

Comments of Hong Kong Cable Television Limited on the “Second Consultation on Digital Terrestrial Broadcasting in Hong Kong”

I. Introduction

- 1.1 Hong Kong Cable Television Limited (“HKCTV”) welcomes the opportunity to comment on the “Second Consultation on Digital Terrestrial Broadcasting in Hong Kong” (“Consultation Paper”) issued on 5 December 2003. It is HKCTV’s view that all the multiplexes including the multiple frequency network (“MFN”) should be subject to open bidding.

II. All the multiplexes including the MFN should be subject to open bidding

- 2.1 HKCTV is of the view that all the multiplexes including the MFN should be subject to open bidding. The Consultation Paper stated that among the five multiplexes available for the implementation of Digital Terrestrial Television (“DTT”), there was only one MFN which would be assigned to Television Broadcasts Limited (“TVB”) and Asia Television Limited (“ATV”). In paragraph 21 of the Consultation Paper, the Government explained the underlying reason for such arrangement:

“Given that our objective is to guarantee multiplex capacity for ATV and TVB to facilitate their transition to digital broadcasting and that the operation of an MFN multiplex requires close coordination between the existing terrestrial broadcasters on re-tuning some existing analogue frequency channels, we propose that the only MFN multiplex available under the latest frequency plan be assigned to ATV and TVB for simulcasting the existing analogue programme channels in both analogue and digital forms.” (Emphasis added)

In paragraph 28 of the Consultation Paper, the Government reiterated that the proposed allocation method regarding MFN and single frequency network (“SFN”):

“ensures smooth digital transition by guaranteeing the existing broadcasters adequate spectrum capacity to simulcast and at the same time allows both incumbents and new players the opportunity to operate the SFN multiplexes for new services based on the merits of their proposals in the competitive process”.

- 2.2 In the view of HKCTV, the Government, as explained below, has exaggerated the need of TVB and ATV to facilitate their transition to digital broadcasting and the requirement for their close co-ordination on re-tuning their existing analogue frequency channels. While under the proposed arrangement on the MFN, TVB and ATV, the two existing terrestrial broadcasters, may have less teething problem in their transition to digital broadcasting, such advantages are

outweighed by the benefit of having an open tender for the allocation of the MFN.

- 2.3 In the first place, we cannot see the reason for distinguishing the treatment of the only MFN multiplex and the four SFN multiplexes and all the multiplexes should be subject to open bidding. As in the spectrum in the Third Generation mobile service or land, the Government has been using open tender or auction to allocate or sell these scarce public resources to private entities to operate new business or to develop land using these resources. Sale by open tender or auction has the advantage of being fair and transparent. In addition, according to basic economic principle, resources in a free market should be assigned to the person or entity who can offer the highest price and this represents the most efficient allocation and movement of resources in an economy. In the press release issued by the then Information, Technology and Broadcasting Bureau on 3 October 2000 on the announcement of the method of allocation of the licence for the Third Generation mobile services by spectrum auction, the Government stated:

“Allocation of licences by spectrum auction is an allocation process that is efficient, fair and transparent.”

We think that MFN in the DTT is not different from the spectrum in the Third Generation mobile service and we urge the Government to put the MFN up for open tender instead of assigning the MFN to TVB and ATV. In addition, since Government has the intention to adopt a multiplex licensing framework, open tender for multiplex operators with “must carry” obligation of terrestrial content of present analogue programme service providers in digital format will ensure facilitation of transition to digital broadcasting. We do not see why there cannot be close coordination between the existing terrestrial broadcasters who are also the programme service providers and the multiplex operator on re-tuning some existing analogue frequency channels. The reason is that the programme service providers (in this case both TVB and ATV) would also derive benefit from close coordination since it ensures that an even wider audience is reached.

