



STARHUB MOBILE
RESPONSE TO
MDA PUBLIC CONSULTATION PAPER

“POLICY AND REGULATORY
FRAMEWORK FOR MOBILE
BROADCASTING SERVICE”

18 January 2008

EXECUTIVE SUMMARY

1. StarHub Mobile Pte Ltd (“**StarHub**”) welcomes the opportunity to comment on MDA’s public consultation on the proposed regulatory regime for mobile broadcasting. We support an open and consultative approach to changes in the regulatory framework for broadcasting services.

2. StarHub has studied carefully the proposed Policy against international best practices and the conditions in the Singapore market. While we understand the importance of protecting consumer interests, we are concerned by the proposal to impose additional regulatory obligations on the services provided by the cellular mobile operators.

3. We believe that the services provided by the cellular mobile operators are clearly distinguishable from the multiplex licenses MDA is looking to award, and we would highlight that the cellular mobile operators’ services are already subject to a range of regulatory safeguards (including their IDA licenses, MDA’s Class Licence regime, the Mobile Operators’ Content Code, as well as MDA’s Competition Code).

3. We therefore believe that imposing additional regulatory obligations on the cellular mobile operators is unnecessary, and may well be counter-productive. StarHub agrees with the statement in the Consultation Paper that: *“intervention risks stifling innovation and competition and ... intervention is only ever justified if there is a serious case of market failure or if there are significant public interest considerations”*. In the absence of any identified market failure, StarHub strongly submits that the services provided by the cellular mobile operators should not be subject to the proposed regulatory framework.

4. In regard to the award of multiplex licenses MDA is proposing to award, StarHub supports the “technology-neutral” approach MDA is proposing. However, StarHub does have concerns with the proposed evaluation criteria, which appear to be subjective and unquantifiable (such as *“diversity and quality of programme offering”*). Given the need for clarity and certainty in spectrum allocation decisions, StarHub would propose that MDA either: (a) award the multiplex licenses by way of an auction; or (b) establish evaluation criteria that are objective, quantifiable, and unambiguous.

5. StarHub’s detailed comments on the Consultation Paper are set out in the attached annexes, and are structured into:

(a) **Section A**, which considers the regulation of cellular mobile services; and

(b) **Section B**, which examines MDA’s proposal in regard to the regulation of multiplex licenses.

SECTION A

STARHUB'S COMMENTS ON THE REGULATION OF CELLULAR MOBILE SERVICES

Section 3.1:

- *MDA therefore proposes that the current licensing structure used for fixed digital broadcasting, involving a multiplex licence and a broadcasting service licence, should be applied to MTVS.*
- *MDA proposes to require each cellular mobile TV service provider to obtain a broadcasting service licence before transmitting TV services to its customers in future.*
- *MDA proposes to adapt the two-tier framework to regulate the MTVS operators and cellular mobile operators who wish to provide content services on their cellular network.*
- *MDA proposes to license both the MTVS and cellular mobile TV service providers under the niche licensing framework.*
- *MDA does not propose to limit the number of mobile TV broadcasting service licences.*

International Best Practice:

StarHub has studied carefully the proposed regulatory framework against international best practices for mobile broadcasting. We would note that:

- *The Canadian Radio-television and Telecommunications Commission (“CRTC”) has specifically exempted mobile broadcasting from its television licensing regime. The Chairman of the CRTC has commented recently that “*exempting mobile television services promotes innovation in delivering television to Canadians*”.*
- *In the United Kingdom, the regulation of mobile broadcasting is based on a Code of Practice for commercial mobile picture-based content, developed by the mobile operators. The Code (similar to the Content Code introduced by mobile operators in Singapore) covers such matters as unsuitable content.*
- *In the United States, mobile broadcasting is considered an information service provided via mobile networks, rather than a broadcasting service. The Federal Communications Commission has requested the industry to discourage children from accessing adult content via mobile devices through public education, developing self-regulatory code of practice and providing restricted access system.*

The common approach across these countries is to rely on industry self-regulation, and to exempt cellular mobile operators from broadcasting-type regulation. By taking this approach, Canada, the United Kingdom, and the United States, are encouraging the provision of mobile broadcasting services, by removing the regulatory burdens on operators. In this light, it is unclear why the Consultation Paper is proposing a contrary direction (requiring operators to obtain licenses, pay licence fees, and to be potentially subject to the foreign ownership controls of the Broadcasting Act).

