the introduction of free TV services in Hong Kong some 40 years ago, spectrum for the provision of free TV services has consistently been administratively assigned to operators upon the grant of free TV licences by the CE in C.

11. Turning to the policy framework, in April 2007, the Government promulgated the SPF which identifies the Government's policy considerations in relation to spectrum management. The SPF states that Hong Kong's spectrum policy and management aims to, inter-alia, facilitate the most economically and socially efficient use of spectrum with

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<sup>2</sup> Other factors include the encouragement of innovation and investment in the communications market, and the adoption of best practices.

a view to attaining maximum benefit for the community. The SPF also sets out, as a guiding principle of spectrum management, that the Government's policy inclination is to use a market-based approach wherever the CA, or the former Telecommunications Authority ("TA") before the establishment of the CA, considers that there are likely to be competing demands from providers of non-Government services, unless there are overriding public policy reasons to do otherwise, in which case the CA should publish such public policy reasons. Through a statement issued in April 2007, the former TA undertook that, in exercising his statutory powers under the TO, the TA would give due regard to the SPF to the extent that there were no inconsistencies with the objectives and provisions of the TO.

### **The CA's Statutory Duty to Promote Efficient Allocation and Use of Spectrum and the Eligibility/Assignment Criteria for Broadcasting Spectrum Assignment**

12. Given its statutory duty under section 32G(1) of the TO to promote the efficient allocation and use of the radio spectrum as a public resource of Hong Kong, the CA considers that the following criteria should be applied when assigning broadcasting spectrum –

#### Broadcasting Spectrum Assignment Eligibility Criterion

13. First, the CA considers that **only free TV licensees under the BO should be eligible for assignment of broadcasting spectrum** as only they are in a ready position to effectively and efficiently use that spectrum for the benefit of the viewing public. Given that spectrum is a scarce public resource, this eligibility criterion is of fundamental importance as otherwise it could lead to idleness of broadcasting spectrum or its wasteful hoarding.

#### Broadcasting Spectrum Assignment Criterion

14. Secondly, while the quantum of broadcasting spectrum to be assigned to individual free TV licensees for the provision of their licensed free TV services should be determined on a case by case basis, **the CA considers that, as a general principle, subject to the availability of spectrum, free TV licensees should be assigned such amount of broadcasting spectrum as is commensurate with, and no more than what is required to meet, their respective licensed service needs,**

**measured primarily in terms of their licensed service programme channel line-up.** This accords with CEDB’s policy views, that the CA should assess whether the amount of broadcasting spectrum to be assigned to a free TV licensee is commensurate with the needs of that licensee’s provision of free TV services. This assignment criterion is of particular importance especially at this particular point in time, given the finite supply of spectrum in the near term (viz. only the 1.5 digital multiplexes to be withdrawn from ATV before switching off analogue TV broadcasting (“ASO”)), the likelihood of competing demands from free TV licensees and prospective licensees and the prevailing free TV landscape as set out in paragraphs 18 to 25 below, and taking into account CEDB’s policy views, that the CA should assess whether the broadcasting spectrum assignment can enhance variety and provide more diversified programme choices for the public.

15. In performing the functions conferred upon it by the TO, including when exercising its power under section 32H(2)(c) of the TO to assign radio frequencies, the CA is required by section 4(4) of the CAO to have regard to the factors set out in that provision, in so far as they appear to the CA to be relevant in the circumstances. Those factors include the promotion of competition in the communications market for the benefit of the industry and consumers<sup>3</sup>.

16. As mentioned above, the CA decided on 12 May 2015 to administratively re-assign to TVB, an incumbent free TV licensee, two sets of analogue frequency channels, and one digital multiplex of SFN coupled with half of the capacity of one digital multiplex of MFN (collectively “1.5 digital multiplexes”), which are commensurate with the need of its licensed free TV services, comprising two analogue programme channels, and five digital programme channels in high-definition (“HD”) format under its renewed licence. TVB is not required to pay any spectrum utilisation fee (“SUF”).

17. Given the requirement for the CA to take into account the promotion of competition in the free TV market, the CA considers that it should so far as possible adopt the same approach to spectrum assignment,

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<sup>3</sup> Other factors include the encouragement of innovation and investment in the communications market, and the adoption of best practices.

to new entrants and incumbents.

### **The Prevailing Free TV Landscape**

18. Following the CE in C's decision on 1 April 2015, ATV will cease to be a free TV licensee upon the expiry of its licence on 1 April 2016.

19. On 1 April 2015, having regard to the recommendations of the CA submitted in January 2015, the CE in C decided to grant a free TV licence to HKTVE for a term of 12 years, on the basis of inter-alia its use of a fixed network to transmit its free TV service as per HKTVE's proposal in its licence application. HKTVE is required to broadcast, within 12 months from licence grant, i.e. by 31 March 2016, a 24-hour Chinese channel, and within 24 months from licence grant, i.e. by 31 March 2017, a 16-hour English channel.

