

LEGCO PANEL ON INFORMATION TECHNOLOGY AND BROADCASTING:

LEVEL 3 COMMUNICATIONS' SUBMISSION TO THE PANEL'S DISCUSSION OF INTERCONNECTION ISSUES, 12 FEBRUARY 2001

Level 3 welcomes the opportunity to comment on the Panel's consideration of Interconnection issues.

About Level 3

Level 3 is a global information and communications services company, building the world's first communications network fully optimised for IP communications. As a key part of this global network, we are in the final stages of completing the first leg of Asia's first independent high-capacity submarine cable network, which will link Hong Kong directly to other key Asian centres, the United States and Europe. Last year, Level 3 awarded Hong Kong's first cable-based EFTNS (External Fixed Telecommunications Network Services) licence, and has been offering services to the Hong Kong Internet community since late 2000, via our state-of-the-art gateway located in Quarry Bay.

Level 3 has committed, both publicly and as a condition of our EFTNS licence, to make available to the Hong Kong Internet community a plentiful supply of international capacity at dramatic discounts to today's prices, which are currently 8-10 times the prices paid in the United States and Europe.

The problem

As a cable-based EFTNS operator, Level 3 is licensed to provide external services to customers over our international submarine cable network. However, we are unable to effectively complete this network in Hong Kong and connect it directly to our international customers, for at the Hong Kong end we are unable to either build the final segment of our network, or to buy an appropriate element from a local FTNS operator.

It is universally recognised within the telecommunications industry that operators must possess meaningful rights to "build" or "buy" the elements of their networks. This is the founding principle of all telecommunications regulatory frameworks, for it is only under these conditions that new operators are able to compete and grow effectively, and thereby improve the competitive environment for businesses and consumers.

However, in Hong Kong Level 3 has neither a "build" nor a "buy" right. Current regulatory policies not only prohibit us from providing the Hong Kong shore-end elements ourselves, nor but also prevent us from establishing appropriate interconnection arrangements with local FTNS operators that would enable us to enjoy an effective "buy" right.

We believe that this situation is wrong in law, misguided in policy and highly detrimental to the objective of developing Hong Kong as the region's premier communications hub.

Absence of "build" rights

As currently interpreted, our EFTNS licence prohibits us from building our external network to connect directly to our web-centric customers, whether they are located at our Quarry Bay gateway or at the facilities of other operators.

That is, under present OFTA guidelines, we are prohibited from completing our international cable system once it reaches the Hong Kong shore. Instead, we must complete this external circuit by seeking to acquire the final links from the domestic FTNS operators, at prices 50-60 times the amounts faced in the United States. Similar restrictions are imposed for other external circuits, whether they are overland cable or satellite links. This prohibition - which we understand exists in no other developed telecommunications economy worldwide - imposes significant additional costs that dramatically affect our ability to drive down the high prices currently faced by the local Internet community.

It is important to note that this situation does not simply have the effect of imposing a "toll" on our provision of services, but fundamentally impedes our ability to deliver on our commitment to provide the Hong Kong Internet community with a cheap and plentiful supply of international capacity.

We strongly disagree with the current interpretation of our EFTNS. We believe instead that we are entitled to connect external circuits directly to our customers, including those parts of external circuits that pass over SAR territory. We can find no basis in our licence, or in any other type telecommunications licence, upon which to validly draw any other conclusion.

Absence of "buy" rights

In addition to the absence of a "build" right, we also have no clear right to interconnect at the fibre level. That is, when seeking to connect our external network to customers located at other gateways, we cannot yet insist on leasing the fibre circuits without the attachment of unnecessary and unwanted electronics, and the subsequent obligation to purchase connectivity in capacity increments, rather than as leased optical fibre to which we would apply our own electronic equipment. This is an important distinction that impacts heavily on the price, quality of service and provisioning times that we are able to offer customers. In short, it is crucial to our ability to compete effectively.

No clear right to interconnect at this level exists because the recent *Broadband Interconnection* Report left this issue open. In order to resolve this issue, we (or another operator) would be forced to engage in expensive and possibly lengthy determination proceedings. While this course of action clearly remains open, the need to do so, together with the indeterminacy of outcome, renders the need to have recourse to such an option less than ideal, particularly in light of the commercial need

to roll out our services quickly and our relative disadvantage compared to those competitors who have ready access to these local networks.

In practice, this means that we can be forced to purchase capacity in increments representing tiny fractions of our requirements, and at purchase these increments at extremely high prices. Again, this drastically hinders our ability to compete effectively with incumbent operators, and to drive down prices for the local Internet community. Moreover, this absence of a clear right to interconnect at the fibre level violates Hong Kong's WTO obligations, which obliges Hong Kong to develop interconnection policies that ensure that all elements of a network are made available on a fully disaggregated, or "unbundled", basis.

The effect

The current absence of true "build" or "buy" rights has profound adverse effects for the promotion of competition and for Hong Kong's development as a regional communications hub.

Approximately 40-60% of the operating costs of Hong Kong ISPs are spent on international bandwidth. These costs need to fall dramatically, in a very short period of time, if this community is to survive and prosper, and if the general Hong Kong community is to be able to participate fully in the on-line economy and maintain its position as the region's premier business hub.

We note that the current regulatory environment is due to remain in force until 1 January 2003, when new domestic FTNS operators will be licensed to offer services.

It must also be pointed out that new entrants require at least 1-2 years to secure necessary permissions to build their networks, and then to complete them. As such, in the event that these new licensees are unable to commence building their networks until 2003, then the market will not actually begin to fully until 2004 or 2005, when these networks become operational. We are very concerned that Hong Kong cannot afford to delay the introduction of open competition until this far in the future.

Given the rapid pace of regulatory reform and commercial developments, both regionally and worldwide, this timeline is extremely disadvantageous to Hong Kong aspirations, and reforms are needed urgently.

The solution

We believe that the situation can be remedied relatively simply, without the need to amend the Telecommunications Ordinance or to pass legislation.

In our view, OFTA and ITBB simply needs to state that:

- EFTNS providers have the right to build all elements of their external networks, including those portions that falling within SAR territory. This will create an effective "build" right.

- FTNS operators are entitled to interconnect with other FTNS operators at the fibre level, in respect of both Type 1 and Type 2 interconnection. This will create an effective "buy" right.

Further, to prevent Hong Kong falling behind in developing as a regional communications hub, new domestic FTNS licenses must be issued immediately, and licensees be permitted to commence the significant task of building their networks in readiness for 1 January 2003.

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9 February 2001