

## **Telecommunications Ordinance (Chapter 106)**

Notice is hereby given that the Broadcasting Authority has received an application from Phoenix Radio Limited, a company duly incorporated in Hong Kong whose registered office is situated at Nos. 2-6 Dai King Street, Tai Po Industrial Estate, Tai Po, N.T., Hong Kong, for a licence to establish and maintain in Hong Kong a sound broadcasting service.

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

### **1. Company Information**

#### **Corporate and shareholding structure**

The Applicant, Phoenix Radio Limited (“Phoenix Radio”), was incorporated on 11<sup>th</sup> November 2009 in Hong Kong in accordance with the Companies Ordinance (Cap.32). Phoenix Radio is wholly-owned by Phoenix Satellite Television (B.V.I.) Holding Limited, which is a direct wholly-owned subsidiary of Phoenix Satellite Television Holdings Limited.

#### **Compliance with statutory requirements**

Phoenix Radio submits the following:-

- Phoenix Radio and all persons exercising control of Phoenix Radio are fit and proper persons<sup>1</sup>.
- Phoenix Radio is empowered under its memorandum of association to comply fully with the provisions of the Telecommunications Ordinance (Cap.106) and the terms and conditions of its licence.
- Phoenix Radio is a subsidiary. Therefore, it does not comply with the requirement on competence of licensee under section 13F of the Telecommunications Ordinance<sup>2</sup>.

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<sup>1</sup> Under section 13C(5) of the Telecommunications Ordinance, in determining whether a person is a fit and proper person, account shall be taken of –

- (a) the business record of the person;
- (b) the record of the person in situations requiring trust and candour;
- (c) the criminal record in Hong Kong of the person in respect of offences under the laws of Hong Kong involving bribery, false accounting, corruption or dishonesty; and
- (d) the criminal record in places outside Hong Kong of the person in respect of conduct that, if done in Hong Kong, would constitute or form part of the criminal record in Hong Kong of the person as mentioned in paragraph (c) .

<sup>2</sup> Section 13F stipulates that a sound broadcasting licence may be granted to or held only by a corporation that is not a subsidiary.

Phoenix Radio has already applied to the Chief Executive in Council for an exemption from such restriction pursuant to section 39 of the Telecommunications Ordinance<sup>3</sup>.

- The disqualified persons<sup>4</sup> exercising control of Phoenix Radio are set out as follows:

1. Mr. Liu Changle

Reasons for being disqualified person

- (a) Mr. Liu Changle owns 93.3% of the shares in Today's Asia Limited, which in turn holds 100% of the shares in Vital Media Holdings Limited. Vital Media Holdings Limited owns 100% of the shares in Dragon Viceroy Limited, and Dragon Viceroy Limited owns 26.85% interest in Asia Television Limited. As (i) Asia Television Limited is a holder of domestic free television programme service licence; and (ii) Mr. Liu Changle indirectly holds 25.05% voting shares in Asia Television Limited and thus is a person exercising control of Asia Television Limited, pursuant to the definition of "disqualified person" under section 13A of the Telecommunications Ordinance, Mr. Liu Changle is a disqualified person.
- (b) Mr. Liu Changle is a director, the chairman and chief executive officer of Phoenix Satellite Television Company Limited. As (i) Phoenix Satellite Television Company Limited is "a person who in the course of business transmits sound or television material, whether in Hong Kong or outside Hong Kong"; and (ii) Mr. Liu Changle holds office in Phoenix Satellite Television Company Limited and thus is a person exercising control of Phoenix Satellite Television Company Limited, pursuant to section 13A of the Telecommunications Ordinance, Mr. Liu Changle is a disqualified person.

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<sup>3</sup> Pursuant to section 39 of the Telecommunications Ordinance, the Chief Executive in Council may by order exempt any person or any class of persons from the Telecommunications Ordinance or from such of the provisions thereof as he thinks fit.

