

# **Television Broadcasts Limited**

## **TVB's Response to CITB's Consultation On the "Proposed Spectrum Policy Framework"**

### Introduction

1. **Television Broadcasts Limited (TVB) agrees in principle that Hong Kong should have a long-term spectrum policy and long-term spectrum release plan and that they should have a high degree of transparency.**

**However, to ensure smooth implementation of Hong Kong's spectrum policy and release plan so that the community can reap the most benefit, the Government must proceed with caution. TVB's concerns, comments and suggestions on specific issues are outlined in this paper.**

### Considerations for a Spectrum Policy Framework

2. **We agree that future shape of radiocommunications, international developments, encouragement of investment, strategic considerations and fair compensation for the community as referred to in the Consultation Paper should be factored in Hong Kong's spectrum policy framework and supporting spectrum management arrangements.**
3. **In addition, we propose that fair compensation for spectrum users and investors should be another consideration, especially in cases of spectrum redeployment and refarming.**
4. **Besides industry and economic considerations, public service considerations should also be included. The Government should not forget that public services enabled by the utilisation of spectrum have a direct bearing on the General Public and should be factored in at the onset. Spectrum policy should be flexible for anticipation of future development and also changing social and community needs.**

### Spectrum Policy Objectives

5. **TVB supports the Government's proposal that spectrum is an important resource and critical input in the production of telecommunications and broadcasting services, thus the policy of spectrum should play the role of supporting the wider telecommunications and broadcasting policies and objectives.**
6. **Thus, we propose that the wording of the objectives set out in paragraph 31(a) to (e) should be modified to reflect that the spectrum policy is part of the wider telecommunications and broadcasting policies.**
7. **In addition to the broad guidelines for the objectives outlined [paragraph 31 (a) to (e)], (e) should be expanded to include public services – "To ensure that necessary spectrum is reserved for Government services, and**

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Government-mandated services and services in the public interest.” We believe that if the Government would take a strictly market-led approach in spectrum assignment and management, invaluable services for the general public, such as Free TV, might disappear and public service radio and TV might never appear in the telecommunications and broadcasting landscape in Hong Kong.

8. The Government must not forget that in addition to providing almost round the clock free entertainment and information for the general public, Free TV is a vital part of Hong Kong’s emergency communications system. Free TV also has the mandatory obligation to broadcast, free of charge, one-minute of Announcement in the Public Interest (API) per clock hour and a quota of Government-mandated programmes. Furthermore, Free TV operators’ services are not purely commercial in nature – under licence, Free TV must provide a quota of “positive programming” such as news, documentary, programmes for children, young persons and senior citizens, which are public service in nature. Therefore, special public service consideration should be factored in spectrum management policy, assignment and renewals so far as Free TV services are concerned.

### Guiding Principles in Spectrum Management

9. We propose that a more flexible market-based approach than the one proposed should be considered for Hong Kong. The Government must remember that Hong Kong is a small market. We are of the view that the proposed guiding principle in spectrum management contained in Paragraph 36 does not provide sufficient emphasis on the need to protect Government-mandated services and services in the public interest; thus, we propose to modify the principle as follows: -

#### “Guiding Principle for Spectrum

The TA should use market-based approach in spectrum management when there are competing commercial demands for the spectrum but this is subject to the need to reserve spectrum or provide preferential treatment in spectrum allocation for Government services, Government-mandated services and services in the public interest including Free TV.”

### Spectrum Rights Before Expiry and at the End of Assignment

10. TVB agrees that the proposed spectrum policy framework should state explicitly that Telecommunications Authority (TA), or any future authority which is entrusted with the responsibility, should not vary or withdraw frequencies assigned to a licensee before the expiry of the spectrum assignment, except in circumstances where public interest, Government policy, international obligation or interference between legitimate users, render it necessary.

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11. We also agree that sufficient notice should be provided for such withdrawal. However, we feel that in cases where a new user benefits from an existing user's spectrum rights being varied/withdrawn, the existing frequency user who is affected should be compensated by the new user as in the case in the US where telephone companies paid a fee to broadcasters for relocating their ENG usage away from 2.5GHz.
12. In the case of spectrum rights at the end of assignment (Paragraph 46), we believe that the proposal to publish sufficiently long notice periods for change/non-renewal of spectrum assignment is insufficient to protect licensees. The TA should make a binding commitment at the time of spectrum assignment on what the TA intends to do with the spectrum at the end of assignment, i.e. it should be transparent to the assignee at the time of assignment how and under what conditions the assignee could obtain renewed usage of the assigned spectrum. For example, the TA could state that the spectrum assignment is renewable subject to satisfactory performance or the TA could state that the assigned spectrum would be put up for another auction at the end of assignment, etc.
13. In addition, non-renewal of spectrum assignment or reassignment of spectrum must be conducted in a manner that meets the spectrum policy objectives. The TA should review regularly whether spectrum reassignment over time has resulted in a balance of spectrum assignment that better meets Hong Kong's spectrum policy objectives.
14. Also, fair compensation or other special treatment should be accorded to a spectrum assignee whose spectrum has been redeployed, e.g. alternative spectrum should be assigned to the affected assignee.

### Spectrum Refarming

15. We agree that the TA should be required to undertake impact appraisals prior to spectrum refarming. In addition, the TA should be required to undertake post-refarming appraisals to see whether the refarming exercise has resulted in a better allocation of spectrum in light of the spectrum policy objectives; and to monitor whether the new assignees have made good use of their newly assigned spectrum.