20. On 12 May 2015, having regard to the recommendations of the CA, the CE in C decided to renew TVB's free TV licence for another 12 years from 1 December 2015 to 30 November 2027. On the same day, the CA promulgated its decision to adopt an administrative approach to re-assign to TVB the spectrum it currently holds, comprising two sets of analogue frequency channels and 1.5 digital multiplexes for the provision of its licensed free TV services until the expiry of its renewed free TV licence, i.e. 30 November 2027. The CA's Statement which sets out the CA's decision and the reasons for it can be found at [http://www.coms-auth.hk/filemanager/statement/en/upload/326/ca\\_statements20150512\\_en.pdf](http://www.coms-auth.hk/filemanager/statement/en/upload/326/ca_statements20150512_en.pdf).

21. Other than the above free TV licensees, there are three applications for free TV licences, from Fantastic Television Limited

(“Fantastic TV”), Hong Kong Television Network Limited (“HKTV”)<sup>4</sup> and Forever Top (Asia) Limited (“Forever Top”) respectively, which are under processing by the CA.

22. Fantastic TV has obtained approval in principle from the CE in C for its application for a free TV licence in October 2013, on the basis of inter-alia its use of a fixed network to provide its free TV services as per the proposal in its licence application. In January 2015 the CA submitted to the CE in C its recommendations on whether a free TV licence should be formally granted to Fantastic TV. On 12 May 2015, the CE in C, having taking into account the request of Fantastic TV, invited the CA to further consider any relevant supplementary information and confirmation that Fantastic TV was required to provide, and to submit further recommendations to the CE in C on the free TV licence application of Fantastic TV. The CA is processing the supplementary information received accordingly.

23. As to the free TV licence application submitted in April 2014 by HKTV, it is premised inter-alia upon the use of a combination of fixed network and mobile TV platform as its transmission mode. The CA is processing the application in accordance with the BO and established procedures.

24. The free TV licence application submitted in mid-April 2015 by Forever Top is premised inter-alia upon the use of spectrum as its transmission mode for the provision of its proposed free TV services. The CA is processing the application in accordance with the BO and established procedures.

25. As at the date of this Statement therefore, three operators are

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<sup>4</sup> This refers to the free TV licence application submitted by HKTV in April 2014, which was the second application submitted by the applicant.

On 31 December 2009, HKTV (formerly City Telecom (HK) Limited) submitted its first free TV licence application to the former Broadcasting Authority (“BA”). The former BA processed the application in accordance with the BO and established procedures, and submitted its recommendation to the CE in C on 13 July 2011. On 15 October 2013, the Government announced that the CE in C decided to refuse HKTV’s application. On 6 January 2014, HKTV applied for leave to apply for judicial review against the CE in C’s decision to refuse its application. On 24 April 2015, the Court of First Instance handed down its judgement in quashing the CE in C’s decision and remitting it back to the CE in C for re-consideration. On 19 May 2015, the CE in C decided to lodge an appeal against the judgement earlier handed down by the Court of First Instance on the judicial review case.

licensed under the BO to provide free TV services in Hong Kong – ATV and TVB which use spectrum as their transmission mode, and HKTVE which relies on a fixed network to provide its services. By 2 April 2016, ATV will no longer have a free TV licence. That will then leave TVB as the only spectrum-based licensee providing its free TV services to the Hong Kong viewing public, with HKTVE, the other free TV licensee, operating a fixed network (although it has also applied to the CA for permission to use spectrum as an additional mode of transmission) to deliver its services, unless before then more free TV licences are granted to other applicants.

## **Spectrum Policy Framework**

### The Likelihood of Competing Demands for Broadcasting Spectrum

#### *Spectrum Demand*

26. Applying the criterion set out in paragraph 13 above, only two free TV licensees (TVB and HKTVE) would currently be eligible to be assigned broadcasting spectrum, and both have expressed to the CA their interests in being assigned spectrum –

- (a) In submitting its application to renew its free TV licence in November 2013, TVB requested additional spectrum on top of its existing assignment to enhance its HD DTT services and to cater for the introduction of new DTT services under its new licence term. Further in April 2015, TVB wrote to the CA requesting additional spectrum to enhance the picture quality of its Jade and Pearl channels; and
- (b) Under the free TV licence granted by the CE in C, HKTVE is authorised to provide a free TV service comprising one HD programme channel and one standard-definition (“SD”) programme channel, using a fixed network as its transmission mode. Subsequent to the licence grant, HKTVE submitted an application in April 2015, in accordance with the relevant conditions in its free TV licence, for the CA’s approval to deploy spectrum as an additional means of transmission for providing territory-wide coverage of its free TV service.



