

(Released on February 13, 2004)

## **Summary of Meeting of the Radio Regulatory Council (No. 880)**

### **1. Date and Time**

January 14, 2004 (Wednesday)

16:00 to 17:15

### **2. Location**

Meeting Room of MIC (Ministry of Internal Affairs and Communications)

(Meeting Room No. 1001 on the 10th floor)

### **3. Attendees (Honorifics omitted)**

(1) Members of the Radio Regulatory Council

Yasuhiko Yasuda (Chairperson), Takeo Inokuchi (Vice-Chairperson), Junichi Hamada, Kashiko Kodate, and Hatsuko Ukikawa

(2) Hearing Examiner of the Radio Regulatory Council

Taku Kiyasu

(3) Secretary

Manabu Nomizu (Deputy Director of the General Affairs Division, Telecommunications Bureau)

(4) MIC (Ministry of Internal Affairs and Communications)

Takeda (Director-General of the Information and Communications Policy Bureau),

Fujioka (Deputy Director-General of the Minister's Secretariat), and others

### **4. Minutes of the Meeting**

(1) Regarding the draft ministerial ordinance that partially amends the Regulations for Enforcement of the Broadcast Law and the Essential Standards for Establishing Broadcasting Stations(Consultation No. 1)

MIC explained the draft ministerial ordinance in the title in the wake of deregulation of the principle of excluding multiple ownership of the media and provided a question-and-answer session as follows.

Note that as Article 99-12 (1) of the Radio Law and Article 53-11 (1) of the Broadcast Law required that MIC hear public comments on this matter, MIC appointed Taku Kiyasu as the hearing examiner who would preside over procedures for inviting public comment.

a. Explanation by MIC

This intends to make required amendments to the Regulations for Enforcement of the Broadcast Law and the Essential Standards for Establishing Broadcasting Stations in line with the draft amendment to the system concerning the review on deregulation of the principle of excluding multiple ownership of the media, on which this Council reported last December.

The purport of the amendment is that the principle of excluding multiple ownership of the media should be reviewed based on the change of environment that surrounds the world of the current broadcasting to help promote terrestrial digital broadcasting services and reinforce the management base of broadcasters while properly providing the multifactor features and securing the regional characteristics of information through broadcasting, which is the basic concept of the principle.

The outline of the draft amendment is as follows:

(1) Deregulation of (but not limited to) restrictions on holding voting rights in the case of certain collaboration of broadcasters between local stations among different broadcasting service areas, and

(2) Special measures (that allow exemption from applying the provisions of restrictions on holding of voting rights and interlocking directorate) to continue broadcasting when broadcasters are facing certain management difficulties.

This review, however, excludes collaboration among broadcasters in the same broadcasting service area and between key stations and local stations from the amendments because, in reality, the former could cause fewer choices of measures with which the audience can get information, and the latter should be kept intact due to the fact that it could compromise the function with which a local station is expected

to offer information on the region where it is located by the increasing influence from a key station on a quite large management scale.

The specific content of amendment (1) includes the following two points:

1) The first change is to ease the following condition to "less than one-third:"

In the case of collaboration (that means a relation such as broadcasters mutually holding one-fifth or more of voting rights in other broadcasters) among fewer than seven contiguous and continuous broadcasting service areas (excluding the Kanto wide area), the current provision limits the holding ratio of the voting right to "less than one-fifth."

The "contiguous" areas do not have to be connected by land. For example, broadcasting service areas that have straits inserted between them and are geographically most close to each other shall be treated as contiguous areas. The "(excluding the Kanto wide area)" part of the said paragraph means that the collaboration among key stations and local stations should be kept intact.

A broadcasting service area that is covered by a broadcasting station that conducts prefectural broadcasting is included as one area in counting the contiguous and continuous broadcasting service areas. Since the Chukyo wide area makes up broadcasting service areas with three prefectures, namely, Aichi, Gifu, and Mie, it is counted as three areas. The Kinki wide area is counted as six areas because it consists of six prefectures: Osaka, Kyoto, Hyogo, Wakayama, Nara, and Shiga. The term "collaboration" means a case where broadcasters have a relation of mutually holding one-fifth or more of voting rights. Note that this definition shall apply to the broadcasting stations that conduct community broadcasting, based on the prefectures to which the community broadcasting belongs by reading broadcast service area(s) as prefecture(s) into the definition.

