

Bills Committee on the Telecommunication (Amendment) Bill 1999

Mobile Network Operators' Exercise of Statutory Right of Access under the proposed Section 14(1A) of the Telecommunication (Amendment) Bill 1999 to Premises of Mass Transit Railway Corporation (MTRC) and Kowloon Canton Railway Corporation (KCRC)

The Mass Transit Railway Corporation (MTRC) and the Kowloon Canton Railway Corporation (KCRC) have raised concern over that statutory access by mobile network operators into their premises might affect safety of railway operation.

The Proposal

2. To address the concerns of MTRC and KCRC to ensure the safety of railway operation -
 - (a) the TA would issue operational guidelines governing the mobile network operators' exercise of the right of access under the proposed section 14(1A) to premises of MTRC and KCRC; and
 - (b) the Administration would consider to introduce a committee stage amendment (CSA) to require that the Telecommunications Authority (TA) shall not grant an authorization under section 14(1A) introduced by the Telecommunication (Amendment) Bill 1999 ("the Bill") unless reasonable opportunity has been afforded to the persons having a lawful interest in the land concerned.

These improvements would further strengthen the requirement that the mobile network operator's access right would be granted only if it is in the public interest to do so (section 14(1B)) and that there is no question of having railway safety being compromised.

Background

3. At the Bills Committee on 6 October 1999, the Administration agreed to consult MTRC and KCRC on the operational guidelines governing the exercise of statutory right of access of mobile network operators under the proposed section 14(1A) to premises of MTRC and KCRC. The TA had subsequently forwarded a draft of the guidelines to the two Corporations and

had a meeting with the Corporations on 16 November 1999 to discuss the draft. A copy of the draft guidelines is attached.

The draft guidelines

4. Paragraph 2.4 of the draft guidelines sets out very clearly that the two Corporations are **the sole authorities** in determining the technical specifications or standards of the radiocommunications installations that are relevant to the **safety** of the railway operation. As required in paragraph 2.3 of the draft guidelines, the mobile network operators should submit the drawings and other information as may be required by the two Corporations prior to the commencement of the installation works. The Corporations' approval should be obtained on the design and other details of the installations which may affect the safety, security, efficiency and convenience in the normal use of the premises and the aesthetics of the premises.

5. The two Corporations are concerned that there may be uncoordinated entry of the mobile network operators who have been granted authorisation by the TA under the proposed section 14(1A) to the two Corporations' premises. To address this, paragraphs 2.6 and 2.7 require that access to the premises should only be made in reasonable time after liaison with the Site Manager of the two Corporations and consent on each occasion for the entry should be obtained from the Site Manager. Paragraph 2.8 of the draft guidelines further requires that the licensees should observe any instructions from the Site Manager concerning the safety, security and efficiency of rail operation.

6. We believe that the guidelines provide a practical framework for implementing radiocommunications installations, fully recognising the importance of maintaining railway safety. We will continue to discuss with MTRC and KCRC to make improvements to the draft.

7. The two Corporations have requested the Administration to consider making the guidelines statutory. We are of the view that as the guidelines are operational in nature and require regular updating in view of the practical experience of the Corporations and the mobile network operators, it is not appropriate to make the guidelines statutory. The TA and the two Corporations are the sole authorities in maintaining telecommunications and railway safety under their respective Ordinances. To make such operational guidelines part of the Telecommunication Ordinance may cause confusion as to whether one statutory body is subject to the other. Moreover, the operational guidelines to be issued only apply to one of the many situations which the proposed section 14 seeks to regulate, i.e., access into railway premises. Making such operational guidelines statutory is not appropriate in view of the scope of the application of the proposed section 14.

The Corporations' other concerns

8. While we recognise the concerns of the two Corporations over the effect of the radiocommunications installations on railway safety, we would consider to introduce a CSA to require that the TA shall not grant an authorization under section 14(1A) of the Bill unless reasonable opportunity has been afforded to the persons whose interest in the land concerned is affected by the intended authorization. This is in response to the proposed amendments put forward by the MTRC after our meeting with them on 16 November 1999. Instead of giving only the two Corporations the opportunities to make representations, our amendments will ensure that all the concerned landlords will be invited to make representations before the TA grants the authorization. The Assistant Legal Adviser of LegCo Secretariat has also requested the Administration to consider such an amendment.

9. The two Corporations have also raised whether there is any conflict of authority in respect of spectrum management and railway safety. For example, whether the TA, being the statutory authority in spectrum management, may overrule the two Corporations on matters of interference which may be considered by the two Corporations as harmful interference in railway safety.

10. On this, we would like to explain that the TA, in exercising his powers as the authority in the control of radio interference in Hong Kong, will always have regard to the specifications put forward by the two Corporations concerning interference level affecting railway safety. Should there be concerns on the acceptable level of interference, references can always be drawn to the same international or regional standards, or standards widely accepted by railway safety authorities in other leading countries. It is also an established practice of the TA to justify the standards he uses in determining what constitutes unacceptable or harmful interference.