27. The three applicants for free TV licences have also indicated their wish to be assigned spectrum. Whilst none of them can currently be treated as eligible for spectrum assignment, some of them may become eligible by 2 April 2016 (when the broadcasting spectrum assigned to ATV becomes available for re-assignment) or in the following months if the CE in C grants them free TV licences –

- (a) In its application for a free TV licence, Fantastic TV proposes to provide two SD programme channels. Following the grant by the CE in C of his approval in principle of the free TV licence application of Fantastic TV for it to provide a free TV service by the use of a fixed network as its transmission mode, Fantastic TV indicated its interest in January 2014 in the use of spectrum to transmit its proposed free TV service. It wrote to the CA in April 2015 to “apply for the right” to use spectrum to supplement its proposed transmission of free TV services using a fixed network. It indicated in July 2015 its intention to transmit its Chinese programme channel in HD format and the English programme channel in SD format;
- (b) In its application for a free TV licence, HKTV proposes to provide one HD and two SD programme channels. During the CA’s processing of HKTV’s free TV licence application, which is premised upon the use of a transmission mode not involving spectrum, HKTV indicated to the CA in March 2015 its interest in the use of spectrum for the provision of its proposed free TV services; and
- (c) In its application for a new free TV licence made in mid-April 2015, Forever Top proposes to make use of spectrum to provide its proposed free TV services.

*Supply of Spectrum for the Provision of Broadcasting Services*

28. The UHF TV band is currently fully utilised. All the four digital multiplexes available for DTT services in Hong Kong have been assigned – 1.5 digital multiplexes each to TVB and ATV, and the remaining one digital multiplex to RTHK. Following the CE in C’s decision on 12 May 2015 to renew the free TV licence of TVB for another 12 years, the

CA decided to re-assign to TVB the spectrum it currently holds until the expiry of its renewed free TV licence, i.e. 30 November 2027. Accordingly, the 1.5 digital multiplexes currently held by TVB will not be available for re-assignment for free TV services before 1 December 2027.

29. The Government announced on 9 December 2014 that the working target for ASO would be deferred from end-2015 to end-2020, with a review of the target date to be conducted in 2017-18. Subject to further assessment and coordination, there is a possibility that after ASO, new spectrum will become available for assignment to free TV licensees. Therefore, in the near term between 2 April 2016 and the eventual date of ASO, only the 1.5 digital multiplexes currently assigned to ATV would be available for re-assignment to other free TV licensees for the provision of their licensed DTT services.

#### *Competing Demands for Broadcasting Spectrum*

30. When applying the guiding principle in the SPF to the assignment of the broadcasting spectrum to be withdrawn from ATV, the CA needs to assess the likelihood of competing demands from providers of non-Government services as at 2 April 2016 (the date of its withdrawal from ATV) and in the months thereafter. Having regard to the prevailing free TV landscape described in paragraphs 18 to 25 above and its analysis of potential spectrum demands in paragraphs 26 and 27, the CA is of the view that there are likely to be competing demands for the broadcasting spectrum to be withdrawn from ATV.

31. Where there are likely to be competing demands for the broadcasting spectrum to be withdrawn from ATV, the guiding principle in the SPF requires the CA to adopt a market-based approach to the assignment, unless it considers that there are overriding public policy reasons to do otherwise. As explained below, the CA considers that there are overriding public policy reasons to adopt an administrative approach to the assignment of broadcasting spectrum to be withdrawn from ATV.

#### Public Policy Reasons for Not Adopting a Market-based Approach in the Assignment of Broadcasting Spectrum

32. In the CA's views, there are three key public policy reasons for

not adopting a market-based approach to the assignment of the broadcasting spectrum to be withdrawn from ATV –

- (a) In line with the practices of other advanced overseas economies, Hong Kong has consistently adopted an administrative approach to the assignment of spectrum for the provision of licensed free TV services under which the licensees are not required to pay SUF in return for performing the unique social functions as set out in paragraphs 33 to 35 below;
- (b) Given the licence led regime in Hong Kong under which the CE in C grants licences, with the CA fulfilling a facilitative role in assigning spectrum to licensees, adopting a market-based approach which involves the payment of SUF under the present circumstances would cause serious practical difficulties, and give rise to far-reaching and adverse implications on viewers' programming choices and competition in the free TV market, as summarised in paragraphs 36 to 39 below; and
- (c) The CA's statutory duty to have regard to the promotion of competition in the free TV market and the desirability of maintaining a level playing field in the free TV market are strong justifications for the CA to adopt the same administrative approach to the assignment of broadcasting spectrum to new entrants as with TVB, the incumbent, which is not required to pay SUF.

These public policy reasons are further elaborated below.