2) The second change is concerned with exempting the following instances of collaboration from the restrictions on holding voting right and interlocking directorate: For multiple contiguous and continuous broadcasting service areas (excluding the Kanto, Chukyo, and Kinki wide areas), in the case of the collaboration (a relation such as broadcasters mutually holding one-fifth or more of the voting rights) in broadcasting service areas that meet condition A, that "every service area is contiguous to at least one of the other service areas," or that meet condition B, that

"the Minister of Public Management, Home Affairs, Posts and Telecommunications separately announces that the areas shall be regarded as close as the locality of condition A, "collaboration up to mergers and wholly owning other broadcasters as a subsidiary shall be allowed and exempted from the provisions concerning the restrictions on holding the voting rights and interlocking directorate" because the locality of broadcasting services may be improved. The reason why the Chukyo and Kinki wide areas are excluded in addition to Kanto is that commercial broadcasters that cover the Chukyo or Kinki wide area as their broadcast service area may have much larger management scales than those of regular local stations. If collaboration in the form of a merger or a wholly owned subsidiary should be allowed, the commercial broadcasters that cover the Chukyo or Kinki wide area could exert a huge influence, and as a result, features such as the function with which local stations can offer information on the region could be compromised.

The areas that meet condition B that "the Minister of Public Management, Home Affairs, Posts and Telecommunications separately announce..." shall be all 6 prefectures in Tohoku and seven prefectures in Kyushu, all seven prefectures in Kyushu, or seven prefectures in Kyushu and Okinawa Prefecture. Note that a community station shall be evaluated based on the prefecture to which the station belongs.

Draft amendment (2) allows for special measures when broadcasters face management difficulties and is concerned with terrestrial and satellite broadcasting. If management problems have an adverse effect on a broadcaster continuing to offer their broadcasting services and the audience in the area may face a decreasing number of channels that they can watch as long as actions must be taken and limited under the provision of the principle of excluding multiple ownership of the media, the amendment intends to develop an environment where management assistance measures can be provided to the broadcaster by setting special measures to bypass the regular restrictions on holding voting rights, etc. to improve the management of the broadcaster while avoiding disadvantages to the audience and securing the continuity of broadcasting services.

That is, for example, the amendment will allow even key stations, etc. to provide management assistance to broadcasters in management trouble.

The specific content of the amendment is that if a broadcaster is a category A broadcaster "for which the commencement of reorganization proceedings under the Company Rehabilitation Law or civil rehabilitation proceedings under the Civil Rehabilitation Law has been decided" or a category B broadcaster "that marked excessive deficits for the past two years in a row and marked ordinary losses for the past three years, including the fiscal years that recorded excessive deficits," the provisions concerning the restrictions on holding voting rights and interlocking directorate shall not apply to the broadcaster. If a broadcaster falls under category B during the valid license period or after receiving a qualification update (for satellite broadcasting) and applies for this special measure, the broadcaster is allowed to ensure that it may be entitled to this measure so that the management can make business judgments and decisions without anxiety. In addition, if the restrictions on voting right holding, etc. are restored to the range of the provisions of the principle of excluding multiple ownership and the broadcaster is not in a financial status where it may experience difficulty in continuing business activities until the next time it applies for the license or qualification update again, this special measure shall not apply to the broadcaster at that time. This treatment is intended for restoring such broadcasters to their previous status when their management base recovers, and the reason why mergers are prohibited is that they will reach the point where it is difficult to restore them if they merge with another broadcaster.

MIC invited public comments from the 4th to the 25th of last December. A total of 14 opinions were submitted: 11 opinions from legal entities or organizations and 3 opinions from individual persons. Although some opinions judged that the draft amendments were not necessarily adequate, saying that "...can appreciate them, but more deregulation measures are needed." and others voiced, "...about radio, it needs more substantial deregulation of the current system," most opinions generally approved and agreed with the draft. MIC intends to consider the received requests when the necessity arises in light of changes, etc. of the media environment while administering this system.

b. Main contents of the Q&A session

-The following questions were asked: "How does the special measure for business difficulties work when a broadcaster continues to experience financial troubles during

several license grants, and what will happen when a broadcaster discontinues its business while this measure is being applied?” MIC answered as follows: “If a broadcaster would fall into managerial trouble unless the special measure was not applied, the broadcaster could clear the relicense process with this provision. If the broadcaster could restore the management, the measure would apply to it until the next relicense and would be canceled at that time. Also, under the Radio Law, broadcasters are required to notify MIC of the discontinuation of their stations.”