In line with international best practice (from Canada, the United States, and the United Kingdom), StarHub believes that it would be appropriate to exempt cellular mobile services from the proposed regime. We are not aware of any country that has regulated cellular mobile operators in the manner proposed in the Consultation Paper.

Industry Feedback on Regulation:

In considering the regulatory framework for cellular mobile services, we believe that it is important for MDA to take into account recent industry feedback. In this regard, we would note that, in MDA's recent Regulatory-Industry Forum, the industry highlighted that:

- Broadcasting-type regulations should not creep into/apply to new media platforms;
- Ex-post rather than ex-ante regulations should be used (e.g. reduce the need for pre-vetting of content); and
- MDA should encourage the industry to establish its own industry self-regulation ecosystem by 2010.

We respectfully submit that imposing ex-ante broadcasting-type regulations on new media platforms (as the Consultation Paper proposes), would be directly contrary to the clear feedback from the broadcasting industry. We submit that relying on industry self-regulation and the existing regulatory safeguards would provide a more effective regulatory regime, and would be considerably more in line with the industry feedback MDA has received.

Coverage of Existing Regulatory Framework:

It is important to note that StarHub is not seeking to have the services of the cellular mobile operators completely unregulated. Rather, we believe that the existing regulatory safeguards on the cellular mobile operators are more than sufficient to ensure the protection of consumers and the competitive process.

The regulatory obligations on the cellular mobile operators already include:

- The Mobile Operators' Content Code, which prescribes the type of content the mobile operators can provide to their customers;
- The Facilities-Based Operators Licenses (issued by IDA), which regulates the coverage and quality of the cellular mobile networks;
- The Code of Practice for Market Conduct in the Provision of Mass Media Services (issued by MDA), which regulates parties' market behavior; and
- The Broadcasting (Class Licence) Notification (issued by MDA), which also regulates content for a variety of different services.

There is no indication that these measures are in any way inadequate, or that there are specific market failures in regard to the services provided by cellular mobile operators. Rather than imposing additional (and burdensome) new obligations on the cellular mobile operators, we submit that the existing regulatory framework is effective, and should be allowed to continue.

We would also note that MDA has stated that “*the industry is encouraged to self-regulate and set their own standards*”.¹ It is therefore unclear why the Consultation Paper is proposing to impose direct regulation on the cellular mobile operators, despite those operators having implemented an effective industry content code.

Reasons to Regulate Cellular Mobile Operators:

The Consultation Paper includes a short statement suggesting that the cellular mobile operators’ services should be regulated on the grounds that:

- The services provided by the cellular mobile operators “*are likely to see high adoption rate among young users and children*”; and
- The services provided by the cellular mobile operators “*have the same look as MTVS [Mobile TV Services]*”.

We submit that a closer examination shows that neither of these points is valid.

In regard to concerns about high adoption, we believe that this concern flies in the face of practical experience. The development of cellular mobile services in Singapore has clearly shown that the highest adoption of new technologies comes from “tech savvy” users, in the 22-40 age group. Adoption rates amongst “*young users and children*” are generally low for many years after new technologies have been introduced. As the terminal devices for mobile broadcasting are likely to be expensive, we believe that “*young users and children*” will have a low adoption rate for a number of years.

In the case of services provided by the cellular mobile services, StarHub would note that young users (usually below 18 years) and children are unable to subscribe to any mobile service without a guarantor (who usually will be the parents). If parents are concerned that their children might be exposed to potentially objectionable internet content via their mobile phones, they have the choice to disable their children’s GPRS access, and restrict the mobile service to purely voice calls and messaging service.

On the issue of cellular mobile services having the same “*look and feel*” as MTVS, it is important to note that there are fundamental differences between the services, as demonstrated in table below.

Cellular Mobile Services	<ul style="list-style-type: none"> ➤ Uses 2G & 3.5G spectrum. ➤ Uses a data network to deliver services. ➤ Its transmission is in “unicast mode” (point-to-point), where it is subject to scalability limitation (i.e. a limit on the number of simultaneously active users). ➤ Transmission resources are only being used when they are being consumed by active users
MTVS (e.g. DVB-H)	<ul style="list-style-type: none"> ➤ Rides on VHF/UHF frequencies. ➤ Uses a video network to deliver services. ➤ Transmission is in “broadcast mode”, and is capable of supporting unlimited number of users at any point in time within coverage area. ➤ Transmission resources are allocated and used at all times.