*Adoption of an Administrative Approach in light of the Unique Social Functions Performed by Free TV Services*

33. A “public trustee” model has been adopted in Hong Kong over the past 40 years by which nearly all the spectrum available for the provision of free TV services is entrusted to the free TV licensees for the provision of licensed free TV services, following an administratively-assigned approach without the need for licensees to pay SUF. Part of the reason for this is that they are required to perform unique social functions as

compensation to the community. The CA notes from the CEDB's policy views at the **Appendix** that it considers that the unique social functions performed by free TV services are –

- (a) they have been the most significant source of free entertainment, education and information for the general public;
- (b) they perform unparalleled social and public functions, catering for the needs of the masses and minorities. These include positive programming requirements specifying minimum broadcast hours for identified genres (e.g. programmes for children, elderly, youth, etc.), English language channel requirement, subtitling, broadcast of announcements in public interest, carriage of RTHK programmes etc.; and
- (c) they have been the most pervasive media in Hong Kong. A typical free TV programme with a television rating (“TVR”) (1 TVR representing over 60 000 viewers) of over 20 can reach over one million viewers simultaneously. Since free TV service providers are required under the BO and their licences to ensure territory-wide coverage of their free TV services to the satisfaction of the CA, and with their pervasiveness, they have also long been recognised as an essential platform to widely disseminate messages to the masses free of charge in case of emergency.

34. Hong Kong's practice of adopting an administrative approach in the assignment of spectrum for the provision of broadcasting services is in line with that of advanced overseas economies (as explained in the CA Statement on the assignment of spectrum to TVB of 12 May 2015). The findings of the research conducted by the Office of the Communications Authority into the practices of a number of overseas economies<sup>5</sup> show that they all adopt an administrative approach for the assignment of spectrum to TV broadcasters without the levy of SUF or equivalent, and such TV broadcasters are required to fulfil social obligations including meeting the positive programming requirements as a return to the community for the use

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<sup>5</sup> The research covers the practices of inter-alia Australia, Canada, Japan, Singapore and the United States in their assignment of spectrum for free TV services.

of frequency spectrum as a scarce public resource.

35. Taking into account CEDB's policy views, and given the importance of those unique social functions, the CA considers that it would be in the public interest to maintain the on-going approach of administratively assigning the broadcasting spectrum to free TV licensees and not to charge SUF. This approach is consistent with the views put forward by the Secretary for Commerce and Economic Development ("SCED") and the former TA in their joint consultation paper issued in November 2010, which specified that administratively assigned spectrum for the provision of terrestrial broadcasting services should not attract SUF. This proposition, which was not challenged in the consultation exercise, was premised upon the unique social functions performed by broadcasting services and the significant public interest involved.

*The Practical Difficulties and Adverse Implications on Viewers' Programme Choice of Adopting a Market-based Approach*

36. Generally speaking, the regime for licensing of broadcasting services and how this relates to the assignment of spectrum cause fundamental difficulties in applying a market-based mechanism in the assignment of broadcasting spectrum. Although the CA has the statutory duty to assign spectrum, it is the CE in C which is vested with the statutory power to grant free TV licences under the BO. Given this decision making structure, adoption of a market-based approach would create uncertainty as to whether an applicant for a new free TV licence which relies upon spectrum as its means of transmission or an incumbent seeking licence renewal would be able to acquire the spectrum which it requires to meet the long term investment and operating proposals contained in its licence application.

37. Specifically, under the prevailing free TV landscape, TVB is already assigned a quantum of spectrum, viz. 1.5 digital multiplexes, which are commensurate with its licensed DTT service need, to provide five HD programme channels. As to HKTVE, by the CA's estimation, the broadcasting spectrum to be withdrawn from ATV is thrice the quantum that HKTVE needs to provide its licensed free TV service comprising one HD and one SD programme channels. If the CA were to adopt a market-based approach by conducting an auction now for the assignment of the

broadcasting spectrum to be withdrawn from ATV, with only the above existing licensees considered eligible to take part having regard to the eligibility criterion set out in paragraph 13 above, TVB as an incumbent would then have the privilege to acquire spectrum which is surplus to its licensed service needs. The same would apply to HKTVE, the new entrant. In both circumstances therefore, a market-based approach may well lead to idleness of spectrum or its wasteful hoarding, while more importantly, bringing no benefits to the viewing public in terms of programme diversity and choices, and this runs counter to the CA's statutory duty to promote the efficient allocation and use of spectrum, not to mention the effect on new entrants - free TV licensees that come on stream subsequent to the auction would not have an opportunity of obtaining spectrum for the provision of their licensed free TV services. The assignment of all the broadcasting spectrum available for DTT services (until more becomes available after ASO) to the two currently eligible licensees claiming it would also restrict the programming choices of viewers, and thus be harmful to their interests.

38. On the other hand, if "all comers" including say free TV licence applicants are considered eligible to bid for the broadcasting spectrum currently assigned to ATV, this would not be consistent with the CA's duty to manage spectrum efficiently, as it could potentially lead to spectrum being held by parties who have yet to be authorised or who lack the ability to use it. This would potentially lead to unacceptable idleness of broadcasting spectrum or its wasteful hoarding.

39. In relation to this, the CA notes CEDB's views that when considering the assignment of the broadcasting spectrum, the CA may assess carefully inter-alia whether the spectrum assignment can enhance variety and provide more diversified free TV programme choices for the public, and whether the spectrum assignment can enhance competition in the free TV broadcasting market for the development of the industry and benefit of the public. In the CA's view, the scenarios described in paragraphs 37 to 38 above whereby the broadcasting spectrum could be acquired either by an incumbent free TV licensee in excess of its licensed service needs, or by a party not yet authorised or lacking the ability to use it, would work against these considerations of CEDB and the CA's statutory duty. The CA does not therefore consider a market-based approach to broadcasting spectrum assignment acceptable under the circumstances.