<sup>4</sup> Pursuant to section 13A(1) of the Telecommunications Ordinance, "disqualified person" means –

- (a) an advertising agent;
- (b) a person who in the course of business supplies material for broadcasting by a sound broadcasting licensee;
- (c) a sound broadcasting licensee;
- (d) a person who in the course of business transmits sound or television material, whether in Hong Kong or outside Hong Kong;
- (da) a person who is –
  - (i) a domestic free television programme service licensee, or a domestic pay television programme service licensee, within the meaning of section 2(1) of the Broadcasting Ordinance (Cap 562); or
  - (ii) an associate of a licensee referred to in subparagraph (i);
- (e) a person who exercises control of a corporation that is a person referred to in paragraph (a), (b), (c), (d) or (da)(i).

2. Mr. Chui Keung

Reasons for being disqualified person

Mr. Chui Keung is a director and deputy executive officer of Phoenix Satellite Television Company Limited. As (i) Phoenix Satellite Television Company Limited is “a person who in the course of business transmits sound or television material, whether in Hong Kong or outside Hong Kong”; and (ii) Mr. Chui Keung holds office in Phoenix Satellite Television Company Limited and thus is a person exercising control of Phoenix Satellite Television Company Limited, pursuant to section 13A of the Telecommunications Ordinance, Mr. Chui Keung is a disqualified person.

3. Mr. Wang Jiyan

Reasons for being disqualified person

Mr. Wang Jiyan is a director and deputy executive officer of Phoenix Satellite Television Company Limited. As (i) Phoenix Satellite Television Company Limited is “a person who in the course of business transmits sound or television material, whether in Hong Kong or outside Hong Kong”; and (ii) Mr. Wang Jiyan holds office in Phoenix Satellite Television Company Limited and thus is a person exercising control of Phoenix Satellite Television Company Limited, pursuant to section 13A of the Telecommunications Ordinance, Mr. Wang Jiyan is a disqualified person.

4. Mr. Yu Tung Ho

Reasons for being disqualified person

(a) Mr. Yu Tung Ho is the chairman of Phoenix Radio and is currently an alternate director to Mr. Yan Gang, director of Asia Television Limited. As (i) Asia Television Limited is a holder of domestic free television programme service licence; and (ii) Mr. Yu Tung Ho holds office in Asia Television Limited and thus is a person exercising control of Asia Television Limited, pursuant to section 13A of the Telecommunications Ordinance, Mr. Yu Tung Ho is a disqualified person.

(b) Mr. Yu Tung Ho is a senior deputy executive officer of Phoenix Satellite Television Company Limited. As (i) Phoenix Satellite Television Company Limited is “a person who in the course of business transmits sound or television material, whether in Hong Kong or outside Hong Kong”; and (ii) Mr. Yu Tung Ho holds office in Phoenix Satellite Television Company Limited and thus is a person exercising control of Phoenix Satellite Television Company Limited, pursuant to section 13A of the Telecommunications Ordinance, Mr. Yu Tung Ho is a disqualified person.

5. Mr. Shi Ningning

Reasons for being disqualified person

Mr. Shi Ningning is the president of Phoenix Radio and deputy executive officer of

Phoenix Satellite Television Company Limited. As (i) Phoenix Satellite Television Company Limited is “a person who in the course of business transmits sound or television material, whether in Hong Kong or outside Hong Kong”; and (ii) Mr. Shi Ningning holds office in Phoenix Satellite Television Company Limited and thus is a person exercising control of Phoenix Satellite Television Company Limited, pursuant to section 13A of the Telecommunications Ordinance, Mr. Shi Ningning is a disqualified person.

6. Phoenix Satellite Television (B.V.I.) Holding Limited

Reasons for being disqualified person

- (a) Phoenix Satellite Television (B.V.I.) Holding Limited owns partial interests of the entities set out in the table below. Such entities carry on business of outdoor media which involves advertising agency business in mainland China:

Company Name	Shareholdings of Phoenix Satellite Television (B.V.I.) Holding Limited	Principal place of business
Phoenix Metropolis Media (Beijing) Co. Ltd.	75%	Beijing
Phoenix Metropolis Media (Shanghai) Co. Ltd.	75%	Shanghai
Phoenix Metropolis Media (Hangzhou) Co. Ltd.	75%	Zhejiang Province
Shenzhen Phoenix Metropolis Media Co. Ltd.	60%	Shenzhen
Phoenix Metropolis Media (Guangzhou) Co. Ltd.	56.25%	Guangdong Province
Jiangsu Phoenix Metropolis Media Co. Ltd.	75%	Jiangsu Province
Phoenix Metropolis Media (Sichuan) Co. Ltd.	75%	Sichuan Province

Pursuant to the Telecommunications Ordinance, as (i) the above entities are all advertising agents; and (ii) Phoenix Satellite Television (B.V.I.) Holding Limited exercises control of each of the above entities, pursuant to section 13A of the Telecommunications Ordinance, Phoenix Satellite Television (B.V.I.) Holding Limited is a disqualified person.

