

Mr. K.C. Kwong
Secretary for Information Technology & Broadcasting
1/F -2/F Murray Building
Garden Road
Central
Hong Kong

6th December 1999

Dear Mr. Kwong,

The Telecommunication (Amendment) Bill 1999
Statutory right of access to non-government road tunnels by mobile operators and related compulsory fee determination

Thank you for your reply letter of 19th November 1999. We appreciate your detailed explanation of the objectives of the Bill and the policy of the Administration to carry out a full public consultation on charging principles. However, we must reiterate our concern on the following points, which you have failed to address in your letter:

1. Proposed Amendment Bill is contrary to tunnel ordinances:

It is important to note that each BOT tunnel company is governed by its own Ordinance and project agreement which contains specific provisions that public utilities and tunnel companies shall negotiate according to the principles of a free market to determine the wayleave fees. As BOT tunnel companies have incurred substantial capital investment, it is unfair and unlawful for the Government to change unilaterally the terms agreed in existing franchises with the tunnel companies. We must draw your attention to the Administration Paper CB(1)372/99-00(02) issued at the 6th Bills Committee meeting of 16th November 1999, in which the Legal Service Division of the LegCo Secretariat commented that “the right of access provision in this Bill appears to contradict the relevant provision in the tunnel legislation.” You may refer to the attached relevant page for details.

The Bill would definitely send a very negative message to prospective investors in Hong Kong’s infrastructure and undermine their confidence in agreements with the HK SAR Government.

2. TA cannot be the mediator:

TA cannot be seen as an impartial mediator. Despite there will be statutory checks and balances under the Bill to regulate TA, it is in effect not practical. Given statutory right of access, the mobile phone operators will have the upper hand, and the tunnel companies’ bargaining power will be greatly reduced, which means that the negotiation will not be on even grounds. In these circumstances, there will not be any commercially reached agreements, and TA will be asked to step in every time. Further, TA has no sufficient knowledge of the operations of non-government tunnels.

We would like to emphasize that we support the opening of the mobile phone market. However, with a unique franchise agreement between the BOT tunnel companies and the Government, it is necessary to have a different arrangement of the mobile phone operators in gaining access to BOT tunnels. There is no problem of access for all four BOT tunnels. We thus strongly request the Government to accept our proposal to exempt BOT tunnels from this Bill.

Yours sincerely

For and on behalf of
NEW HONG KONG TUNNEL CO.LTD.

For and on behalf of
TATE'S CAIRN TUNNEL CO.LTD.

Mr. Alexander Chan
General Manager

Mr. George Lee
General Manager

For and on behalf of
WESTERN HARBOUR TUNNEL CO.LTD.

For and on behalf of
ROUTE 3 (CPS) CO.LTD.

Mr. Kenneth Pang
General Manager

Mr. Gary Luk
General Manager

CC: Chief Executive

Chief Secretary for Administration

Financial Secretary

Mr. Sin Chung Kai, Chairman of Bills Committee on Telecommunication
(Amendment) Bill 1999