### *Maintaining a Level Playing Field for the Incumbent and New Entrants*

40. The adoption of a market-based approach to assign the broadcasting spectrum to be withdrawn from ATV would necessitate the use of a price, SUF, to determine (a) the successful bidder to whom spectrum would be assigned, and (b) the quantum of spectrum to be assigned, which needs not be linked with the licensed service needs. This would be inconsistent not only with the approach to assignment of spectrum for the provision of broadcasting services adopted so far in Hong Kong and in advanced overseas economies where free TV licensees are not charged SUF, but also with the CA's adoption of an administrative approach to the re-assignment to TVB, the incumbent, of two set of analogue frequency channels and 1.5 digital multiplexes of spectrum, which are commensurate with its licensed service needs, at zero SUF.

41. As a matter of fairness and to provide a level playing field to licensees to compete in the free TV market, the CA considers it important for the same administrative approach to be adopted for spectrum assignment, to incumbents and new entrants alike. This accords with CEDB's views, that the CA should carefully assess whether the assignment of the broadcasting spectrum is equitable among incumbents and new market players.

### **THE CA'S DECISION ON THE APPROACH TO THE ASSIGNMENT OF BROADCASTING SPECTRUM TO BE WITHDRAWN FROM ATV**

42. Having given due consideration to all the relevant factors, including the provisions of the TO and the CAO, the CA's statutory duties, the free TV landscape prevailing at the date of this Statement, the SPF and the policy views of the CEDB, the CA is of the view that the unique social functions performed by free TV services which historically, and today, justify the adoption of an administrative approach to spectrum assignment, the practical difficulties, far-reaching and adverse implications on viewers' programming choices and competition in the free TV market of adopting a market-based mechanism for spectrum assignment, and the importance of providing a level-playing field for incumbent and new entrants to compete in the free TV market constitute overriding public policy reasons for not

adopting a market-based approach to assign the broadcasting spectrum to be withdrawn from ATV to free TV licensees.

43. Accordingly, the CA **decides** that an administrative approach should be adopted for the assignment of the broadcasting spectrum to be withdrawn from ATV to free TV licensees at zero SUF. The CA will consider individual assignments of the broadcasting spectrum on a case by case basis, having regard to all relevant factors and in accordance with criteria for the spectrum eligibility and assignment principles as set out in paragraphs 13 and 14.

## **APPLICATION BY TVB FOR THE ASSIGNMENT OF SPECTRUM**

### **The Application of TVB**

44. TVB is already assigned two sets of analogue frequency channels, and one digital multiplex of SFN coupled with half of the capacity of one digital multiplex of MFN of the UHF band, for the provision of its licensed free TV services, comprising two analogue programme channels and five digital programme channels in HD format, until the expiry of its renewed free TV licence, i.e. 30 November 2027. TVB wrote to the CA in April 2015, seeking assignment of the remaining half of the MFN multiplex so as to increase the bit rates used for the transmission of its Jade and Pearl channels, thereby improving their broadcast quality. TVB submitted that Jade channel was their flagship channel with the largest number of viewers compared to other channels. According to TVB, with the additional assignment of transmission capacity in the MFN multiplex, the viewing public could receive Jade channel with significantly improved picture quality and viewers of Pearl channel could also enjoy programmes with enhanced picture quality. In addition, TVB submitted that it would introduce interactive and data services in the MFN multiplex, similar to those currently provided in its SFN multiplex, though it had not submitted any timetable to do so.

### **The CA's Consideration**

45. The CA has already assigned 1.5 digital multiplexes to TVB,



which are commensurate with its licensed service need for providing five programme channels in HD format during the term of its renewed licence. In view of the finite supply of spectrum for the provision of licensed free TV services before ASO, the likely competing demands from existing and prospective free TV licensees, and taking into account CEDB's views that the CA may assess whether the assignment of the broadcasting spectrum could enhance variety and provide more diversified free TV programme choices for the public, the CA is of the view that existing and prospective free TV licensees which do not have any spectrum assignment for the provision of their licensed free TV services should have priority for being assigned broadcasting spectrum, as on balance, and at this juncture taking into account the prevailing free TV landscape, the promotion of competition outweighs the benefits of improvements in picture qualities and introduction of interactive and data services.

### **The CA's Decision on TVB's Application**

46. In view of the finite supply of spectrum available for the provision of licensed free TV services before ASO, the likely competing demands from the other free TV licensee and prospective licensees, and the policy views of CEDB, the CA **decides** not to accede to TVB's request for the assignment of more spectrum on top of its existing assignment of 1.5 digital multiplexes for the purpose of enhancing its licensed free TV services.