- (b) Phoenix Satellite Television (B.V.I.) Holding Limited has 100% interest in

Phoenix Satellite Television Company Limited. As (i) Phoenix Satellite Television Company Limited is “a person who in the course of business transmits sound or television material, whether in Hong Kong or outside Hong Kong”; and (ii) Phoenix Satellite Television (B.V.I.) Holding Limited is a beneficial owner of more than 35% of voting shares in Phoenix Satellite Television Company Limited and thus is a person exercising control of Phoenix Satellite Television Company Limited, pursuant to section 13A of the Telecommunications Ordinance, Phoenix Satellite Television (B.V.I.) Holding Limited is a disqualified person.

Phoenix Radio submits that it has sufficient justifications to apply to the Chief Executive in Council for exercising discretion to grant a licence<sup>5</sup>:

1. The above persons met the criterion of fit and proper persons under the Telecommunications Ordinance.
2. The above persons are experienced in the management of various media businesses and possess the management skills required in the development of radio business. Moreover, Phoenix Satellite Television (B.V.I.) Holding Limited has sound and stable financial backing and has the ability to maintain, throughout the period for which the licence would be in force, the proposed sound broadcasting service.
3. Phoenix Radio’s digital audio broadcasting business and the television broadcasting business of Asia Television Limited belong to two different media. Although both services are operated in Hong Kong, they will not have a negative impact on the competition in their respective media markets.
4. Phoenix Satellite Television Company Limited is a holder of non-domestic television programme service licence. Its television service does not primarily target the Hong Kong market, while the digital audio broadcasting service of Phoenix Radio serves the Hong Kong local market. The two services will not be operated in the same market, and thus have no negative impact on the competition in their respective service markets.
5. The sound broadcasting business under Phoenix Satellite Television (B.V.I.) Holding Limited and the outdoor advertising business are not in the same media. Furthermore, the outdoor advertising business only serves the mainland China market, while the digital audio broadcasting business serves the Hong Kong market. The two businesses will not be operated in the same market, and thus will have no negative impact on the competition in their respective service markets.
6. This application will not make negative impact on:-
  - (1) the editorial policy and programme, advertising and technical standards of Phoenix Radio;
  - (2) competition on the local broadcasting industry; and
  - (3) benefits to the local audience and the community as a whole.

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<sup>5</sup> Pursuant to section 13G of the Telecommunications Ordinance, Chief Executive in Council may grant a sound broadcasting licence to a corporation in respect of which a disqualified person exercises control.

7. Phoenix Radio believes that the approval for the above persons to exercise control on Phoenix Radio will be beneficial to the overall interest of the public. Phoenix Radio is willing to consider any terms or conditions proposed by the Chief Executive in Council in this regard.

- Details about unqualified person<sup>6</sup> are set out as follows:

Mr. Liu Changle, a director of Phoenix Radio, resides in Hong Kong for less than 180 days in year 2009 to 2010 due to business affairs and therefore failed to comply with the requirement of being ordinarily resident in Hong Kong. Prior to that, Mr. Liu had been ordinarily resident in Hong Kong and had been resident for a continuous period of not less than 7 years. Mr. Liu Changle has 34.7% of the indirect interest in the voting shares of Phoenix Radio, which did not exceed the restriction under the Telecommunications Ordinance, i.e., the aggregate of voting shares in which unqualified persons have interest shall not exceed 49% of the total number of shares in a licensee.

