

**The Administration's Responses to the Bills Committee
on the Telecommunication (Amendment) Bill 1999**

I. Access to Buildings and Land by Mobile Network Operators

A. Policy

In view of the growing importance of mobile telecommunications to consumers and to the industry, and to enhance the position of Hong Kong as a telecommunications hub, our policy intention is that there should be ubiquitous coverage for mobile telecommunications services in Hong Kong. To achieve this policy objective, we propose to extend the right of access to buildings and land now conferred to fixed telecommunications operators and subscription television broadcasting licensees^{Note 1} to mobile telecommunications operators, subject to payment of access fees by mobile telecommunications operators. It remains our intention, also, that mobile network operators should, in the first instance, seek a commercial agreement with the landlords/tunnel operators on the payment of access fees.

2. Under the Telecommunication (Amendment) Bill 1999, the Telecommunications Authority (TA) would be empowered to authorize mobile network operators to enter land for radiocommunications installation for provision of services to a public place subject to the payment of access fees, only if the public interest test is met under new section 14(1B)(a) and the factors under new section 14(1B)(b), such as the availability of alternative sites, have been taken into account. The three key factors for the TA to consider in applying the public interest test are:

- the Government policy objectives on telecommunications industry namely
 - ◆ that the widest range of quality telecommunications services

^{Note 1} There are four existing Fixed Telecommunication Network Services (FTNS) licensees including Cable & Wireless HKT (CWHKT), Hutchison Communications (Hong Kong) Limited (Hutchison), New T & T Hong Kong Limited (New T & T) and New World Telephone Limited (New World Telephone). The Hong Kong Cable Television Ltd is the only subscription television broadcasting licensee at present.

should be available to the community at reasonable cost

- ◆ that telecommunications services should be provided in the most economically efficient manner possible
- ◆ that Hong Kong should serve as the preeminent communications hub for the region now and into the next century
- protection of consumer interests
- encouraging the efficient investment in telecommunications infrastructure

New section 14(5)(a) provides that “the licensee (that is, mobile network operators) and the person having a lawful interest in the land concerned shall endeavor to come to an agreement as to the fee to be paid”. Only when this failed would the Telecommunications Authority (TA) be empowered to intervene and determine the fee.

3. There has been some misunderstanding about the policy intent and the implications of new section 14(1B) of the Bill, which we would like to clarify as follows:

- (a) the proposed amendment should not affect existing commercial agreements between mobile network operators and landlords/tunnel operators. It will empower the TA only if the public interest test and any other relevant factors set out in the Bill are met. There is no question of the TA making a determination to override commercial agreements;
- (b) the proposed amendment does not extend the right of access automatically to any buildings, land or shielded areas. The vast majority of building owners and landlords will not be affected when there are alternative areas for the installation of mobile network equipment to provide service coverage in certain locations/areas; and
- (c) the proposed amendment does not target tunnels, but aims to cover all confined areas for which access to the areas concerned is essential for

the extension of mobile service coverage to the users in those areas.

B. Determination of access fees

4. At the Bills Committee held on 21 July 1999, Members asked the TA to make known its guidelines for determination of access fees to allay the concern on the objectivity of its decision. We would like to elaborate on the well-established process and guidelines the TA has been adopting.

5. It has been the established practice of the TA to consult the public, concerned parties and the industry prior to making decisions of significance and public interest. The consultation process is initiated by the TA with a consultation document prepared by a multi-disciplinary team within the Authority (including engineers, accountants, competition experts, economists and legal advisers). Having taken into account the views collated at the public consultation exercise, the TA will make known the considerations, principles and criteria for the exercise of its authority by publishing guidelines. It is to ensure transparency and public accountability. Moreover, parties concerned are asked to come to commercial agreements first. Only when this failed would the TA make a determination based on the published guidelines.

6. In line with its established practice, the TA intends to conduct public consultation on the charging principles in determining the access fees to shielded areas under section 14(5)(b) of the Telecommunication (Amendment) Bill 1999. It will formulate clear guidelines on how he would make such a determination. The TA will carry out research and analyses on the relevant factors and considerations, including the commercial consideration put forward by landlords/tunnel operators, to determine the appropriate charging models under various circumstance. These models may include, but not limited to, the following:

- an incremental cost-based model that includes only costs such as the costs of additional resources incurred by the tunnel operators to enable the installation, operation, management and maintenance of the mobile network facilities inside the tunnels;
- a revenue-sharing model that involves the estimation and sharing with the tunnel operators of the additional revenue being generated through

the usage of the mobile network facilities inside the tunnels;

- access charges that are based on the valuation of property rights such as the retail rental value of spaces on equivalent premises; and
- various combinations of above models to be applicable under specific circumstances.