¹Please see: <http://www.mda.gov.sg/wms.www/devnpolicies.aspx?sid=161>

Given that cellular mobile services and M-TV will be very different, and will appeal to different customer segments, we strongly believe that cellular mobile services should not be regulated as if they are M-TV.

As MDA has noted in its draft Code of Practice for Market Conduct in the Provision of Mass Media Services:

“the phenomenon of convergence is in its early stages, with different platforms subject to differing degrees of competition. Therefore, objective application of these principles may result initially in the imposition of different regulatory obligations on Regulated Persons which utilize different platforms. In certain cases, public interest may require the imposition of special obligations on Regulated Persons who use different platforms.”

Impact of Regulatory Obligations:

MDA has indicated that it is keen to “facilitate the commercial deployment of mobile TV in Singapore”.² However, we would note that the regulatory regime proposed in the Consultation Paper could have a counter-productive result. In particular, we would note that:

➤ Licence Fees:

The Consultation Paper proposes that licensees must pay 2.5% of their total revenues to MDA in licence fees. While the paper does propose waiving these fees for an initial period, it is beyond question that the proposed regulatory framework will significantly increase the cost of providing mobile broadcasting services. The licence fees will absorb revenue that could otherwise be used by operators to acquire new content, expand coverage, and lower prices to end-users. As MDA will be aware, a 2.5% licence fee is very high by any international standard.

We also believe that the existing 3G operators in Singapore had a legitimate expectation that they would be able to use the 3G spectrum for any 3G service, including the provision of mobile broadcasting. We would be concerned by any suggestion, 7 years after the 3G licenses were allocated, that the 3G operators will be prohibited from providing 3G services (such as mobile broadcasting), unless they obtained an additional licence, and pay 2.5% of the resulting revenues as licence fees.

➤ Content Approvals:

StarHub appreciates that there are some types of content that will not be suitable for general viewing. However, we are concerned by the delays that operators will experience in having to obtain MDA’s prior approval for all new content. Even under the timelines MDA has outlined in the Consultation Paper, we would note that the content approvals process can take a matter of months. We believe that this measure will reduce operators’ flexibility and ability to deliver attractive services in a timely manner. Given the existence of the Mobile Operators’ Content Code, we strongly believe that the proposed “pre-approvals” regime should not apply to the cellular mobile operators.

² Please see: “MDA seeks public views on how mobile TV should be regulated in Singapore”, 21 November 2007.

➤ **Discouraging Growth:**

While MDA has indicated that it will initially licence operators under the “niche” licensing framework, we understand that this regime would only apply when the operator has less than 100,000 customers. Once the operator’s customer base grows beyond 100,000, the operator may have to move to a nationwide service licence, and will then be subject to significantly harsher licence terms (for example, Part X of the Broadcasting Act, which limits foreign ownership and management, would apply). The proposed regime therefore provides a strong and direct disincentive for operators to grow beyond 100,000 customers, and may well severely limit the growth of the sector.

Section 5.2 - *These operators should seek MDA’s prior approval before implementing any new services, changes to the nature of the service or any significant changes to the content offered.*

StarHub is concerned by this proposal, as it would significantly reduce the operators’ flexibility, and reduce the level of certainty in the industry.

As there are various programming guidelines and codes (such as the free-to-air TV broadcasting programming code and the subscription TV broadcasting programming code) currently in place on the type of content that operators can and cannot offer, it is unclear why MDA’s prior approval is needed before launching any new service or changing the nature of its service offerings (such as a change in service offering line-up). We are also concerned by the lack of methodology or parameters to clarify how MDA would base its approval. This condition would only give rise to uncertainty and confusion to all operators on the types of content that they can carry.

StarHub strongly believes that the timely introduction of new services is critical to the development of the mobile broadcasting market. By subjecting operators to an ex-ante approvals process for any new service and changes to the nature of the service or content offered (such as re-positioning its service line-up), this will not only impair operators’ ability to react to their competitors’ service offerings, it will discourage the offering of new services.