47. The CA is prepared to consider future requests for spectrum from TVB to enable it to make improvements to the broadcast quality of its licensed free TV services if and when more spectrum, subject to further assessment and coordination, becomes available for the provision of broadcasting services after ASO, which is currently planned by Government to take place in 2020.

## **APPLICATION BY HKTVE FOR THE ASSIGNMENT OF SPECTRUM**

### **The Application of HKTVE**

48. HKTVE is licensed as per its free TV licence application to

use a fixed network as its transmission mode to provide a 24-hour Chinese channel in HD format by 31 March 2016 and a 16-hour English channel in SD format by 31 March 2017. Following the grant of its licence, HKTVE has applied to the CA to use spectrum as an additional mode of transmission, and seeks to be assigned the full SFN multiplex to be withdrawn from ATV.

### **The CA's Consideration**

49. In considering this request, the CA must have regard to all relevant factors, including the prevailing free TV landscape, its statutory duties which inter-alia require it to have regard to the promotion of competition in the communications market and the policy views of CEDB regarding enhancing variety, providing more diversified programme choices for the public and enhancing competition in the free TV market. These factors and the real likelihood that the free TV market would in around eight months' time be left with only a single spectrum-based free TV licensee with high coverage and penetration providing its services to Hong Kong viewers, incline the CA to approve the application from HKTVE to use spectrum, on top of its fixed network, to transmit its licensed free TV service. However, any such approval would be premised upon and subject to agreement by HKTVE to comply with all the additional conditions the CA imposes that are pertinent to spectrum assignment for the provision of licensed free TV services.

50. Primarily, although HKTVE already has an assured transmission mode, the CA notes that its fixed network is projected to have only a coverage of 65% to 80% of the households<sup>6</sup> in the initial six years of its service rollout. This is much inferior compared to that of radio spectrum

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<sup>6</sup> Measured by "premises ready for service within 28 days", which mean premises (to be specified by the licensee and accepted by the CA) to which the TV programme service of the licensee is capable of being provided by the licensee within 28 days after receipt of a request for the licensee's service in writing from:

- (a) the building management offices/incorporated owners/owners of the relevant building in which the premises so specified are situated; and
- (b) the residents of the premises so specified (where applicable),

in which an agreement for access to the relevant building and premises so specified to carry out any work necessary for the provision or reception of the licensee's service is obtained from (a) and (b) (where applicable), and in which the equipment necessary for receiving the licensee's service via delivery means designated by the licensee is made available by (a) or (b).

which reaches 99% of the households. On present information, it would take some years before HKTVE may reach the coverage of TVB's programme channels, let alone the penetration rate currently achieved by TVB. The CA considers that it would be in the viewers' interest for spectrum to be assigned to HKTVE in order that it may achieve the same level of coverage as TVB more readily upon service launch, hence providing more programming choices more expeditiously, to many more Hong Kong households, viz. 99%, a marked improvement from the initial 65% in the case of fixed network. More effective competition in the free TV market would also ensue with the incumbent and new entrant both making use of radio spectrum to transmit their services to Hong Kong viewers.

51. The CA is guided by the general principle set out in paragraph 14 above in deciding on the quantum of spectrum to be assigned to HKTVE. In this regard, HKTVE is licensed to provide one HD programme channel and one SD programme channel. Mindful of the finite supply of spectrum for the provision of licensed free TV services before ASO, the likelihood of competing demands from other prospective free TV licensees, and the policy views of CEDB, the CA considers that the possible assignment to HKTVE of half of the transmission capacity of a digital multiplex should be commensurate with its licensed service need to provide two programme channels of a reasonable broadcast quality.

### **The CA's Decision on HKTVE's Application**

52. Subject to the agreement of HKTVE to comply with all the additional conditions the CA imposes which are pertinent to spectrum assignment for the provision of licensed free TV services, the CA **decides** that it is prepared to assign to HKTVE half of the transmission capacity of a MFN multiplex for the provision of its licensed free TV services from the date when the broadcasting spectrum to be withdrawn from ATV becomes available to the end of the term of HKTVE's free TV licence on 31 March 2027.

53. The CA is prepared to consider future requests for spectrum from HKTVE, in excess of the planned assignment of half of the MFN multiplex, if and when more spectrum, subject to further assessment and

coordination, becomes available for the provision of broadcasting services after ASO which is currently planned by Government to take place in 2020.

## **FURTHER APPLICATIONS BY NEW FREE TV LICENSEES FOR BROADCASTING SPECTRUM**

54. The CA will consider individual requests for assignment of the broadcasting spectrum on a case by case basis, having regard to all relevant factors and in accordance with the spectrum eligibility and assignment principles set out in paragraphs 13 and 14. The CA will promulgate its future decisions on assignment of broadcasting spectrum through the issue of separate CA's Statements.

55. For the avoidance of doubt, nothing in this Statement will in any way fetter the CA's discretion to manage spectrum and to decide how it should be assigned in the future. In exercising that discretion and making such decisions the CA will have regard to all relevant factors, including the TO and the CAO, its statutory duties, the prevailing free TV landscape and the relevant policy considerations. The CA will consider future assignments or re-assignments of spectrum on a case by case basis.