7. If necessary, the TA may engage outside consultants (e.g. surveyors and valuers) to advise. A review stage will follow the public consultation process, involving consideration of responses to the consultation document and further quantitative or qualitative analysis of the issues.

8. The purpose of the consultation is intended to enhance the effectiveness and transparency of decisions by ensuring that the views of all interested parties, including the landlords and tunnel operators, are factored into the decision-making process.

9. Accordingly, it is too early for the TA at this stage to specify the guidelines on determining access fee under the section 14(5)(b) proposed by the Bill. Whether the cost/revenue/value basis approach should be adopted is subject to consultation and advice of consultants. The TA would follow the above due procedures preparing the guidelines on determining access fees under the proposed section 14(5)(b) and publish those guidelines.

C. Examples whereby mobile network operators fail to gain access

10. Mobile network operators have been able to reach commercial agreements with tunnel operators to gain access. However, mobile network operators and tunnel operators usually take a long time to reach agreement. In most cases, negotiations took over a year. Part of the reasons for the lengthy negotiations period are due to (i) there is no alternative to place the radiocommunications equipment inside the tunnel areas if network coverage is to be extended into the tunnels; and (ii) mobile network operators have licence obligations to extend service coverage to tunnels with performance bonds committed to meet such obligations.

11. The problem does not only exist in tunnels, but also in shopping

arcades and other confined areas such as MTRC and KCRC stations. In general, it would take mobile telecommunications operators over one year in order to reach agreement with landlords of shopping arcades or confined areas. To illustrate the problem:

- One mobile telecommunications operator reported that it had spent seven years to negotiate with the landlord to gain access to a shopping arcade in Hung Hom.
- One operator reported that it had taken over four years to negotiate with a landlord to gain access to its shopping arcades on top of a MTR station and a KCRC station.
- One operator reported that it had taken three years to reach agreement to gain access to a Department Store in Causeway Bay.

12. Although Hong Kong has one of the world's highest mobile penetration rate, coverage of our mobile networks is not yet ubiquitous. There are still many "blind spots" in urban and business areas, given the difficulties mobile network operators face in reaching commercial agreements with landlords of shopping malls and tunnel operators. This is not in the interest of the telecommunications industry and consumers. The problem will intensify with the advent of the third generation mobile phone, especially for potential new entrants.

D. Formula based on which the existing access fees to tunnels are charged

13. From the information obtained from mobile telecommunications operators, we have not been able to generalise some formulae in determining the access fees to tunnels. We are seeking information from the BOT tunnel companies in this regard.

14. Nonetheless, we have obtained the latest information from the mobile telecommunications operators regarding the actual access fees that they pay and, where applicable, the formulae for annual fee adjustment. The monthly fee for access to BOT tunnels for each mobile network ranges from HK\$83,000 to \$ 480,000, or an annual fee for access from \$1 million to \$58 million. Three BOT tunnels adopt similar formulae for annual fee adjustment, taking the

highest of the relevant indicators as the annual fee adjustment factor. A table setting out the information on the access fees and the formula for annual fee adjustment is at Annex A.

15. The TA has not formed a view as to whether the access fees is fair and reasonable or not. It is not appropriate for him to come to such an opinion before the formulation of guidelines subject to due consultation and consideration. He will follow the procedures as set out in paragraphs 5 to 8 above upon passage of the Bill.

E. Proportion of the Operating Costs of Mobile Telecommunications Operators Attributable to the Payment of Access Fees

16. According to the information provided by the mobile telecommunications operators, the payment of access fees constitutes 14% to 21% of their operating costs. Considering access fees to BOT tunnels only, they account for 0.8% to 1.6% of the operating cost. Details are set out in Annex B. Based on the access fees payable to BOT tunnels and the volume of mobile phone traffic in tunnels, the average cost of each minute of a mobile phone call made in such tunnels is about \$4.3 per minute, which is about five times mobile telecommunications operators are currently charging mobile phone users on average.

F. Proportion of the Tunnel Operators' Revenue Attributable to the Access Fees Received from Mobile Telecommunications Operators

17. The Administration has obtained information from four BOT tunnel companies regarding the proportion of their revenue attributable to the access fees received from mobile telecommunications operators. Such information is set out at Annex C. In 1997-98 and 1998-99, access fees received from mobile telecommunications operators accounted for 2.1% to 4.5% of the revenue of each of the four BOT tunnel companies.

