

**POSITION OF NEW WORLD TELEPHONE GROUP TO THE  
TELECOMMUNICATION (AMENDMENT) BILL 1999**

**INTRODUCTION**

New World Telephone Group (NWTG) representing New World Telephone Limited (NWT) and New Word PCS Limited (NWPCS) welcomes the opportunity to express to the Bills Committee our views on the proposed Telecommunication (Amendment) Bill 1999.

**ISSUES FOR COMMENT**

Competition Safeguards

NWTG concurs with the proposal to increase the penalty substantially for breaching the licence conditions. Under the current Telecommunication Ordinance (Ordinance), there is insufficient deterrent for breaching the licence conditions. One example is the repetitive breach of the licence conditions by Cable & Wireless HKT (CWHKT). Since February 1998, CWHKT was thrice found to have breached its licence conditions for offering services below published tariff. However, CWHKT was not penalized for the first instance and was only fined \$ 20,000 and \$ 50,000 for the second and third instances respectively. The fines imposed by the Telecommunication Authority (TA) were the maximum penalties under the Ordinance and are vastly disproportionate to the benefits derived from engaging in the anti-competitive practices which is estimated to reach millions of dollars in lost revenue for CWHKT's competitors.

NWTG also supports the proposed legislation in allowing the TA to obtain information from non-licensees on alleged breaches of licence conditions. In the past, the TA relied heavily on the complaint to provide proof for breach of licence conditions. This has proved to be ineffective because customers benefiting from the anti-competitive offers are reluctant to provide information to the complainant. Anti-competitive practices can only be discovered months after their occurrences, causing irrecoverable damages to those parties that abide by the licence conditions. With reference to the case where CWHKT was first found to have engaged in anti-competitive practice in April 1998, some of the activities identified actually dated back to as early as February 1997. This case clearly highlights the deficiency of the existing system in identifying anti-competitive practices, especially when they involve "bundled offers" from both licensees and non-licensees.

NWTG further welcomes the proposed amendment to avail civil remedy to parties who suffered losses from other parties engaging in anti-competitive practices. Access to the courts will provide a useful mechanism for the parties that abide by the licence conditions and suffered losses to recover their damages when the offending parties are proved to have engaged in anti-competitive practices or misleading and deceptive advertisement. The threat of a civil suit will also act as an effective deterrent against operators who engaged in anti-competitive practices since, at present, an operator who is found to have engaged in anti-competitive practices is only penalized after he fails to comply with directions of the TA, issued pursuant to the breach of the operator's licence conditions.

In summary, NWTG would like to stress that the TA must be allowed to take a pro-active role to investigate and monitor the presence of anti-competitive behaviour to ensure effective enforcement of the proposed legislation.

#### Empowering the TA to make interconnection determination on any technical feasible point

NWTG supports the proposed measures to strengthen the TA's power to determine the conditions of interconnection at any technically feasible point. The proposed measures will remove any ambiguity on the TA's authority to make such determination on issues relating to interconnection and would facilitate more reasonable commercial negotiations between operators. One notable example is NWT's attempt to gain access to the local exchanges of CWHKT for Type II interconnection.

In support of the government's proposal to improve the local telecommunication services to 50% of the households in Hong Kong, NWT started discussion with CWHKT on the terms and conditions for interconnection at CWHKT's local loop, or "Type II Interconnection" in January 1998. After months of unsuccessful negotiation, in May 1998 the TA's assistance was finally sought to make a determination, in order that access to CWHKT's exchanges can be made available to NWT by the end of 1998. Failing to persuade the TA to discontinue the determination, CWHKT attempted to block the process by applying for a judicial review to challenge the TA's authority in respect of the determination on Type II interconnection. As a result, the TA's intervention came to a halt and only resumed when the TA took an alternative approach to mediate the commercial negotiation between both parties that an agreement was eventually reached in April 1999. In total the entire matter took over 16 months after commercial negotiation between the parties first commenced. This example illustrates the importance of a mechanism for regulatory intervention in matters relating to interconnection because ultimately it is the public's interest that is prejudiced if the parties are unable to reach an agreement.