### **Financial soundness and proposed investment**

The revenue of the Phoenix Group for the year 2009 exceeded HK\$1.5 billion with a profit of over HK\$300 million. The Group has almost HK\$800 million cash. Phoenix Radio submits that the Group has sufficient financial resources to support the development of Phoenix Radio and is capable to bear the risk in developing a new business.

According to the current situation and planning, Phoenix Radio estimates that the funding needs will be about HK\$42 million. Total expenditure for the first 6 years will be about HK\$203 million, which includes capital expenditure of HK\$13 million and operating expenditure of HK\$190 million. Such estimations are based on the conditions that the economy continues to prosper in Hong Kong and the Pearl River Delta region, that the new digital audio broadcasting market develops smoothly, and that Phoenix Radio is licensed to provide 3 digital audio broadcasting channels.

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<sup>6</sup> Pursuant to section 13I of the Telecommunications Ordinance, a person shall be an "unqualified person" unless-

- (a) he is a person who is for the time being ordinarily resident in Hong Kong and has at any time been resident for a continuous period of not less than 7 years; or
- (b) that person is a company that is ordinarily resident in Hong Kong.

Pursuant to section 13A of the Telecommunications Ordinance, a company is ordinarily resident in Hong Kong if:-

- (a) it is formed and registered in Hong Kong under the Companies Ordinance; and
- (b) in the case where-
  - (i) not more than 2 of its directors take an active part in the management of the company, each of those directors is; or
  - (ii) more than 2 of its directors take an active part in the management of the company, a majority of those directors are each of them, for the time being ordinarily resident in Hong Kong and has at any time been resident for a continuous period of not less than 7 years; and
- (c) the control and management of which is bona fide exercised in Hong Kong.

### **Managerial and technical expertise**

Phoenix Radio submits that the experience of the Phoenix Group in the management of various media businesses can ensure that Phoenix Radio is able to maintain, throughout the period for which the licence would be in force, the proposed sound broadcasting service. Phoenix Radio can utilize the information and human resources of Phoenix Satellite TV, ifeng.com, Phoenix Weekly Magazine as well as Phoenix Metropolis Media which mainly cover mainland China and overseas Chinese communities so as to enrich the programme contents and reduce operating costs. Among the senior management of the Phoenix Group, many are from the radio broadcasting industry.

The directors of Phoenix Radio include Mr. Liu Changle, Mr. Chui Keung and Mr. Wang Jiyun. Mr. Yu Tung Ho is the chairman and Mr. Shi Ningning is the president of Phoenix Radio.

### **Quality control and compliance**

Phoenix Radio submits that it will strictly comply with the Broadcasting Authority's "Radio Code of Practice on Programme Standards," "Radio Code of Practice on Advertising Standards" and "Radio Code of Practice on Technical Standards." For each channel, Phoenix Radio will appoint a Chief Editor for vetting programmes. The Programme and Production Director will be responsible for deciding on any queries raised by the Chief Editor. The Director of Marketing and Sales will be responsible for ensuring compliance with the Advertising Standards, while the technical staff and the Administration Director will be responsible for compliance with the Technical Standards. The aforesaid staff will be arranged after the grant of licence. Training on internal monitoring system will be provided prior to the launch of service.

Regarding the supply of programmes from programme suppliers, Phoenix Radio will enter into licence agreements with each programme supplier when purchasing programmes for broadcasting on the digital audio broadcasting channels. The programme suppliers will give undertaking in the licence agreements that they are the copyright owners of such programmes or they have the right to licence such programmes to Phoenix Radio.

## **2. Programming Information**

### **Programming to be provided, by nature and number of channels and extent of local production**

Phoenix Radio submits that the brand of Phoenix Radio's digital broadcasting service in Hong Kong will be "Phoenix U Radio."

Phoenix Radio has applied for operating 3 digital audio broadcasting channels, which will be positioned together as "Learn Putonghua, Listen to Phoenix", "Know the World, Listen to Phoenix" and "Understand China, Listen to Phoenix". Phoenix Radio hopes that the three channels will have a unique positioning in the Hong Kong sound broadcasting industry, bring diversification to the local sound broadcasting industry and provide more choices for Hong Kong audience.