G. Overseas experience in handling the issue of access to tunnels for radiocommunications installations

18. The Administration is seeking more information from overseas jurisdictions regarding their experience in handling the issue of access to

tunnels for radicomunications installation. We will provide such information to Members once available.

II. Framework of overseas telecommunications regulators

19. The Administration has conducted a research on the framework of the telecommunications regulators in Singapore, the UK, Ireland, the US, France, Switzerland, Canada and Australia, particularly on the check and balance of the powers of these regulators. The research findings are tabulated at Annex D.

III. Response to the Cable & Wireless HKT's submission

20. The Administration is still examining the Cable & Wireless HKT's submission and will provide a written response to the Bills Committee in due course.

Information Technology and Broadcasting Bureau
September 1999

**Access fees paid by mobile telecommunications operators for access to BOT Tunnels
for radicomunications installation**

Tunnel	Column A Access fee per network per month (HK\$) (see Note 1)	Column B Access fee per network per annum estimated from Column A (HK\$Mn)	Formula for annual increase of access fee
Tunnel A	100,000 100,000 100,000 106,700 120,000 209,000 270,000 280,000 285,000 (figures for two other networks not available)	200 1.200 1.200 1.280 1.440 2.508 3.240 3.360 3.420	The greatest of the following increase – (a) Composite CPI (b) No. of Subscribers (c) Tunnel users subject to a cap of 25% in 99/00 and 50% in 00/01 (Note 2)
Tunnel B	120,000 140,000 146,400 168,750 168,750 175,000 175,000 (figures for four other networks not available)	440 1.680 1.757 2.025 2.025 2.100 2.100	The greatest of the following increase – (a) 15% (b) No. of Subscribers (c) Tunnel users subject to a cap of 35% in 1999/2000, 30% in 2000/01 and 28% in 2001/02 (Note 2)
Tunnel C	110,000 (same fee for all the 11 networks)	320 (see fee for all the 11 networks)	1999/2000-CPI(A) 2000/03-CPI(A) or 20% whichever is greater

Tunnel	Column A Access fee per network per month (HK\$) (see Note 1)	Column B Access fee per network per annum estimated from Column A (HK\$Mn)	Formula for annual increase of access fee
Tunnel D	83,000	0.996	Not Available
	83,000	0.996	
	83,000	0.996	
	96,000	1.152	
	135,000	1.620	
	135,000	1.620	
	180,000	2.160	
	(figures for four other networks not available)		
Tunnel E	100,000	1.200	Not Available (As a condition, all personal communications service operators have to advertise in this tunnel as a package for gaining access)
	220,000	2.640	
	250,000	3.000	
	250,000	3.000	
	285,000	3.420	
	300,000	3.600	
	270,000	3.240	
	173,000	2.076	
	173,000	2.076	
	480,000	5.760	
(figure for the remaining network not available)			
<u>Notes</u>			
1. There are a total of 6 mobile telecommunications operators, operating 11 mobile networks. Each figure represents the access fee for one single network.			
2. This is a typical formula used by that tunnel. Size of the cap varies from operator to operator.			

Source: Six mobile telecommunications operators

Access Fee as a Percentage of Mobile Operators' Operating Costs

	Proportion of mobile operator's expenditure attributable to the payment of access fees to tunnel operators	Proportion of mobile operator's expenditure attributable to site rental cost (exclude rates & management fee)
Company A	0.8%	16%
Company B	0.9%	14%
Company C	1.2%	15%
Company D	1.3%	17%
Company E	1.4%	20%
Company F	1.6%	21%

Source: Six mobile telecommunications operators

Proportion of the Tunnel Operators' Revenue Attributable to the Access Fees Received from Mobile Telecommunications Operators

Tunnels (See Note 1)	Annual Revenue (HK\$Mn)	Proportion of Tunnel Operators' Revenue Attributable to the Access Fees Received from Mobile Telecommunications Operators
Eastern Harbour Crossing Tunnel	427.9 (1997/98)	2.2%
	538.8 (1998/99)	2.9%
Tai Lam Tunnel (See Note 2)	312 (1998/99)	2.7%
Tate's Cairn Tunnel	286.4 (1997/98)	2.1%
	270.9 (1998/99)	4.5%
Western Harbour Tunnel	326.3 (1997/98)	0.8%
	478.5 (1998/99)	3.2%

Notes

1. The Cross Harbour Tunnel Company Limited has not responded to the Administration's request for information about the revenue and the proportion of the revenue attributable to the access fees paid by mobile telecommunications operators.