- 2.4 Apart from the fairness and transparency associated with the tender process, the allocation of MFN by open tender will foster competition in broadcasting. The Government should create a level playing field for all operators in broadcasting and telecommunications. By pre-assigning the MFN to TVB and ATV, the Government is discriminating against the prospective broadcasting operators. The Government should treat all private enterprises in an even-handed manner and should not favour the two existing terrestrial broadcasters which in turn puts the new operators in a disadvantageous position. In fact, the Government stated in paragraph 28 of the Consultation Paper

“... in our view, the alternative of allowing ATV and TVB to take up the SFN multiplexes on a priority basis, and allocating any remaining multiplexes through an open process will be undesirable. It may deny

prospective new players market entry, discourage competition, deprive the public of alternatives based on merits of services and programmes, and not represent the best use of limited spectrum resources.”

In our view, the Government’s reasoning in relation to the SFN also applies to the MFN. Ironically, the proposed pre-allocation of the MFN to TVB and ATV would have defeated the Government’s own policy objective of promoting competition in the broadcasting arena.

The Government’s proposed pre-assignment of the MFN to TVB and ATV is eerily reminiscent of the allocation of the development right at the Cyberport at Pokfulam. The Government award of development right in Cyberport without an open tender has attracted much criticism and has adversely affected business confidence on the Government’s commitment to ensure a fair and competitive business environment. We hope that the Government has learned from its past experience.

- 2.5 In the third place, the allocation of the MFN by open bidding would generate revenue to the Government in a period of Government budget deficit.
- 2.6 In short, the proposed pre-assignment of the MFN to TVB and ATV represents a departure of the Government from its time-honoured practice of having open tender for the allocation of scarce public resources. HKCTV suggests an open tender for the MFN in order to promote competition in the broadcasting business.

III. All multiplexes should have high-definition television programme content and transmission requirement

- 3.1 Apart from our suggestion of open tender for the MFN, HKCTV submits that all multiplexes should have high-definition television ("HDTV") programme content and transmission requirement as a requirement of the licence.

IV. All multiplexes should be free television service

- 4.1 Finally, HKCTV is of the view that all multiplexes should be free television service instead of pay television service. As contemplated in paragraph 23 of the Consultation Paper, the dates of simulcast and the network rollout timetable should be incorporated in the multiplex licences (which, according to the Government, will be carrier licences) and there should be performance bond for the milestone. If TVB and/or ATV fail to meet the timetable or the milestone, provisions should be made allowing free carriage right of the analogue channels in DTT format.

V. “Must Carry” rule of terrestrial content

- 5.1 There should be a “Must Carry” rule of terrestrial content for multiplex operator to carry terrestrial content and the programme service providers of

terrestrial content shall make available such programme content to multiplex operators as well as operator which is able to carry terrestrial content at a prescribed quality like HKCTV. This is because viewers will still wish to retain access to the existing free-to-air services. For this reason, it is essential that the other delivery platforms are able to carry existing domestic free services, if they so choose, to enable viewers connected to these alternative platforms to be able to receive domestic free services directly over the chosen delivery platform. It is important to note that if this is implemented when DTT services are launched and HKCTV carries the free-to-air services over its network, more than 25% of Hong Kong viewers would be able to receive ATV and TVB channels digitally. On the basis that it is Government's policy to implement the transition from analogue to digital as quickly as possible, the carriage of the free-to-air services by HKCTV would be a significant step to achieving this objective.

VI. Conclusion

- 6.1 To conclude, the Government, in order to provide a level playing field, should put the MFN up for open tender and should not discriminate against prospective operators.
- 6.2 There should be a "Must Carry" rule of terrestrial content for multiplex operator to carry terrestrial content and the programme service providers of terrestrial content shall make available such programme content to multiplex operators as well as operator which is able to carry terrestrial content at a prescribed quality like HKCTV.
- 6.3 HKCTV submits that all multiplexes should have HDTV programme content and transmission requirement as a requirement of the licence and all multiplexes should be free television service instead of pay television service.

Hong Kong Cable Television Limited
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