

Broadcasting Ordinance (Chapter 562)

Notice is hereby given that the Broadcasting Authority has received an application from Fantastic Television Limited, a company duly incorporated in Hong Kong whose registered office is situated at 16th Floor, Ocean Centre, Harbour City, Canton Road, Kowloon, Hong Kong, for a domestic free television programme service licence.

The particulars of the application in this Notice, as set out below, are provided by Fantastic Television Limited. Nothing in this notice shall affect or prejudice any powers, discretion and rights of the Broadcasting Authority or the Government.

1. COMPANY INFORMATION

Principal Shareholders

Fantastic Television Limited (“Fantastic TV”) is currently a wholly-owned subsidiary of i-CABLE Communications Limited (“i-CABLE”), a publicly listed company in Hong Kong under HKEx (Stock Code: 1097) which is in turn a subsidiary of The Wharf (Holdings) Limited¹. Fantastic TV submits that two independent discretionary trustees, i.e. Discretionary Trustee A and Discretionary Trustee B, will each hold 42.55% of the voting shares and i-CABLE will retain 14.9% voting shares (and 100% non-voting shares) in Fantastic TV upon receiving approval-in-principle to grant a licence by the Chief Executive in Council (“CE in C”), or at any other time that the CE in C considers appropriate. Fantastic TV submits that the two discretionary trustees and i-CABLE will act independently in exercising their respective powers (including the voting power and the power to appoint directors) in Fantastic TV.

According to Fantastic TV’s submission, the two discretionary trustees will be an individual or corporation ordinarily resident in Hong Kong with financial, business and/or professional background and will be able to exercise the discretion under the trust deed without consultation with i-CABLE or third parties.

Compliance with Statutory Requirements

Fantastic TV submits that:

- (a) it is a company registered and incorporated in Hong Kong under the Companies Ordinance (Cap. 32) in 2009.

¹ Another subsidiary of i-CABLE, i.e. Hong Kong Cable Television Limited (“HKCTV”) currently holds a domestic pay television programme service licence under the Broadcasting Ordinance.

- (b) upon completion of the corporate restructuring as described above, Fantastic TV will not be a subsidiary of a corporation as required by the Broadcasting Ordinance².
- (c) Fantastic TV and all persons exercising control of Fantastic TV will be, and remain, fit and proper persons³.
- (d) the majority of the directors and principal officers of Fantastic TV, including the principal officers in charge of the selection, production or scheduling of television programmes, will be ordinarily residents in Hong Kong and will have been so residents for at least one continuous period of not less than 7 years⁴.
- (e) the control and management of Fantastic TV will be bona fide exercised in Hong Kong, the majority of its directors described in (d) will actively participate in the direction of the company⁵.
- (f) there will be no disqualified persons⁶ exercising control of Fantastic TV upon

² Section 8(3) of the Broadcasting Ordinance and section 2 of Schedule 4 to the Ordinance prohibit a domestic free television programme service licence to be granted to or held by a company which is the subsidiary of a corporation. Under section 2 of the Ordinance, “subsidiary” has the same meaning as in the Companies Ordinance.

³ Section 1(6) of Schedule 1 to the Broadcasting Ordinance provides that a person exercises control of a corporation if he is –

- (a) a director or principal officer of the corporation;
- (b) the beneficial owner of more than 15% of the voting shares in the corporation;
- (c) a voting controller of more than 15% of the voting shares in the corporation; or
- (d) a person who has the power, by virtue of any powers conferred by the memorandum or articles of association or other instrument regulating that corporation or any other corporation, to ensure that the affairs of the first-mentioned corporation are conducted in accordance with the wishes of that person.

Under section 21(1) of the Broadcasting Ordinance, a television programme service licensee and any person exercising control of the licensee shall be and remain a fit and proper person.

⁴ Under section 8(4)(a)(iv) of the Broadcasting Ordinance, a domestic free television programme service licence shall not be granted to or held by a company unless, except with the prior approval in writing of the Broadcasting Authority, the majority of the directors of the company and the majority of the principal officers of the company, including the principal officers of the company in charge of the selection, production or scheduling of television programmes, is each an individual who is for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of “ordinarily resident in Hong Kong” in section 2(1) of the Broadcasting Ordinance and has been so resident for at least one continuous period of not less than 7 years.