2 The Tai Lam Tunnel started operation on 25 May 1998 which falls into the first operating year of 1998/99. There were no operating activities in 1997/98.

Source: Four BOT tunnels

FRAMEWORK OF OVERSEAS TELECOMMUNICATIONS REGULATORS
(Singapore, UK, Ireland, US, France, Switzerland, Canada and Australia)

Country	Regulatory Authority	Is the power vested in a single person, body, a committee or commission, etc?	What are the powers and functions of the regulator?	Are the regulator's decisions subject to appeal or judicial review?	What is the process by which the regulator makes decision?
Singapore	Telecommunications Authority of Singapore (TAS)	TAS is a body corporate constituted under TAS Act 1992 and exists with perpetual succession, capable of suing and being sued in its corporate name. TAS is a statutory body under the Ministry of Communications.	TAS has the exclusive privilege for the operation and provision of telecommunication and postal systems and services in Singapore (sections 24 and 40 of TAS Act)	Under section 29(2) of TAS Act, any person who is aggrieved by any decision of TAS may, within 14 days after receiving a notice in writing of the decision, appeal to the Minister whose decision is final.	<p>Policies for telecommunications and post are set by the Government with the advice of TAS.</p> <p>The TAS board consists of representatives from private sector, academic institutes, consumer groups, government ministers etc., to ensure that views from various sectors of the society are reflected in the development of telecommunications policies, regulation and legislation.</p> <p>TAS does not conduct public hearing or industry consultation during its decision making process.</p>

Country	Regulatory Authority	Is the power vested in a single person, body, a committee or commission, etc?	What are the powers and functions of the regulator?	Are the regulator's decisions subject to appeal or judicial review?	What is the process by which the regulator makes decision?
United Kingdom	Office of Telecommunications (OFTEL)	OFTEL was established under the Telecommunications Act 1984, and the power of the regulator is vested in a single person - the Director General of OFTEL.	Director General of OFTEL is given extensive powers under the Telecommunications Act to enforce licence conditions and initiate modification of licence conditions.	Decisions made by the Director-General of OFTEL are subject to judicial review, save for matters concerning competition, in which case, appeal may be lodged with the Competition Commission under the Competition Act 1998.	In respect of policy and matters such as modification of licence conditions and issues relating to dominance, for the sake of transparency and due process, the practice of the Director General of OFTEL is to make decision by firstly consulting the industry and consumers. Director General of OFTEL also consults the Department of Trade and Industry in respect of major policy decisions.
Ireland	Office of the Director of Telecommunications Regulation (ODTR)	ODTR was established under the Telecommunications (Miscellaneous Provisions) Act 1996 and the power of the regulator is vested in a single person-Director of Telecommunications Regulation.	Under the legislation, the Director of Telecommunications Regulation has an obligation to act independently and is responsible for development of operational policies for licensing, managing the radio frequency spectrum, licensing/setting standards	No appeal channel is established by the legislation and decisions of the Director of Telecommunications Regulation are subject to judicial review.	Consultation approach.

Country	Regulatory Authority	Is the power vested in a single person, body, a committee or commission, etc?	What are the powers and functions of the regulator?	Are the regulator's decisions subject to appeal or judicial review?	What is the process by which the regulator makes decision?
			and specifications for operators and regulating in accordance with licence terms/standards and specifications.		
United States	Federal Communications Commission (FCC)	FCC was established under the Communications Act 1934. FCC is directed by five commissioners who are appointed by the President. It is directly accountable to Congress.	FCC is responsible for regulating interstate and international communications (including broadcasting), by radio and by wire.	Appeal against the decisions of FCC may be lodged with the federal courts. Decisions made by FCC are also subject to review by federal courts, which have jurisdiction to reverse decisions made by FCC on various grounds, for example, if they are found to be "arbitrary and capricious".	All FCC actions are subject to the requirements of the Federal Administrative Procedure Act which sets forth procedural requirements designed to maximize transparency. FCC decisions are rendered in the form of a Report and Order, which explains the FCC decisions and its rationale.
France	Telecom-mu nications Regulatory Authority (ART)	ART was established on 1 January 1997 under the Telecommunications Act 1996. ART consists of five members appointed to their legal, technical and economic expertise.	ART is entrusted with the duties of processing applications for telecommunications licenses, allocating frequencies and numbers, approving interconnections and referring	Decisions of ART may be subject to an appeal or judicial review. Appeal shall not be suspensive.	ART adopts the consultation methods by conducting international consultation, ad-hoc consultation, through public consultation exercises (e.g. licence