### Spectrum Rights/Obligations for Non-licensees

16. While we agree that spectrum rights for non-licensees should not be included in this spectrum policy framework, since more and more satellite operators are using terrestrial frequencies 2.2-2.5GHz, provisions should be introduced to ensure that their use of spectrum should not interfere with those used by licensees.

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### Spectrum Supply and Spectrum Release Plan

17. We support the proposal that a spectrum release plan should be published and the way these spectrums should be assigned, i.e. by auction, beauty contest or any other methods. We also agree that there should be a rolling plan; however, the rolling period should be longer, 5 years instead of the proposed 3 years, for licences, such as carrier licenses, that require heavy investment.
18. With burgeoning new technology in the telecommunications and broadcasting arena, Hong Kong is at the juncture when Government and industries are trying to decide how and what could best benefit Hong Kong's economy and community. There are uncertainties in the deployment of technology, demand and market and public/consumer support for their deployment of the different services.
19. In the case of spectrum for Digital Terrestrial Television (DTT), two Single Frequency Network (SFN) multiplexes have been assigned to ATV and TVB. Yet, SFN technology has not been proven feasible in such a congested built-up environment as Hong Kong. That is why the two remaining available SFNs have not been assigned contingent on ATV and TVB's successful implementation.
20. The Government has just commenced a public consultation on mobile TV. There have not been any policy framework nor objectives set on how best available spectrums in Band III, L Band and the two unassigned DTT multiplexes could or should be deployed for the maximum benefit of the public, the telecommunications and broadcasting sectors and Hong Kong.
21. The Government must also decide on how to re-issue and redeploy the freed-up spectrum after analogue switch-off – as DTT would be launched before end of 2007, and the Government has set a target of 5 years after DTT launch for analogue switch-off. For this, we propose that the Government should conduct a separate consultation.
22. We also propose that the Government should determine long-term telecommunications and broadcasting objectives first before finalising the spectrum policy framework and releasing a long-term spectrum release plan, since the spectrum policy framework should be formulated to support the objectives of the two main sectors that utilise the spectrums. Also, the Commerce, Industry and Technology Bureau ("CITB") should take the time to plan meticulously and consult with stakeholders every step of the way during the process.

### Secondary Trading of Spectrum

23. TVB believes that given the small market size in Hong Kong, the Government must consider the notion of secondary spectrum trading with caution. Besides initiating a feasibility study on secondary trading of spectrum and conducting further consultation after issuing the report of the

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study, public forums should be held where different sectors, including industry and public can thoroughly debate the issues involved. Besides spectrum hoarding and anti-competitive issues, foreign and cross-sector ownership issues should also be addressed.

### Spectrum Liberalisation

24. TVB agrees that the Government should further monitor developments in other jurisdictions regarding spectrum liberalization before considering whether it should be introduced to Hong Kong.

### Spectrum for Government and Public Services

25. We support that the command and control approach for spectrum management should continue to be applied to spectrum for government services and the TA should review their usage, however, the period should be decided according to the usage and users' requirements. The review period should be decided after consultation with users rather than set arbitrarily across the board.
26. Furthermore, the review should not be based on efficiency of use alone. Quality and reliability of service must also be factored into consideration. The Government must remember that spectrum for fire, police and Emergency Communications Systems should be reserved for their dedicated use even though they could be idle at times. That would also apply to micro-wave and 2.2GHz ENG links for news broadcasts as well – as such links should be reserved for the broadcasters for live-breaking news which would have substantial impact on the public.

### Spectrum Utilisation Fee (SUF)

27. We would like to point out that TVB has been paying a spectrum fee for microwave and terrestrial frequencies for broadcasts and ENG and SNG links as well as licence fees for the carrier licence and programme services licence.
28. While we have no objection to the concept of SUF being applicable to commercial use of spectrum, we strongly believe that the setting of spectrum fees for Free-to-Air (FTA) TV broadcasting should be assessed in a different way.

The following additional considerations must be taken into account: –

- (a) Users of FTA TV spectrum are providing a free entertainment and information service to the Hong Kong community. The average person in Hong Kong consumes more than 3 hours per day of this free service. If this service is not available, it would cost the public billions

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of dollars to substitute it with other forms of entertainment/information.

- (b) Uses of FTA TV spectrum are required to broadcast one minute of Announcements in the Public Interest (APIs) per hour. In the case of TVB, the value of these APIs amounts to more than HK\$300 million in one year. In effect, TVB is paying the Government a SUF in cash and in kind.
- (c) FTA TV is the most important part of the Emergency Communications System in Hong Kong. The public's safety is dependent on the availability of the FTA TV medium.
- (d) Technological and consequential lifestyle changes have made it necessary for the FTA TV service to be made available through new modes of delivery such as Mobile TV. By the same arguments (a) to (c) above, preferential use/pricing of Mobile TV spectrum must be given to FTA TV services.

### Other Issues and Conclusion

- 29. While a long-term spectrum policy and spectrum plan with a high degree of transparency would minimize uncertainty for new investors and incumbents, the Government must bear in mind, cases where such a policy framework and terms had not been in place when existing spectrum holders and users made their investments. Special considerations must be made in dealing with their spectrum re-assignment and renewal of licences.
- 30. While we now hold a fixed carrier licence under the TA and a domestic Free TV programme service licence under the Broadcasting Authority (BA), spectrum is part and partial of the terrestrial Free TV services in Hong Kong. The use of spectrum for Government-mandated services, services of a public service nature and services in the public interest such as Free TV has important social and community impact and should be given special consideration in spectrum assignment and renewal of assignment.

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