The target audience of Phoenix Radio's digital broadcasting service in Hong Kong will be those who are interested in learning more about the world and mainland China; those who intend to invest, set up business or travel in mainland China; those who want to learn Putonghua; those who commute among Shenzhen, Hong Kong and the Pearl River Delta areas; those who are immigrants from mainland China; and those who are Chinese-speaking tourists from mainland China, Taiwan and overseas etc.

The first channel will be called "Phoenix Special U Radio". It aims to provide content on current and social affairs, economic and financial issues, as well as historical and cultural programmes. The programme language is mainly Putonghua. The genres of programmes include news, financial programmes, information programmes (including current affairs, lifestyle etc.), interview programmes, cultural programmes, entertainment programmes and music programmes.

The second channel will be called "Phoenix Guangdong Hong Kong U Radio". It emphasizes on information exchange between Hong Kong and Guangdong. It will particularly focuses on the interaction between Hong Kong and the Pan Pearl River Delta region. It aims to promote the development of the economy, culture, living, tourism, etc in the two regions. Approximately 70% of its programmes will be in Putonghua and 30% will be in Cantonese. Programme genres include news, financial programmes, information programmes, interview programmes, cultural programmes, entertainment programmes, Phoenix TV programmes and music programmes.

The third channel will be called "Phoenix Putonghua & Music U Radio". It aims to teach Putonghua and play high quality music. With programmes specifically for learning Putonghua together with songs in Putonghua, this channel can help Hong Kong audience to learn Putonghua in an easy way and experience the joy of speaking Putonghua in everyday life. Regarding the types of the music, a majority of the songs will be in Putonghua and the rest will be mainly Cantonese songs with some English songs. Their proportions will approximately be 6.5: 3: 0.5. The genres of programmes in this channel will be Putonghua-teaching programmes and music programmes.

According to the current plan, all programmes on the first channel will be locally produced. 80% of the programmes on the second and third channels will be locally produced, while 20% of the programmes will be obtained from radio stations in mainland China by gratuitous exchange. The genres and contents of the programmes to be obtained will depend on the recruitment results and market situations.

### **Proposed milestones on channel roll-out**

If the preparation proceeds smoothly (including timely completion of the construction of transmission stations and networks etc.), Phoenix Radio wishes to launch its first channel (i.e. Phoenix Special U Radio) within 6 months after the grant of licence, its second channel (i.e. Phoenix Guangdong Hong Kong U Radio) 6 months thereafter, and its third channel (i.e. Phoenix Putonghua & Music U Radio) another 6 months later.



### **The daily operating hours of the service**

Phoenix Radio is prepared to broadcast on a 24-hour basis, including music programmes and re-run of programmes.

## **3. Technical information**

### **Transmission mode and frequency to be employed**

Phoenix Radio plans to adopt the DAB+<sup>7</sup> standard. Phoenix Radio will apply for using channel 11C (219.584 - 221.120 MHz) in common with other licensees.

### **Proposed location of each transmission station and geographical coverage**

Phoenix Radio will pay to use the digital audio broadcasting network constructed by other entities instead of building its own network. The location of transmission station, coverage and frequency will be decided by the entity constructing the network.

Phoenix Radio proposes to provide territory-wide coverage, including Hong Kong Island, Kowloon and the New Territories.

### **Service roll-out**

Phoenix Radio intends to attain 50% coverage within 18 months. However, the network constructing entity will decide the actual network coverage.

Phoenix Radio will engage professional technical company to provide technical support and network operation, and to tailor-make the digital audio receiver products specifically for the target users of Phoenix Radio, such as receivers for vehicles and mobile phones. Phoenix Radio will offer free receivers to its audience and use other advertising media within the Phoenix Group as its marketing and service development strategies.

### **Equipment and facilities required at the customer end**

The proposed services will not be encrypted. Audience is required to use DAB+ receivers to receive the service. Phoenix Radio will offer free receivers to its audience and no installation charge or periodic payment is required.

## **4. Other information**

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<sup>7</sup>DAB+ is based on the Eureka 147 DAB standard and employs a more advanced audio codec than that of DAB which has been deployed in some foreign countries. In general, a DAB compatible receiver will not be able to receive services delivered in DAB+ format. On the other hand, a DAB+ compatible receiver can receive services delivered in both DAB and DAB+ formats.