- The following question was asked: “I would like to ask a question about the deregulation of restrictions on voting right holding, etc. for a certain collaboration among different broadcasting service areas. Does the collaboration mean a relation in which every concerned broadcaster has one-fifth or more of the voting rights in the other broadcasters?” MIC answered as follows: “Collaboration does not mean all mutually have one-fifth or more of the voting rights. If broadcasters in contiguous but not discontinuous areas have one-fifth or more of the voting rights in the other areas, the relation can be said to be a type of collaboration.”

- The following question was asked: “MIC explained that some public comments voiced requests such as ‘more deregulation is needed.’ What background does MIC think such comments come from?” MIC answered as follows: “MIC assumes that the ‘not adequate’ comment perhaps means that key stations should be able to make a little more investment in local stations, but such a measure could compromise features such as the function with which a local station is expected to offer information on the region. Consequently, MIC has decided to exclude it from this deregulation. MIC is basically taking actions for radio broadcasting that are similar to those for TV broadcasting. Since radio broadcasting's share in the advertisement market tends to fall recently, more comments request deregulation measures for radio broadcasting than request deregulation measures for TV broadcasting. MIC understands these comments, but as the radio media is important media at the time of an emergency or disaster, deregulation measures comparable to those for TV shall apply to them.”

(2) Regarding the proposed change to parts of the Basic Plan for Broadcast Propagation and the Plan for the Available Frequencies Allocated for Broadcasting

(Consultation No. 2)

MIC explained that the draft notice in the title was related to, but not limited to, providing BS broadcasts (BS analog broadcasting services [2 channels from NHK and 1 channel from WOWOW and BS broadcasting through the ninth channel]) with the BSAT-1a successor satellite(s) as entrusted domestic broadcasting services, and using the ninth channel, which is now being used by analog high-definition broadcasting services that will be discontinued in 2007, for digital broadcasting services from 2007, and provided a question-and-answer session as follows.

Note that as Article 99-12 (2) of the Radio Law and Article 53-11 (2) of the Broadcast Law required that MIC hear public comments on this matter, MIC appointed Taku Kiyasu as the hearing examiner who would preside over procedures for inviting public comment.

a. Explanation by MIC

The background information of this proposed change includes, but is not limited to, the following: The partial change to the Basic Plan for Broadcast Propagation in April 2003 required that BS analog broadcasting continue until 2011 except for hi-definition analog broadcasting. As the BSAT-1a broadcasting satellite that is being used by the current BS analog broadcasting will reach the end of its design life in 2007, a successor satellite(s) must be ensured and the policy for utilizing the ninth channel after 2007 that is being used by the current hi-definition analog broadcasting must be decided.

The content of the change includes two points. The first point is that as providers of satellite broadcasting programs are expected to increase due to (but not limited to) the utilization of the ninth channel in addition to NHK and WOWOW, the competition among program-supplying broadcasters and entry opportunities for new broadcasters must be ensured, and BS broadcasts (BS analog broadcasting services [2 channels from NHK and 1 channel from WOWOW and BS broadcasting through the ninth channel]) that will be provided with the BSAT-1a successor satellite(s) after 2007 must be offered as entrusted domestic broadcasting services where the use of repeaters can be secured under legally impartial conditions. The second point is that the ninth channel, which is being used by the current hi-definition analog broadcasting that will be discontinued in 2007, shall be used for digital broadcasting from 2007. As digital broadcasting has enormous significance in the diffusion and

enhancement of broadcasting services due to its features compared to analog broadcasting, such as the capability for flexible organization and the efficient use of transmission bandwidths, and it is appropriate that all BS broadcasting services be replaced with digital broadcasting services in the future, it is proper that the ninth channel will be used by digital broadcasting services after 2007.

b. Main contents of the Q&A session

- The following question was asked: "About using the ninth channel for other purposes, I wonder if MIC considered the audience trend for digital broadcasting, etc. before deciding on this policy." MIC answered as follows: "MIC has adopted this policy in light of comments and opinions that were voiced from persons in charge of actually providing broadcasts in a review meeting held last year."