Country	Regulatory Authority	Is the power vested in a single person, body, a committee or commission, etc?	What are the powers and functions of the regulator?	Are the regulator's decisions subject to appeal or judicial review?	What is the process by which the regulator makes decision?
		<p>The chairman and two other members shall be appointed by decree. The two other members shall be appointed by the chairman of the National Assembly and by the chairman of the Senate.</p>	<p>to competition authority when there is a breach of competition rules.</p>		<p>typology, high speed local loop and access to submarine cables) to enhance transparency in decision-making.</p>
<p>Switzerland</p>	<p>Federal Communications Commission (SFCC)</p>	<p>SFCC was established under the Telecommunications Law 1997 as the licensing authority and market regulator. SFCC consists of five to seven members appointed by the Federal Council. FCC is an independent body that is not required to follow instructions from the Federal Council or the administrative authorities. SFCC may delegate authorities to the Federal Office for Communications (Office).</p>	<p>SFCC is responsible for performing the duties and making decisions pursuant to the Telecommunications Law 1997 and its implementing provisions. These include licensing, making interconnection determinations, approving national frequency plan and numbering plans.</p>	<p>Decisions made by the Office shall be open to appeal before Appeals Board and decisions taken by the SFCC shall be open to administrative appeal before the Federal Court governed by the Law on Administrative Procedure and by the law on Judicial Organization.</p>	<p>SFCC adopts a system of internal regulation allowing the president, with one other member, to make provisional measures and the commission to take decision by circulation to improve efficiency. Consultation will also be conducted for significant matters.</p>

Country	Regulatory Authority	Is the power vested in a single person, body, a committee or commission, etc?	What are the powers and functions of the regulator?	Are the regulator's decisions subject to appeal or judicial review?	What is the process by which the regulator makes decision?
Canada	Canadian Radio-television and Telecommunications Commission (CRTC)	CRTC is an independent federal agency with quasi-judicial status constituted under the Canadian Radio-television and Telecommunications Act 1985. CRTC may have up to 13 full-time and 6 part-time commissioners, to be appointed by the Governor in Council (Cabinet). CRTC is vested with administrative and quasi-judicial authority operating at "arm's length" from the Government.	Under the Telecommunications Act, CRTC is given a broad range of authorities to regulate broadcasting services and telecommunications common carriers that fall under federal jurisdiction.	Under the Telecommunications Act, decisions of CRTC are appealable to the cabinet. The cabinet must act within one year of the decision on its own motion or in response to an application. An appeal from a decision of CRTC on any question of law or of jurisdiction may be brought in the Federal Court of Appeal.	Decisions taken under the Telecommunications Act are on the basis of a public record subject to comments by the public. In suitable circumstances, public consultation and oral examination may be conducted.
Australia	Australian Communications Authority (ACA)	ACA is an independent regulator established under the Australian Communications Authority Act 1997. It comprises one Chairman, one Deputy Chairman, and at least one, but not more than three, other members. ACA reports to the	ACA is responsible for managing the radio frequency spectrum, administering the licensing of carriers, and administering consumer and technical issues relating to telecommunications in Australia.	Under the Telecommunications Act 1997, ACA's decision may be subject to reconsideration by ACA and if the decision is affirmed or varied by ACA, applications may be	Under the Telecommunications Act, ACA adopts a combination of processes in making decisions. ACA conducts public enquiries and public hearings. It also issues consultation papers,

Country	Regulatory Authority	Is the power vested in a single person, body, a committee or commission, etc?	What are the powers and functions of the regulator?	Are the regulator's decisions subject to appeal or judicial review?	What is the process by which the regulator makes decision?
		Minister for Communications.		made to the Administrative Appeals Tribunal for review of the decision.	receives submissions, convenes task working groups, advisory committees and consumer consultative forums.
	Australian Competition and Consumer Commission (ACCC)	ACCC is a commission which consists of 6 to 10 full time members, including a chairman and deputy chairman, plus a significant number of associate (part-time) members, including ex-officio associates from other regulators. ACCC is an independent statutory authority albeit budget funded.	ACCC is established to administer the Trade Practices Act 1974 and the Prices Surveillance Act 1983.	ACCC's adjudication decisions can be challenged in the Australian Trade Practices Tribunal. Many of its actions must be taken in court and then there is the normal court appeal process. ACCC is subject to the full range of administrative law remedies under Australian law.	ACCC is a multifunction regulator. It is an enforcement authority, an adjudicator, a prices surveillance authority, a consumer protection authority, a small business advocate and a public utilities regulator. In all these roles, it always consults the industry and, where appropriate, the Government. Many of its decisions are subject to consultation before the final decision is made.