StarHub believes that operators should be free to establish new services, as they see fit. If they are to be regulated, such services should be regulated on an ex-post basis (or be subject to industry self-regulation).

Conclusion:

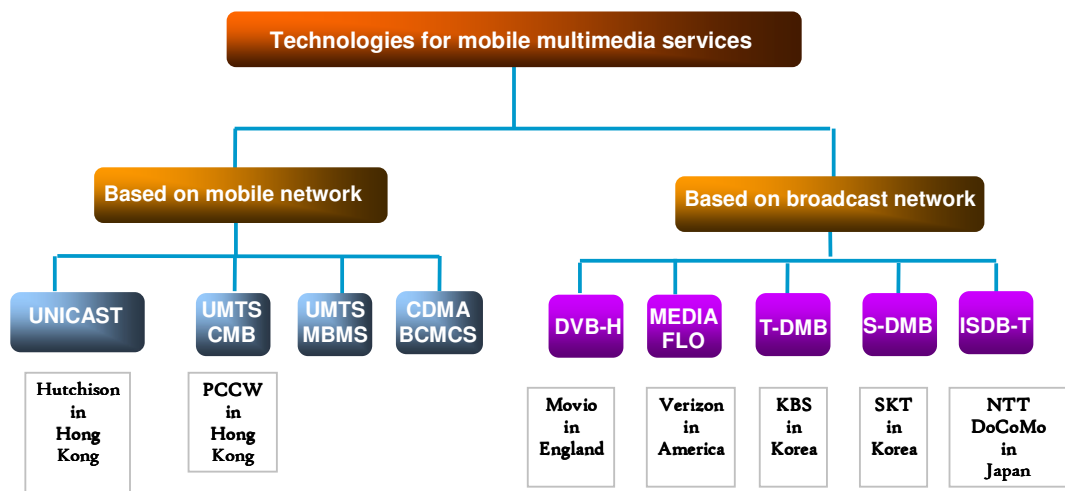
StarHub strongly agrees with the statement in the Consultation Paper that “*intervention risks stifling innovation and competition and that intervention is only justified if there is a serious case of market failure or if there are significant public interest considerations.*” StarHub submits that there is clearly no case of market failure that warrants the imposition of additional regulatory obligations on the services provided by the cellular mobile operators. Similarly, it cannot be argued that there is a “*significant public policy consideration*” in regulating cellular mobile services, given that these services are already subject to considerable regulation. StarHub therefore strongly believes that the services offered by the cellular mobile operators should not be subject to the proposed regulatory framework.

**SECTION B
STARHUB'S COMMENTS TO OTHER SECTIONS OF THE POLICY**

Section 2.3 - MDA therefore propose not to mandate a single standard for MTVS in Singapore but to take account of concerns about market failure in the selection of the appropriate technologies when evaluating the bids for multiplex licence.

StarHub agrees with this proposal, given that technologies are still evolving, and there is no clearly leading technology standard. We note that individual countries have tended to adopt their own standards (refer to figure 1 below), and we believe that it would be premature to mandate a standard for Singapore at this time.

Figure 1: Adoption of different technologies by various operators



Section 2.4:

- MDA does not propose to mandate objective inputs to picture quality such as frames per second and picture resolution although it will reserve the right to set QoS on picture quality if necessary.
- Nor does the MDA propose to mandate performance indicators for customer service.
- MDA...propose to impose minimum network coverage requirements on multiplex licences to ensure that MTVS are offered on a nationwide basis in Singapore. The MDA proposes to specify a 95% (outdoor coverage) level for multiplex licences.
- MDA... proposes not to set indoor in-building or tunnel QoS in this instance but will reserve the right to impose these standards on the multiplex licences if necessary.

StarHub agrees with MDA’s proposal to only impose an outdoor coverage obligation. Picture and customer service qualities should be subject to competitive market forces, and it would be in the operators’ best interests to ensure that their picture quality and customer service level meet their customers’ expectation. For indoor and tunnel coverage, we believe that such obligations would be premature, given the capital investment involved.

Section 3.2 - MDA therefore proposes that the multiplex licences available for MTVS should not be issued by direct award. This leaves a choice between auctions and comparative tenders, with intermediate options which combine elements of both.