A regulatory determined outcome is more important when market power is skewed significantly in favour of the incumbent. New entrants, which usually have less resources at their command, are virtually forced to accept “negotiated” outcomes against their interest.

### Access to Land & Building

Mobile communication in Hong Kong is increasingly becoming more important and will possibly surpass fixed communications in terms of subscribers in the near future. To provide ubiquitous access to mobile communications services, it is necessary for mobile operators to have unrestricted access to public and private premises to place their radiocommunications equipment.

Under Section 14 of the Ordinance, fixed network licensees and cable TV operators are granted the right without charge to access the common area of private premises to install and maintain telecommunications equipment. On the other hand, mobile operators have never been entitled to such rights under the Ordinance. Under the proposed legislation, mobile operators will only be granted a conditional access right, subject to the payment of a reasonable fee. The proposed legislation is still not satisfactory as the current problem, of landlords charging exorbitant rental for access to shielded areas is not addressed. For example, the provision of service in the Western Cross Harbour Tunnel was delayed by more than a year due to the mobile operators and the tunnel operator failing to reach a commercial agreement.

Notwithstanding the fact that the proposed legislation allows the TA to determine the terms and conditions of access, it nevertheless, puts a heavy burden on mobile operators to satisfy very ambiguous and subjective criteria before the TA would consider intervening in the matter. It is envisaged that to satisfy the TA that there is any valid case for intervention would in itself be a lengthy process. In addition to this lengthy process, the TA’s intervention will also required a period of time thereby further delaying the mobile operators from gaining access to the premises. Consequently, the party that is prejudiced will once again be the public. It is with the public interest in mind that NWTG therefore promulgate the idea of extending the right in Section 14 of the Ordinance to mobile operators for installation of their radio equipment in shielded public and private areas pending the conclusion of a commercial agreement. This ensures timely provision of mobile service to areas which otherwise cannot be served and offer the mobile operators a more equal bargaining position with the landlords.

It should be noted that in other jurisdictions, notably Australia, United Kingdom and United States of America, mobile operators are given statutory access rights to land and building

similar to their fixed counterparts. This illustrates the fact that a “non-discriminatory access approach” has been adopted in other liberalized regimes and there is no conceivable reason why Hong Kong should not follow suit.

The granting of statutory access rights to mobile operators would not remove the incentive to negotiate with the landlords. It only provides a useful fall back position when commercial negotiations are unsuccessful. It is interesting to note that in many of those jurisdictions where mobile operators are granted statutory access rights, the mobile operators have apparently not have the need to use their access rights.

In light of the above, NWTG advocates that statutory access rights should be granted to mobile operators pending the conclusion of a commercial agreement with the landlord.

#### Special Number Arrangement

NWTG in principle do not object to the allocation of special numbers for charitable or educational purposes. We are however concerned with the administrative burden in allocating these special numbers to subscribers. In view that the logistics of special number allocation are being discussed in the Telecommunications Numbering Advisory Committee, the TA should ensure the concerns of the mobile operators are fully reflected in the future arrangement.

#### Spectrum Pricing

Under the proposed legislation, the Secretary of Information Technology and Broadcasting may determine from time to time the price of radio spectrum. The policy intention of such a proposal is to rationalize the use of radio spectrum. NWTG believes this policy would instead lead to inefficient allocation of social resources. The drawback of such an arrangement is that it may cast great uncertainties to the operating costs of mobile operators. Overseas experience has shown that such flexible pricing or auctioning may lead to hoarding of radio spectrum by major operators with a strong financial position at the expense of smaller operators even though they may have more compelling needs. The high spectrum cost translates into higher charges to consumers who are the eventual victims of such a policy. We consider that the allocation of spectrum should primarily be based on technical efficiency rather than rationed by price.

**Prepared by New World Telephone Group  
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