Kowloon Canton Railway Corporation

Position Paper

Telecommunication (Amendment) Bill 1999

Clause 7: Power to place and maintain telecommunications lines, etc., on land, etc. Amendments to Section 14.

The Kowloon-Canton Railway Corporation's (Corporation) Position

The Corporation understands from the draft Bill that the Telecommunication Authority is intending to introduce amendments to the Telecommunication Ordinance (Cap. 106) to ensure that both fixed network telecommunications licensees and mobile telecommunications licensees are not prevented from gaining access and providing services to the public in shielded areas such as shopping malls, underground structures and tunnels frequently used by the public; for example underground railway stations. The express intention being to provide a 'ubiquitous' mobile radio coverage to all major public areas in the Hong Kong SAR. The Corporation agrees that there is a need to provide access and coverage to mobile telecommunication licensees but has concerns with respect to how the proposed amendments will achieve that objective, the Corporation's main areas of concern are:

1. that mobile telecommunication licensees will have the right to access the Corporation's premises and build their own individual systems. The Corporation's concern arises because of the increasing complexity of systems to be provided within modern railway stations, and the relevant co-ordination between the multitude of physical elements installed within the confines of the station structure. For this reason the Corporation cannot accept an unfettered right of access to its premises for licensees to build their own individual systems. It is not unreasonable to require mobile telecommunication licensees to reach agreement on broadcasting their services using a shared antenna network infrastructure.

2. that the TA will have the right to determine and set fees charged to mobile telecommunication licensees. This proposed power is in complete contradiction of free market principles. It

assumes that the TA will have the expertise and resources to assess and mediate disputes on the fees charged for constructing, operating and maintaining mobile telecommunication networks, in particular the cost of design, construction, maintenance, operating and, indeed, that of the cost to the Corporation of lost opportunity. The consequence of which may result in the Corporation subsidising the mobile telecommunication industry.

3. that as the owner of the facility, the Corporation will not have the right to bar access to a mobile telecommunication licensee(s) who wish to provide a service which, in the opinion of the Corporation is not suitable, is impractical, is unsafe, or interferes with operational railway systems. Currently, the “Railway Paramount” clause in the Corporation’s agreement with Licensee’s protects the Corporation against such situations.

4. that all future mobile telecommunication services including voice, data and video broadcasts will have immediate right of access to the Corporation’s premises without prior approval from the Corporation.

5. that future mobile telecommunications operators will obtain either more or less favourable access terms as compared to existing mobile telecommunication licensees.

Additional Notes

Concern 1 - Each Operator being Given the Right of Access to Build a Network

As it stands today, when an underground area requires mobile telecommunication coverage e.g. West Rail, the Corporation minimises cost by providing space for one common shared antenna system. However, mobile telecommunication operators generally view the proposed installation in the same way as they would for an above ground installation. Namely, that they would prefer to install their own equipment to suit their own individual equipment for the betterment of their respective networks.

In many cases mobile telecommunication licensees do not co- operate because they have conflicting or competing objectives and development strategies which inhibit them working together. There is evidence to show that where an operator has a relationship with a property owner they have tried to prevent competing networks from gaining access. Another example of where mobile telecommunication licensees failed to co-operate to build a shared network occurred in 1993 when there were only four such licensees. All four were interested in participating in a shared solution for MTRC's stations and tunnels, yet no common agreement could be reached on a shared network. After the discussions collapsed, CSL entered into an agreement with MTRC to provide their own coverage. The remaining three mobile telecommunication licensees then lobbied OFTA to to enable them to gain access to the MTRC facility, but at no stage did they come as a united body offering a single solution to MTRC. In fact because of competitive forces within the industry, MTRC was forced to develop an integrated solution taking into account each system but without divulging sensitive information to the other mobile operators. The Corporation's own experience on the coverage on Beacon Hill and the other three East Rail tunnels was very similar to that of MTRC and it was apparent that some mobile telecommunications licensees would prefer to delay the project, whilst others were keen to proceed. One mobile radio operator did not join the Corporation's project.
With the proposed amendments to the Ordinance there will be less incentive for mobile telecommunication licensees to work together

as they are not precluded from approaching individually the Corporation to install systems to suit their own needs and budget. Under the Bill if the Corporation refuses so to deal with them individually they will have the right, under the Bill, to refer the matter to the TA and obtain gain access to the Corporation's premises by force of law, backed by penalties.

This piecemeal approach to installation and upgrading is not preferred by the Corporation as it will mean a proliferation of individual systems. So, in the worst case scenario, there would be eleven sets of antenna equipment and cables fitted into the ceilings of public areas in stations and along tunnels, and in the future when new licenses are issued by the TA there will be no space available for new antenna equipment and cable systems. This is seen as a major technical and aesthetic problem. The proposed amendment does not protect the owner of the facility from this eventuality. The current arrangement is that the Corporation, the owner, acts as the co-ordinating body by ensuring that a common radio distribution network is designed to minimise the visual intrusion of cables and antennae in public areas and that cable routes are managed in the back of house areas to conserve valuable space in equipment rooms and cable risers. Allowing each mobile radio operator to install his own system would be analogous to each flat owner installing his own TV antenna on the roof of the building. The existing arrangement is satisfactory and for the reasons stated should remain unchanged.

The Corporation is strongly of the view that as the owner of the facility it is in the best position to assure access to their facilities on an equal basis, sharing of the available space equitably, fair apportionment of the capital costs between licensees, and that installation methods and equipment standards are suitable for underground or confined spaces.

The Bill does not give the owner of the land any say over the type of equipment which the mobile telecommunication licensees may use. The Bill is so worded that once access is demanded then the operator may install equipment of his choice alone. The Corporation, for example, has certain policies on the limitation of certain emissions from non-ionised radiation from antennae. If operators were to have a free hand to install their own equipment then the Corporation would be powerless to enforce its policies

which it believes are right, proper and essential to the railway operations.

Concern 2 The Right of the Telecommunication Authority to set Fees

The proposal to amend the Bill to empower the TA to set a fee or fees ***"which is, in the opinion of the Authority (TA), fair and reasonable in all the circumstances of the case"*** is the Corporation opines entirely subjective, inequitable and not in consonance with the Hong Kong SAR policy of non-intervention in commercial matters. It is suggested that there will be numerous disputes raised to the TA and that they will not have the expertise in land related issues and the impact of such easements especially in the public service domain to assess what is a fair and reasonable fee. This is because under such a regime each licensee will derive individually different benefits by installing their system in the Corporation's premises. As such disputes will arise because licensees will maintain that the fees for construction, maintenance and access should be similar to above ground sites. Whilst on the other hand facility owners such as the Corporation, will be of the view that the right of access has a far greater ongoing cost and a value.

As stated before in this Paper the Corporation considers that the unless these financial concerns are adequately safeguarded in the Bill then the Corporation may result in subsidising the telecommunication licensees.