11. The TA is empowered to control interference under the Telecommunication Regulations and the Telecommunication (Control of Interference) Regulations and is therefore accountable to the public on any interference problem. The TA now exercises regulatory control over frequency management in Hong Kong. The TA, in practice, has never intruded into the statutory responsibility of the two Corporations, or that of the Director of Civil Aviation/Airport Authority or the Director of Marine on their respective statutory duties over railway, aviation or maritime safety. The TA has the duty to act in the public interest, and in these cases, this means that he could not act in such a way as to compromise railway, marine or aviation safety. In practice, there has not been any incident of the nature raised by the two Corporations. Neither have we come across grey areas or conflicting views held by these authorities which are also empowered by the relevant Ordinances and are accountable to the public in the respective areas. We do not believe

that the situation put forward by the two Corporations would arise in practice.

Way Forward

12. We will continue to discuss with the two Corporations on the draft guidelines . We will proceed to prepare the proposed CSA and would welcome Members' views.

Information Technology and Broadcasting Bureau
15 January 2000

DRAFT

Guidelines to Mobile Network Operators on the Exercise of Statutory Right of Access to Premises of Mass Transit Railway Corporation (MTRC) and Kowloon Canton Railway Corporation (KCRC) under Section 14(1A) of the Telecommunication Ordinance

1. Introduction

1.1 These guidelines are issued by the Telecommunications Authority (TA) under section 14(6)(c) of the Telecommunication Ordinance (the Ordinance) to licensees under Public Radiocommunication Service Licences who have been authorised by the TA under section 14(1A) of the Ordinance to gain access to premises of the Mass Transit Railway Corporation (MTRC) or Kowloon Canton Railway Corporation (KCRC) for the installation and operation of radiocommunication systems for the purpose of providing a public radiocommunication service to the premises concerned.

1.2 The purpose of these guidelines is to set out the manner in which the statutory right of access under section 14(1A) of the Ordinance is to be exercised by the licensee with such right.

1.3 The licensee shall ensure that these guidelines are observed by its employees, contractors and agents in gaining access to the MTRC/KCRC premises concerned.

2. The Guidelines

2.1 In these guidelines, unless the context indicates otherwise,

“Licensee” means the licensee under a Public Radiocommunication Service Licence who has been authorised by the TA under section 14(1A) of the Ordinance to gain access to the premises;

“premises” means the land to which the Licensee has been authorised under section 14(1A) of the Ordinance to gain access for the installation and operation of a radiocommunication system

DRAFT

for the purpose of providing a public radiocommunication service. It includes railroads, stations and any areas used by MTRC/KCRC for rail operation;

“Site Manager” means the employee, agent or contractor of the MTRC/KCRC responsible for the day-to-day management and control of the premises.

2.2 Prior to the commencement of any installation work on the premises, the Licensee shall submit such drawings and other information as may be required by MTRC/KCRC and seek its approval on the design and other details of the installation including the location of equipment, fixing details, routing of cables, power supply requirements, technical specifications and any other matters which may affect the safety, security, efficiency and convenience in the normal use of the premises and the aesthetics of the premises.

2.3 The Licensee shall submit the information referred to in paragraph 2.2 at least two weeks, or such shorter period as may be agreed with the MTRC/KCRC, before its intended date of installation.

2.4 For the avoidance of doubt, MTRC/KCRC shall be the sole authority in determining the technical specifications or standards that are relevant to the safety of rail operation in relation to the radiocommunication systems for installation on the premises.

2.5 Where necessary, the Licensee shall conduct site meetings with the relevant Corporation to discuss and agree on the matters referred to in paragraph 2.2.

2.6 Access to the premises shall be made by the Licensee at reasonable time after liaison with the Site Manager.

2.7 The Licensee shall contact and obtain the consent from the Site Manager on each occasion prior to entering the premises for the purpose of inspection, installation, operation and maintenance of the radiocommunication system on the premises.

DRAFT

2.8 While on the premises, the Licensee shall observe any instructions from the Site Manager concerning the safety, security and efficiency of rail operation on the premises and the avoidance of inconvenience to other users of the premises.

2.9 All work inside the premises shall be executed in a professional and workmanlike manner. The Licensee shall in accordance with section 14(2)(b) of the Ordinance do as little damage as possible to the premises. Full compensation shall be paid by the Licensee to the relevant Corporation for any damage caused as a result of the exercise of the right under section 14(1A) of the Ordinance.

2.10 The Licensee shall ensure that its employees, contractors and agents carry proper identification documents in gaining access to the premises. A copy of the TA's authorisation under section 14(1A) of the Ordinance in Chinese and English shall be produced to MTRC/KCRC or Site Manager upon request.

3. Amendments

3.1 The TA may amend these guidelines from time to time after consultation with the interested parties.

Office of the Telecommunications Authority