⁵ Under sections 8(4)(a)(i) to (iii) of the Broadcasting Ordinance, a domestic free television programme service licence shall not be granted to or held by a company unless –

- (i) the company complies with paragraph (b) of the definition of “ordinarily resident in Hong Kong” in section 2(1) of the Broadcasting Ordinance;
- (ii) the majority of the directors required under section 8(4)(a)(iv) of the Broadcasting Ordinance actively participate in the direction of the company;
- (iii) a quorum of every meeting of the directors of the company has a majority of directors who is each for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of “ordinarily resident in Hong Kong” in section 2(1) of the Broadcasting Ordinance and has been so resident for at least one continuous period of not less than 7 years.

⁶ Generally, under sections 4 to 7 of Schedule 1 to the Broadcasting Ordinance, television programme service

completion of the corporate restructuring as described above. i-CABLE, following the corporate restructuring, will hold less than 15% of the total voting shares in Fantastic TV and will not be a person exercising control of Fantastic TV within the meaning of “exercise control” under the Broadcasting Ordinance (please see Footnote 3).

- (g) there are no unqualified voting controllers⁷ holding, acquiring, exercising or causing or permitting to be exercised 2% or more of the total voting control of Fantastic TV⁸.
- (h) Fantastic TV is empowered under its Memorandum and Articles of Association to comply fully with the provisions of the Broadcasting Ordinance and the terms and conditions of the domestic free television programme service licence.

Financial soundness

Fantastic TV submits that the capital expenditure and operating expenditure in the first six years of operation are projected to be over \$1 billion in aggregate. Fantastic TV plans to invest \$39 million on capital expenditure and \$968 million on programming (excluding capital expenditure) in the initial six years⁹.

Fantastic TV submits that i-CABLE will fully support Fantastic TV financially. As at 6 July 2010, i-CABLE's market capitalization has reached approximately

licensees, sound broadcasting licensees, advertising agencies, proprietors of newspapers printed or produced in Hong Kong, and all persons exercising control of them, as well as associates of the above, are all disqualified persons in relation to a domestic free television programme service licensee.

⁷ Under section 1 to Schedule 1 of the Broadcasting Ordinance, “unqualified voting controller” means a voting controller who is not a qualified voting controller. A qualified voting controller means, inter alia, a voting controller who—

- (i) in the case of an individual, is ordinarily resident in Hong Kong in accordance with paragraph (a) of the definition of “ordinarily resident in Hong Kong” in section 2(1) of the Broadcasting Ordinance and has been so resident for at least one continuous period of not less than 7 years;
- (ii) in the case of a corporation, is ordinarily resident in Hong Kong.

“Ordinarily resident in Hong Kong” means –

- (a) in relation to an individual, residence in Hong Kong for not less than 180 days in any calendar year, or residence in Hong Kong for not less than 300 days in any two consecutive calendar years;
- (b) in relation to a corporation, a corporation which satisfies the following –
 - (i) if the number of directors who actively participate in its direction –
 - (A) is 2, each is an individual;
 - (B) is more than 2, each of a majority of them is an individual, for the time being ordinarily resident in Hong Kong in accordance with paragraph (a) and has been so resident for at least one continuous period of not less than seven years; and
 - (ii) the control and management of the company is bona fide exercised in Hong Kong.

⁸ Under section 20(1) of Schedule 1 to the BO, an Unqualified Voting Controller shall not without the prior approval of the BA hold or acquire 2% or more of the total voting control of a domestic free television programme licensee.

⁹ Fantastic TV submits that operating expenditure (excluding programming expenditure) in the first six years is projected at \$169 million.

\$2.2 billion. i-CABLE's total revenue for 2009 was approximately \$1.8 billion. According to Fantastic TV's submission, it is capable of bearing the financial risks of variations in the costs of establishing and maintaining the proposed service and in the revenue from advertisers.

Managerial and technical expertise

Fantastic TV submits that its management team will comprise qualified and experienced professionals of the broadcasting industry. A person with substantial experience in the local television industry will be appointed as the Chief Executive Officer and Head of Programming.

