

Bills Committee on the Telecommunication (Amendment) Bill 1999

Principles for the Determination of Access Fees for Mobile Network Operators for Access to Confined Areas under the Proposed Section 14(5) of Cap. 106 - Outline of Consultation Paper to be issued by the Office of the Telecommunications Authority under section 2(2) of Cap. 106

Background

At the Bills Committee meeting held on 6 October 1999, the Administration agreed to provide the Committee with the draft outline of the consultation paper on the principles for determining access fee under section 14(5) as introduced by the Telecommunication (Amendment) Bill 1999. This paper sets out an outline of the draft consultation paper.

Consultation

2. Upon enactment of the Bill, the TA will conduct a thorough consultation with all the interested parties on the underlying principles in this paper. The purpose of the consultation is to collect views from all interested parties on the range of relevant charging principles applicable in various circumstances, and hence facilitate the determination of access fees under section 14(5). The following issues will be addressed in the consultation paper -

- (a) policy objectives of the proposed amendments to section 14 in relation to access of mobile network operators into shielded areas;
- (b) the current status of the development of mobile telecommunications and the access situation of mobile operators in shielded areas; and
- (c) the charging principles that may be relevant and applicable to the determination of access fee under section 14(5) when commercial negotiations between the mobile network operators and the persons having lawful interest in the land concerned fail.

3. The consultation will cover various scenarios of radiocommunications installations in shielded areas that may fall within the scope of the proposed section 14(1A) of the Bill. These scenarios include the installations at tunnels, railways and shopping malls. We aim to consult all interested parties on the charging principles, including the appropriateness of their applications for different premises/projects involved, the applicability of adopting a combination of the principles, and the practical difficulties in applying the principles under different scenarios. After consultation, we will identify the range of principles/combination of principles which may be applicable for the various scenarios. This will provide useful reference for the determination of the access fees and make the whole process more effective. The paragraphs below set out our preliminary analysis of the relevant charging principles for consultation.

Relevant Principles in Determination of Access Fees

4. The access fees payable by the mobile network operators to the persons having a lawful interest in the land concerned should in the first instance be determined by commercial negotiation between the two parties. They should endeavour to come to an agreement on the fees as required under the proposed section 14(5). This is the preferred approach for determining the level of the fees. Only when this failed would the access fees be determined under the proposed section 14(5).

5. To achieve the policy objective of ubiquitous mobile coverage and in the interest of over 3.5 million mobile phone users in Hong Kong, our policy objective is to establish a mechanism to ensure that neither the landowners nor the mobile network operators could exploit their special market positions at the expense of consumers' benefits and efficiency. The fees so determined must be fair and reasonable in all the circumstances.

(a) Cost-related principle

6. The first possible principle for determining access fee is based on full recovery of relevant costs incurred by the landowners to enable the installation, operation, management and maintenance of the mobile network facilities in the confined areas concerned. Relevant costs could cover both directly attributable costs, and indirect or intangible costs incurred. These could

include the cost of capital, opportunity cost of the space, equipment, or other establishments being occupied to facilitate the mobile network operators to gain access to the confined areas, some of the shared costs of the project, and even compensation on the inconvenience incurred.

7. It is necessary also to consult on how an economically justifiable rate of return for the landowners can be determined. This rate should reflect the overall investment and construction costs incurred in the investment, as well as development and management of the properties (or projects), taking into account the business risk factor, and thereby upholding the investment incentive for infrastructural and project development.

(b) *Property valuation principle*

8. Another charging principle intended for consultation is the consideration of the property value of alternative or comparable locations for installations. Possible references could be drawn from the access fees of radiocommunication installations in similar locations and the market rates of the equivalent premises around similar locations in a fairly free and competitive market environment.

(c) *Profit-sharing principle*

9. Profit-sharing is another charging principle intended for consultation. Cost recovery plus sharing of the incremental profits generated from the access to the confined areas can benefit both parties. The mobile network operators could gain a share of the incremental profit plus the intangible benefits of wider coverage and higher quality of service. On the other hand, the landowners could recover all costs incurred and enjoy additional revenue and better services from the increased mobile coverage. We would like to consult what sharing ratio would be appropriate in various scenarios.

Other economic considerations

10. There are other economic considerations that we would like to invite views from the interested parties. These include:

- (a) Other packages existing in the access arrangements: we are aware that

some current access agreements between the mobile network operators and the landowners include other offers (such as the access fee also covers the rental for space for advertisements within the shielded area). Views would be sought on the relevance of such offers in the determination of access fees.

- (b) The annual adjustment mechanism: We would like to seek views on whether the annual fee adjustment factors should be taken into account. These may include inflation, annual growth in the number of mobile service subscribers, or the number of tunnel/railway users or site visitors.

Way Forward

11. Subject to the enactment of section 14(5) introduced by the Bill, the Telecommunications Authority (TA) will issue a consultation paper based on the outline above. After consultation, the TA will consider the views, including the commercial considerations received from all interested parties and particularly those presented by the landowners and mobile network operators. He would then make known his considerations of the views received from the consultation and issue guidelines on the range of charging principles applicable in various scenarios.

12. Members' views are welcomed on the draft outline of the consultation paper as set out above.

Information Technology and Broadcasting Bureau
15 January 2000