Consumers Should Have the Right of Unimpeded Access to Public Telecommunications and Broadcasting Services of Their Choice

10. The occupiers of a property should have non-discriminatory access to the telecommunications and broadcasting services of their choice over the developer's cabling, or over cabling of the network operators installed within the property using the developer's access facilities. The Government intends to review the Telecommunication Ordinance and incorporate suitable provisions to nullify any terms in any lease agreement, deed of mutual covenant or commercial contract that restrict or deprive the right of individual occupiers to access public telecommunications or broadcasting services of their own choice.

Developers Should Provide Access Facilities for Public Telecommunications and Broadcasting Services

11. To enable the occupiers to have direct access to the public telecommunications and broadcasting services in Hong Kong, developers should provide cabling facilities to enable the network operators to install their cables and ancillary equipment to reach their customers in the property. Some developers may choose to provide, in addition to the cabling facilities, cables and ancillary equipment to connect the occupiers of the property to the public telecommunications and broadcasting networks. In these guidelines, cabling facilities and cables and ancillary equipment as collectively known as "access facilities".

Cabling facilities

12. "Cabling facilities" are defined as facilities for the routing, housing, and mounting of cables and ancillary equipment to provide the connections between the public telecommunications and broadcasting networks and the individual premises of the occupiers within the property. These may include -

    - ducts, manholes, trenches and other types of cabling facilities within the boundary of leased land or along private roads,
    - access holes, pipes, conduits, ducts, junction boxes and other types of facilities for cable access into buildings and individual units/premises,
    - risers, ducts, conduits, cable trays, junction boxes and other types of cabling facilities within buildings,
    - accommodation for
        a. cable termination devices (e.g. main distribution frames (MDF)); and
        b. transmission and reception equipment;

        and the provision of power supplies, suitable lighting and ventilation,
    - space for the above.

Cables and Ancillary Equipment

13. The cables and ancillary equipment provided by developers provide "through connections" between the "network termination points" of the public networks and the individual premises of the property. They do not provide aggregation or switching of the telecommunications traffic originating from and/or terminating with the occupiers. The occupiers remain to be the customers of the providers of the public telecommunications and broadcasting services which are delivered to the occupiers through the developer-provided cables and ancillary equipment.

14. Under the Telecommunication Ordinance, a licence is required for the establishment or maintenance of any means of telecommunication. The Government intends to exempt from the licensing requirement any cables and ancillary equipment operated by the developers for the provision of "through connections" for the direct access to public telecommunications and broadcasting services. However, in order to implement the Government policy of ensuring that consumers have direct access to public telecommunications and broadcasting services of their choice and to prevent any anti-competitive practice in the operation of the developer-provided cables and equipment, the exemption will be subject to conditions.

Network Operators have Statutory Right of Access to Install Their Networks within Property Developments to Serve Their Customers

15. The Government has the policy to ensure that the occupiers have direct access to public telecommunications and broadcasting services of their choice. Section 14 of the Telecommunication Ordinance is to implement this policy.

16. Under section 14 of the Telecommunication Ordinance, the TA may authorize a licensee under the Ordinance to place and maintain telecommunication lines in, over or upon any land subject to the conditions stated in that section. The Government policy is to authorize a licensee with "utility" status to have access to the "common parts" of a property to install the cables and equipment necessary for the provision of service to occupiers of the property. "Common parts" means all areas within the property development except those areas which are for the exclusive use, occupation or enjoyment of an occupier.

17. The TA has already authorized WCL to install and maintain telecommunication lines in the common parts of private buildings for the provision of the subscription television broadcasting service. The TA will give similar authorization to the four FTNS operators for the provision of the fixed telecommunication network services after the licences have been issued.

18. The network operators are expected to exercise their statutory right of access reasonably, minimizing disruption and inconvenience to the developers and occupiers during the installation and operation of their networks. They are liable for full compensation for any damage suffered by the developers or occupiers in accordance with section 14(2) of the Telecommunication Ordinance.

Access Facilities Should be Shared Among Network Operators

19. As it is often impracticable to provide multiple sets of access facilities within a property development (e.g. access conduits leading into the individual premises of occupiers; wall sockets, etc.), network operators will be encouraged to share access facilities, in particular ducting, on fair commercial and technical terms and conditions.

20. Should operators be unable to reach agreement on shared use through commercial negotiation, the TA may intervene to impose terms and conditions if there is no reasonable alternative, i.e. the

facilities being the subject of sharing constitute a "bottleneck" in the provision of access to the customers. In requiring shared use, the TA will have due regard to the interests of the network customers and the operators, and to the wider public interest. The regulatory framework with regard to the sharing facilities is given under General Condition No. 31 (reproduced in Annex 1) of the FTNS Licences and section 20A of the Television Ordinance (Annex 2).

Access Facilities Should be Made Available to Network Operators on a Non-Discriminatory Basis

There should be No Exclusive Deals or Restrictive Agreements

21. No access facilities installed and maintained by a developer should be reserved by the developer for the exclusive use of a particular network operator so as to preclude other operators to have access to the occupiers of the property where those access facilities could reasonably be utilized by those other operators.

There Should be no Discriminatory Treatment

22. If a developer decides to provide only cabling facilities within the development, all network operators should be allowed access to the cabling facilities for the installation of their cables and equipment to respond to the demand of their customers in the property.