At the initial launch of service, Fantastic TV plans to enter into service agreements with i-CABLE and its relevant subsidiaries (which provide programme production, airtime sales or television and telecommunications services) to provide Fantastic TV with the necessary assistance at frontline or operational levels. Fantastic TV submits that it will set up its own team to support the free television operations in the medium and longer terms.

Fantastic TV submits that following the corporate restructuring as described above, the current Board of Directors of Fantastic TV, comprising Mr Stephen Ng Tin Hoi and Mr William Kwan Jut Ho, will be replaced by a new Board comprising seven (or a multiple of seven) directors to be nominated and appointed by i-CABLE and the two trustees in accordance with the Articles of Association of Fantastic TV.

Quality control and compliance

Fantastic TV submits that appropriate internal monitoring measures will be put in place to ensure that it will comply with all relevant laws, regulations and codes of conduct in providing the service. Fantastic TV plans to set up a monitoring team comprising the Manager, Programme Executive, Programme Officer and Assistant Programme Officer with relevant experience, knowledge and expertise in advising compliance matters.

According to Fantastic TV's submission, the Manager and Programme Executive will take part in production meetings. Workshops will be held regularly for production staff with a view to upholding and enhancing programming standards. The monitoring team will preview all local productions and acquired programmes prior to broadcast (except live events). Appropriate warnings will be assigned to television programmes if necessary and the relevant requirements for family viewing hours will be tightly observed. Moreover, advertising materials will be handled separately by the advertising compliance team.

2. PROGRAMMING INFORMATION

Programmes to be provided, by nature and number of channels and extent of local production

Fantastic TV submits that it aims to provide high quality entertainment and information programme choice to Hong Kong viewers.

Fantastic TV plans to operate a two-channel (Cantonese and English) domestic free television programme service in both analogue and digital formats.

According to Fantastic TV's submission, the Cantonese channel will be a general entertainment channel targeting mass audience, comprising news, finance, information, entertainment, children's programmes, sports and movies. Over 70% of prime-time programmes on the channel will be produced locally and substantially all prime-time programmes are first-run programmes.

The English channel, on the other hand, will emphasize acquired programmes including documentaries, lifestyle, news, information and financial programmes.

Fantastic TV submits that it plans to provide, in its digital programme service, standard definition television programmes but not high definition television programmes at the outset to enable maximum reach for the service.

Compliance with programming requirements

Fantastic TV submits that it will carry positive programmes¹⁰, Broadcasting Authority publicity materials, announcements in the public interest and television programmes (including RTHK programmes and educational programmes for schools) supplied by the Government as currently required for domestic free television programme service licensees.

Fantastic TV submits that subtitling¹¹ will be provided in phases – initially on taped news programmes and gradually extended to live news programmes.

¹⁰ The positive programme requirements comprise the minimum amount of news, documentary, current affairs programmes and programmes for children to be broadcast on each of the licensee's service, and programmes for young persons, senior citizens and art and cultures, to be broadcast on the licensee's Cantonese language service.

¹¹ The domestic free television programme service licensees are currently required to provide subtitling for all news, current affairs, weather programmes and emergency announcements on their analogue/simulcast digital channels. In addition, on the Cantonese channels, Chinese subtitles must be provided for programmes shown between 7:00pm and 11:00pm, and on the English channels, two hours per week of English programmes with educational value targeting teenagers shall carry English subtitles.

The daily operating hours of the service

Fantastic TV plans to provide 24 hours daily broadcasting¹².

3. TECHNICAL INFORMATION

Transmission mode to be employed

Fantastic TV plans to hire i-CABLE's Hybrid Fiber Coaxial ("HFC") network to transmit the proposed service to buildings. The proposed service signals will be transmitted in analogue I/PAL format and in digital terrestrial television ("DTT") format.

Geographical coverage and service roll-out

Fantastic TV plans to roll out the proposed service within six months upon service launch to buildings which are already covered by i-CABLE's network¹³. In some buildings, households can only access Fantastic TV's proposed service after interconnection with building's in-building coaxial cable distribution system ("IBCCDS"). The remaining households will be covered by UHF frequencies released following the switch-off of analogue terrestrial television broadcasting.