Given the circumstances involved, StarHub submits that the multiplex licenses should be awarded through a competitive allocation, by way of an auction. In view of the scarcity of the frequencies and the substantial capital investment that is required to roll out the service, it is important that potential operators of the multiplex are able to commit on a long term basis and have the capital to ensure the operation of the multiplex service is effectively managed.

The auction approach will also provide a clear and transparent allocation mechanism, reducing uncertainty, and minimising confusion amongst bidders in regard to the evaluation criteria to be followed.

However, should MDA decide to award the multiplex licence by means of “beauty-contest”, StarHub strongly believes that the evaluation criteria adopted by MDA must be based on objective and quantifiable measures.

StarHub is concerned by the suggestion that the evaluation criteria should include such factors as: “stimulus to the competitive development of the broadcast sector”, “protections to safeguard younger viewers from unsuitable content”, and “diversity and quality of the programme offering”. These factors are inherently subjective, and cannot be accurately quantified or measured. For example, the issue of whether a particular bid provides a “quality” offering must inherently involve (subjective) personal opinions, rather than some objective and quantifiable assessment.

If subjective and unquantifiable evaluation criteria are used in the allocation of multiplex licenses, this would generate ambiguity and uncertainty amongst potential bidders, discouraging participation in the allocation. This approach could also lead to disputes over the evaluation of the (subjective) criteria. We therefore strongly believe that subjective or unmeasurable criteria should be removed from the list of evaluation criteria.

StarHub would further note that any operators who have been successfully awarded the multiplex licence(s) should be required to fulfil certain “milestones” and “deadlines for compliance”, in the form of service roll-out and infrastructure roll-out. This requirement is consistent with the Hong Kong pay-TV licensing regime, where the licensees are required to roll out their services and infrastructure within a specified timeframe to ensure compliance of their licences. This requirement would also ensure that the spectrum is put to a productive purpose.

Section 3.3 - The MDA therefore proposes that multiplex licences for MTVS should have a 10 year duration with an option to renew for a further five years.

StarHub would submit that the proposed licence duration for the multiplex licence should be extended to 20 years. A licence duration of 10-years is short when considered against the amount of capital the operator will have to invest in order to achieve the 95% outdoor coverage requirement.

A longer licence term will allow operators to have sufficient time to recoup their investment and provide certainty on the return on their investments. This approach will also encourage operators to adopt a longer perspective in their business plans and operational direction. StarHub would note that this proposed licence duration is also consistent with IDA's licenses.

Section 4.4 – *the MDA proposes that holders of multiplex licences for MTVS should be obliged to make access to multiplex capacity available to third parties on fair, reasonable and nondiscriminatory terms and conditions.;*

As there is a possibility that the multiplex operator would use its existing capacity for the broadcasting of MTVS, StarHub would propose to modify the above condition to be applicable when there is available capacity on the multiplex. Similarly, MDA should also take into account such factors such as the technical compatibility of the networks, to ensure that this arrangement would not cause technical or operational harm.

Section 4.5 – *the MDA proposes that a cap on the share of revenues earned from advertising by mobile TV subscription service providers should not be applied.*

StarHub submits that there should not be any cap on advertising revenues for mobile broadcasting operators. We can see no justification for maintaining this requirement, other than protecting the advertising revenues of the free-to-air broadcasters. StarHub submits that IPTV operators, subscription television operators, and mobile broadcasting operators should be free to generate whatever revenues they can from their service platforms, without the imposition of artificial restrictions on the percentage of overall revenues that can come from one source (such as advertising).

Section 5.4 – *The MDA therefore proposes that the current framework for advertising regulation (as specified in the voluntary SCAP code and MDA TV advertising and sponsorship codes) should be applied to MTVS and cellular mobile TV service providers. This would include limiting advertisements and/or trailers to no more than 14 minutes in each and every hour and adherence to the MDA's advertising codes.*

StarHub has no objection to complying with these codes. However, similar to our position on advertising revenue, StarHub would submit that operators should not be limited to an advertising cap of 14 minutes per hour. We believe that this obligation is artificial and restrictive, preventing operators from experimenting with new business models. We submit that IPTV operators, subscription television operators, and mobile broadcasting operators should be free to determine the quantity of advertising they can carry on their networks.