- The following questions were asked: "Is it possible that NHK, for example, will launch and operate a BSAT-1a successor satellite? If so, it is hardly to say that the broadcasting is a form of entrusted domestic broadcasting. Also, when talking about the separation of hardware and software, does MIC mean that some limitations are imposed on capital relations between a company that owns hardware and a company that owns software?" MIC answered as follows: "Of course, it is possible that NHK will own hardware. No limitations are imposed on capital relations between a company that owns hardware and another that owns software. Even if a company has 100% of the capital in the other company, as the Broadcast Law stipulates that facility-supplying broadcasters shall not give discriminatory and unfair treatment to program-supplying broadcasters, the independence of the latter is legally secured."

- The following question was asked: "If hardware and software integration broadcasting (or the broadcasting services are offered by a broadcaster that owns software [broadcasting programs] and hardware [broadcasting facilities]) is operated by, for example, NHK, and measures are established that make unfair treatment impossible in legal terms, the hardware and software integration broadcasting will be equivalent to hardware and software separation broadcasting. Are there such provisions?" MIC answered as follows: "No. Such provisions don't exist."

(3) Regarding the proposed change to a part of the Plan for the Available Frequencies Allocated for Broadcasting (Consultation No. 3)

MIC explained the proposed change to a part of the Plan for the Available Frequencies Allocated for Broadcasting and provided a question-and-answer session as follows. The Council deliberated this matter and replied indicating that the Council regarded it as acceptable.

a. Explanation by MIC

This deals with a partial change to the channel plan for the terrestrial digital broadcasting.

MIC decided on items such as the frequencies that would be allowed for use by stations such as key stations for terrestrial digital TV broadcasting stations that would be placed in the three major wide areas in September 2002 and other areas than Sanin and Ariake in September 2003. This draft change intends to add items such as frequencies to the Plan that will be used by stations such as key stations for terrestrial digital TV broadcasting stations that will be placed in the Sanin and Ariake areas that were left out in the previous change.

Specifically, the Sanin and Ariake areas include seven prefectures, namely Tottori, Shimane, Yamaguchi, Fukuoka, Saga, Nagasaki, and Kumamoto. Having considered the addition of frequencies in light of the size of the impact for radio spectrum coming from Korea, which will start the terrestrial digital broadcasting a little earlier than Japan, the seven prefectures finally have come to reach the condition that a channel plan can be assigned to them. When the channel plan for these seven prefectures has been developed, the conditions for diffusing the digital broadcasting on a national basis in 2006 will have been established.

The public comments received from some 20 companies were basically in favor of the draft change, but some opinions voiced requests indicating that the analog frequency change measures should be carried out as firmly as before or steadfast technical countermeasures against interference due to radio spectrum from overseas should be taken. MIC intends to continue to consider the public comments and properly promote required approaches to them in the National Council led by the private broadcasters, NHK, and MIC.

b. Main contents of the Q&A session

- The following question was asked:

“I would like to ask a question about the effects of the digital broadcasting radio spectrum. Is radio spectrum radiating from Japan in tests?”

MIC answered as follows:

“Japan has not radiated radio spectrum yet. Japan and Korea compare their own channel plans, coordinate their schedules for opening digital broadcasting stations, and make decisions so that both countries may have as little possibility of technical concerns to some degree. For this reason, MIC expects minor effects, but no major impacts.”

- The following question was asked: “If technical coordination efforts or anything else are required, should we anticipate that some measures such as changing receivers in Korea at national expense will be taken?” MIC answered as follows: “We have had the problem of interference from Korea since the age of analog services. Japan and Korea have taken some actions for the problem. For example, for the areas in Japan that receive much radio spectrum from Korea, more stations have been installed, and vice versa in Korea. Both countries will continue to take similar actions based on the experience. It is out of the question for Japan to bear the expense that Korea spends for the coordination work.”

(The Radio Regulatory Council Secretariat is responsible for the wording of this document)