**Communications Authority**  
**31 July 2015**

**Views of  
Commerce and Economic Development Bureau on  
Free Digital Television Broadcasting in Hong Kong  
upon Cessation of Service of Asia Television Limited in 2016**

**PURPOSE**

In response to the request of the Office of the Communications Authority (“OFCA”), this document sets out areas that may, subject to the Communications Authority (“CA”)’s views, be relevant in considering the assignment of digital broadcasting spectrum to be vacated by Asia Television Limited (“ATV”) following the expiry of its domestic free television (“FTV”) programme service licence (“the Spectrum Assignment”).

2. The views and factors set out in this document are subject to the CA’s technical assessment and provided as possible considerations amongst others that the CA may take into account in discharging its spectrum assignment responsibilities under the Telecommunications Ordinance (Cap.106) (“TO”). For the avoidance of doubt, this document is without prejudice to any provisions of the TO and nothing herein shall be construed as limiting or restricting in any way the independence of and the powers vested in the CA under the TO for the management of broadcasting spectrum and under the Broadcasting Ordinance (Cap. 562) (“BO”) in formulating its recommendations on any new applications for FTV programme service licences (“FTV licences”). It is also without prejudice to the Chief Executive (“CE”) in Council’s powers and discretion under the BO in deciding any FTV licence applications.

**LATEST DEVELOPMENT OF ATV**

3. On 1 April 2015, having regard to the recommendations of the CA, the CE in Council decided not to renew ATV’s FTV licence and, for the purpose of complying with the requirement under section 8(1)(a) of Schedule 4 to the BO, to extend the term of ATV’s existing FTV licence to 1 April 2016, i.e. 12 months after the notice of non-renewal of its FTV licence was served on ATV.

4. Under its fixed carrier licence (“FCL”) issued by the CA under the TO, ATV is assigned two sets of analogue frequency channels, one digital

multiplex of single frequency network (“SFN”) coupled with half of the capacity of one digital multiplex of multiple frequency network (“MFN”), in 470 – 806 MHz of the Ultra High Frequency (“UHF”) band for provision of its licensed analogue and digital terrestrial television (“DTT”) services. ATV’s FCL will expire on 30 November 2018.

5. Following the CE in C’s decision as set out in paragraph 3 above, and having considered the representations from ATV, the CA exercised its power under section 32G(1) and 32H(3) of the TO and gave notice to ATV on 20 April 2015 on the withdrawal of the two sets of analogue TV channels and 1.5 digital multiplexes assigned to ATV as from 2 April 2016. With the withdrawal of the spectrum assigned to ATV by 2 April 2016, 1.5 digital multiplexes<sup>1</sup> (“broadcasting spectrum”) would be available for re-assignment to other free TV licensees.

## **BROADCASTING POLICY OBJECTIVES**

6. The broadcasting policy objectives are to –
- (a) widen programming choice to cater for the diversified tastes and interests of the community;
  - (b) encourage investment, innovation and technology transfer in the broadcasting industry;
  - (c) ensure fair and effective competition in the provision of broadcasting services;
  - (d) ensure that broadcasting services provided are up to the expectations and do not offend the tastes and decency of the community; and
  - (e) promote the development of Hong Kong as a regional broadcasting and communications hub.

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<sup>1</sup> For the two sets of analogue frequencies to be withdrawn from ATV, the Government has requested the Radio Hong Kong Television to utilise the frequencies to provide analogue TV services as from 2 April 2016.

## **RADIO SPECTRUM POLICY FRAMEWORK**

7. According to the Radio Spectrum Policy Framework (“RSPF”) promulgated by the Government in April 2007, the policy inclination is that a market-based approach will be adopted for the assignment of the spectrum wherever the CA (or the former Telecommunications Authority (“TA”) before the establishment of the CA) considers that there are likely to be competing demands, unless there are overriding public policy reasons not to do so. Following the promulgation of the RSPF, the former TA issued a statement in April 2007 indicating that in exercising its statutory powers under the TO, the TA should, in addition to all relevant considerations as required by law, give due regard to the RSPF to the extent that there were no inconsistencies with the objectives and provisions laid down in the TO.

## **CHARACTERISTICS OF FTV SERVICES**

8. FTV services have their unique social functions –
- (a) they have been the most significant source of free entertainment, education and information for the general public;
  - (b) they perform unparalleled social and public functions, catering for the needs of the masses and minorities. These include positive programming requirements specifying minimum broadcast hours for identified genres (e.g. programmes for children, elderly, youth, etc.), English language channel requirement, subtitling, broadcast of announcements in public interest, carriage of Radio Television Hong Kong (“RTHK”) programmes, etc.; and
  - (c) they have been the most pervasive media in Hong Kong. A typical FTV programme with a rating of over 20 television rating (“TVR”, 1 TVR representing over 60 000 viewers) can reach over 1 million viewers simultaneously. Since FTV service providers are required under the BO and their licences to ensure territory-wide coverage of their FTV services to the satisfaction of the CA, and with their pervasiveness, they have also long been recognised as an essential platform to widely disseminate messages to the mass free of charge in case of emergency.