Equipment and facilities required at the customer end

Fantastic TV proposes to deploy three VHF channels and one UHF channel¹⁴ for distribution of the proposed free television service via IBCCDS and/or i-CABLE's network.

Buildings with i-CABLE's network and Building's own IBCCDS in place ("Dual System Buildings")

Fantastic TV submits the following : –

- (a) Residents who are connected to i-CABLE's network can receive the proposed service in analogue format by tuning their television to prescribed frequencies, or receive the proposed service in digital format via their own DTT set-top boxes or on integrated digital television sets.

¹² Section 10 of Schedule 4 to the Broadcasting Ordinance provides that the minimum duration of each language television programme service shall not be less than 5 hours for each day.

¹³ Fantastic TV submitted that i-CABLE's HFC network now covers 2.15 million households (or 95% of Hong Kong households). However, in some buildings covered by i-CABLE's HFC network, the households concerned can only access Fantastic TV's service after interconnection of the i-CABLE's HFC network with the IBCCDS is completed.

¹⁴ They are C43 (390-398MHz), C44 (398-406MHz) and C45 (406-414 MHz) in the VHF band and E57 (758-766 MHz) in the UHF Band.

- (b) Residents not connected to i-CABLE's network may receive the proposed service in analogue and/or digital formats via the building's IBCCDS, after interconnection between the building's IBCCDS and i-CABLE's network. In such cases, Fantastic TV will provide its television signals free of charge to buildings and will offer interconnection recommendations and guidelines if necessary.

Buildings with only i-CABLE's network in place ("Single System Building")

Fantastic TV submits that residents can receive the proposed service readily, without having to make interconnection.

4. OTHER INFORMATION

Commencement of service

Fantastic TV plans to commence the Cantonese and English channels within 6 months and 24 months respectively after the grant of licence.

Construction work required and its impact on the public, if any

Fantastic TV submits that neither construction work nor installation of new equipment in building ends is required. In case of Dual System buildings, however, IBCCDS owners need to install channel filter or channel converter for signal tapping from i-CABLE's network and signal injection to IBCCDS. The work involves (1) laying a coaxial cable from i-Cable HFC tap to Satellite Master Antenna Television (SMATV)/ Communal Aerial Broadcast Distribution (CABD) headend; (2) installing channel filter or channel converter at SMATV/CABD headend; and (3) injecting the filtered or converted signal to the SMATV/CABD network.

The benefit brought by the implementation of the proposal to the local industry, viewers/consumers and the economy as a whole

Fantastic TV submits that it is able to contribute to the Hong Kong society in the following ways: –

- (a) *Enhancing competition* – Fantastic TV submits that the granting of new licence to the applicant will introduce real competition into the free television market, which is constantly dominated by one of the two incumbent operators. The benefits to the viewing public will be more choices, better programming; and to advertisers, more platform choices to place their commercials.
- (b) *Creating job opportunities* – Fantastic TV submits that the establishment of a

new free television station will create employment opportunities in various areas including content production, network operations, sales and marketing, and administration.

- (c) *No cost to the public* – Fantastic TV submits that, except minor technical cost for network connections (as mentioned under “Technical Information” above), no cost is incurred to the public as the proposed service will be delivered via an existing HFC network, which will be hired by Fantastic TV to transmit its service.
- (d) *Immediate Rollout* – Fantastic TV submits that since its programming and infrastructural service delivery system are readily available, a lengthy lead time for service launch is not required. The proposed service of the Cantonese channel can be rolled out within 6 months, covering over 2.15 million households (or 95% of the households) in Hong Kong, which would exceed the current coverage of DTT provided by the two incumbent operators.

Members of the public may provide comments on Fantastic TV’s application to the Broadcasting Authority by **8 August 2010** by mail, fax or e-mail as follows: –

The Broadcasting Authority
c/o Television and Entertainment Licensing Authority
39th Floor, Revenue Tower
5 Gloucester Road
Wan Chai
Hong Kong

Fax Number: 2507 2219
2598 5509 (Confidential)

E-mail: ba@tela.gov.hk

All comments received will not be made in confidence unless specified otherwise. We may reproduce and publish the submissions received in whole or in part (except confidential information as marked) in any form without seeking the permission of or providing acknowledgement to the party making the submission.

9 July 2010
Secretary, Broadcasting Authority