### **Commencement of Service**

If the preparation proceeds smoothly (including timely completion of the construction of transmission stations and networks etc.), Phoenix Radio wishes to launch its first channel (i.e. Phoenix Special U Radio) within 6 months after the grant of licence, its second channel (i.e. Phoenix Guangdong Hong Kong U Radio) 6 months thereafter, and the third channel (i.e. Phoenix Putonghua & Music U Radio) another 6 months later.

### **Preferred period of validity of the licence**

12 years.

### **Construction work required and its impact on the public**

Phoenix Radio will pay to use the digital audio broadcasting network constructed by other entities instead of building its own network. As the transmission stations are located at hill top, it is estimated that the relevant construction work will not have great impact on the public. Moreover, all successful applicants for the digital audio broadcasting licence will share the transmission stations.

### **The benefit brought by the implementation of the proposal to the local industry, audience/customers and the community as a whole**

Phoenix Radio submits that its digital audio broadcasting service will bring the following benefits to the local industry, audience and the community as a whole:

1. Enriching the Putonghua sound broadcasting contents in Hong Kong: Currently, there is only one Putonghua channel among the 13 broadcasting channels operated by the existing 3 sound broadcasting service providers in Hong Kong. With the connection between Hong Kong and mainland China becoming closer, more and more Hong Kong residents wish to learn Putonghua. Furthermore, with the rapidly increasing number of new immigrants from the mainland, as well as the influx of Chinese-speaking tourists from the mainland, Taiwan and overseas countries in recent years, there is a growing demand for Putonghua programmes. According to statistics, there are about 1 million residents in Hong Kong whose language of preference is Putonghua, and there were about 18 million mainland Chinese tourists and 2 million Taiwanese tourists visiting Hong Kong last year, indicating that there is a large group of potential audience for Putonghua programmes. Therefore, the Putonghua channels provided by Phoenix Radio can enrich the current Putonghua broadcasting contents and provide more choices for Hong Kong residents and Chinese-speaking tourists from mainland China, Taiwan and overseas.
2. Enhancing the information exchange between Guangdong and Hong Kong: On 7 April, the “Framework Agreement on Hong Kong/Guangdong Cooperation” was signed between the Hong Kong Special Administrative Region Government and the Guangdong Provincial Government. The Agreement covers co-operation in economic, social, civil and cultural areas between the two regions. It is proposed in the Agreement that Guangdong

and Hong Kong should aim to take the lead in developing a new world-class economy with the highest development and growth potentials. The Agreement covers cooperation in 9 areas, including trans-boundary infrastructure, modern services industry, manufacturing and technology innovation, business environment, living environment, education and talents, key co-operation areas, regional co-operation plans and mechanism arrangement. Phoenix Group possesses governmental resource and enterprise relationship in mainland China, especially in the Pan Pearl River Delta region. With the signing of the Agreement and the closer connection between the two regions, Phoenix Radio strives to facilitate the cooperation between the two regions and enhance information exchange by making use of its abundant governmental resources and close ties with enterprises in the Pan Pearl River Delta Region, for instance, helping Hong Kong residents to better understand mainland China, providing information in entertainment, travel and leisure, property market, investment, education, culture, etc. On the other hand, Phoenix Radio can also provide useful information about Hong Kong for Chinese businessmen operating business in Hong Kong, Chinese tourists visiting Hong Kong and mainland Chinese immigrants. Phoenix Radio can serve as the bridge between the 2 regions.

3. Broaden the vision of the Hong Kong residents: Based in Hong Kong, Phoenix Radio aims to promote the exchange of current affairs, financial news and cultural information, etc. among mainland China, Hong Kong and the world. It helps Hong Kong residents to enhance their knowledge on mainland China and the world and strengthens the connection between Hong Kong residents and the Chinese people worldwide.

Members of the public who are interested may make representations on the application to the Broadcasting Authority by **30 July 2010** at the following address:-

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

Fax Number: 2507 2219  
2598 5509 (Confidential)

E-mail: [ba@tela.gov.hk](mailto:ba@tela.gov.hk)

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9 July 2010  
Secretary, Broadcasting Authority