## EVOLVING LANDSCAPE OF FTV MARKET

9. The landscape of FTV market has been undergoing changes. Apart from the non-renewal of ATV's FTV licence<sup>2</sup> mentioned in paragraph 3 above, on 1 April 2015, having regard to the recommendations of the CA, the CE in C decided to grant a FTV licence to HK Television Entertainment Company Limited ("HKTVE") for a term of 12 years, on the basis of inter-alia the use of a fixed network to transmit its FTV programme service as per the proposal of HKTVE in its licence application. HKTVE is required to broadcast, within 12 months from licence grant, i.e. by 31 March 2016, a 24-hour Chinese channel; and within 24 months from licence grant, i.e. by 31 March 2017, a 16-hour English channel. Following the licence grant, HKTVE has applied to the CA under its licence for permission to use spectrum as an additional mode of transmission.

10. On 12 May 2015, having regard to the recommendations of the CA, the CE in C decided to renew the FTV licence of the Television Broadcasts Limited ("TVB") for 12 years from 1 December 2015 to 30 November 2027. Following the decision of the CE in Council, the CA has informed TVB that the CA has decided to administratively assign to TVB broadcasting spectrum, comprising two sets of analogue frequency channels; and one digital multiplex of the single frequency network coupled with half of the capacity of one digital multiplex of the multiple frequency network in 470 - 806 MHz of the Ultra High Frequency Band, for the provision of its licensed analogue and DTT services during the validity of its renewed FTV licence. The spectrum assignment lasts for a period of 12 years, from 1 December 2015 to 30 November 2027, to tie in with the term of TVB's renewed FTV licence.

11. The application for a FTV licence by the Fantastic Television Limited (Fantastic TV), which was granted an approval-in-principle in October 2013, is under consideration<sup>3</sup> whereas the two other applications (i.e. the 2<sup>nd</sup> application of Hong Kong Television Network Limited and the application of Forever Top (Asia) Limited) received in April 2014 and April

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<sup>2</sup> Hitherto ATV has been providing two domestic channels in analogue format and six in digital format including simulcasting two analogue channels.

<sup>3</sup> Having regard to the request of Fantastic TV, the CE in Council decided on 12 May 2015 that Fantastic TV should be given until 15 September 2015 to resolve all outstanding issues and satisfactorily address the concerns in relation to its application with the CA.



2015 respectively are being processed by the CA. These applicants have also indicated interests to be assigned broadcasting spectrum for provision of their FTV services.

## **DIGITAL FREE TV BROADCASTING**

12. It will be the first time since its first broadcast in 2007 that digital free TV broadcasting spectrum is available for assignment. It is also worth noting that since the introduction of FTV services in Hong Kong some 40 years ago, spectrum for the provision of broadcasting services has been administratively assigned since FTV service carries unique social functions. Having regard to the broadcasting policy objectives, characteristics of FTV services, their unique functions and the evolving landscape of the FTV service market following ATV's cessation of service after 1 April 2016, the CEDB considers that it may be advisable for the CA, before deciding on the spectrum assignment of the 1.5 digital multiplexes to be vacated by ATV, to take into careful consideration all relevant factors, including the objectives and provisions of the relevant legislation, the CA's statutory duties, the prevailing FTV landscape as well as the RSPF.

13. Specifically, the following matters may, subject to the CA's views, warrant the Authority's careful assessment in considering the Spectrum Assignment: -

- (a) whether the Spectrum Assignment can promote the efficient allocation and use of broadcasting spectrum as a scarce public resource of Hong Kong, and whether the assignees can utilise the spectrum expeditiously, efficiently and effectively for the provision of FTV services so that public can enjoy new free digital TV broadcasting service as early as possible and that any service gap can be minimised after cessation of ATV's service;
- (b) whether the Spectrum Assignment can enhance variety and provide more diversified FTV programme choices for the public;
- (c) whether the Spectrum Assignment can enhance competition in the FTV broadcasting market for the development of the industry and benefit of the public;

- (d) in relation to (c), whether the amount of broadcasting spectrum to be assigned is commensurate with the need of individual operators' provision of FTV services; and whether the Spectrum Assignment is equitable among incumbents and new market players; and
- (e) in assigning the broadcasting spectrum, whether conditions and requirements should apply to the assignees.

14. The Commerce and Economic Development Bureau trusts that the CA, in the Spectrum Assignment, would give due consideration to all relevant factors so as to ensure that the FTV spectrum to be vacated by ATV is assigned in a way that best serves the public interest, including but not limited to the social functions and the evolving landscape of the FTV service market as elucidated above.

**Communications and Technology Branch  
Commerce and Economic Development Bureau  
July 2015**