23. If a developer also provides cables and ancillary equipment, all network operators should have access to the cables and ancillary equipment to provide services to the occupiers.

There Should be no Access Charge for Cabling Facilities

24. Under the current legislation, the developers are not entitled to impose an access charge on the network operators for the use of the cabling facilities already provided as part of the property, or for the space for the installation of such cabling facilities, for the installation of cables and equipment which are reasonably necessary for the provision of service to occupiers within the property and some incidental functions. In practice, the costs for the provision of such cabling facilities are expected to be passed on to the purchasers or occupiers of the property in a similar manner as facilities for other utility services (i.e. electricity, water and gas) are provided. The Government considers that this approach is appropriate given the benefits the occupiers of the property, rather than the other consumers outside the property, derive from the use of the cabling facilities within that particular property, and accordingly, the Government will maintain this approach in the new multi-operator environment.

Access Should be Granted for Rollout of Networks

25. Although the three new FTNS operators (see paragraph 5) are not expected to commence service until July 1995, they need to plan and install their networks outside and within property developments well before the service commencement date. The access facilities provided in accordance with these guidelines should therefore be made available to the three new operators as well as the other two existing ones as and when such facilities become available.

Cables and Ancillary Equipment Operated by Developers should be Interconnected with Public Networks on a Non-Discriminatory Basis

26. The cables and ancillary equipment operated by developers should be open for interconnection with the public networks on a non-discriminatory basis so that occupiers of the property can have access to the public telecommunications and broadcasting services of their choice. Under section 36A of the Telecommunication Ordinance, the TA has powers to determine the terms and conditions, including technical and financial terms and conditions, for the interconnection between any cables and ancillary equipment operated by the developers and the public telecommunications and broadcasting networks outside the property.

27. The terms and conditions for the interconnection with cables and ancillary equipment provided by the developers should first be negotiated between the network operators and the developers. If a commercial agreement cannot be reached within a reasonable period, the TA may make a determination of the terms and conditions of the interconnection under section 36A of the Telecommunication Ordinance. If the TA is called upon to make a determination under section 36A of the Telecommunication Ordinance, he will determine the financial terms based on the recovery of all relevant costs (including an appropriate cost of capital) attributable to the interconnection.

28. For the reason stated in paragraph 24, developers are encouraged to adopt the same arrangement as for cabling facilities and pass the costs for the provision of cables and ancillary equipment on to the purchasers or occupiers of the property in a similar manner as facilities for other utility services (i.e. electricity, water and gas) are provided.

The Developers Should Consult and Coordinate with the Network Operators in the Provision of Access Facilities

Planning Adequate Access Facilities

29. The access facilities should meet certain technical standards in terms of size, capacity, technical parameters, quality and safety standards. Compliance with these technical standards will be one of the conditions for the supply of the public telecommunications and broadcasting services to the property.

30. The TA will develop and promulgate a code of practice to establish the technical standards for the access facilities in consultation with the industry. This code of practice will specify as a design requirement for new buildings certain minimum requirements for access facilities within each new building, which will be related to the size of the building and the anticipated number of occupiers which will need to be served by the network operators. While these design requirements should be sufficient in most building environments, the special character of a particular development may require more or different access facilities, and accordingly there should be a process for consultation between the developer and the network operators for each new development.

Coordination for New Buildings

31. As part of the planning of a property development, the developer should notify all network operators of the development and ask the operators to provide their requirements for access facilities. The developer should provide copies of the relevant plans or drawings to the network operators as appropriate. The network operators will coordinate the requirements among themselves and provide the developer with the consolidated requirements for the access facilities. The developers should discuss and agree with the network operators the requirements for access facilities and then incorporate the requirements into the design.

32. If agreement on access facilities cannot be reached on a commercial basis after a reasonable period of active negotiation, the parties involved may seek the assistance of OFTA.

33. As stated in paragraphs 15 to 18, the network operators have statutory right of access. Therefore if developer-provided access facilities prove inadequate, the network operators may exercise their statutory right of access to install their own cabling facilities, cables and ancillary equipment directly to the customers thereby bypassing the developer-provided cables and ancillary equipment.

Coordination for Existing Buildings

34. All network operators have a non-discriminatory right of access to existing cabling facilities in a property and any cables and ancillary equipment owned or operated by the developer. The owners or managers of existing buildings should, where practicable, allow all network operators to have access to existing access facilities of the property on a non-discriminatory basis.

35. Should the existing access facilities be inadequate to meet the requirements of the network operators, upon receipt of any request from network operators for the installation of additional access facilities, the owners or managers should consider whether similar requests from other network operators could be entertained in the future. If there are constraints with allowing other network operators to have separate access facilities, the owners or managers should ask the requesting network operator to coordinate its requirements with the other network operators. In case of difficulty, the assistance of the OFTA may be sought.

36. Under section 14 of the Telecommunication Ordinance, the owners, developers or managers of existing buildings are not entitled to charge for the space to be provided for the additional access facilities. If the access facilities provided by the owners, developers or managers are not adequate to serve the occupiers in the building, the network operators may also install their own access facilities in exercise of their right of access under section 14 of the Telecommunication Ordinance. The network operators are required to compensate the landowners for any damage caused in the installation or operation of the access facilities.

Enquiries and Contacts

37. The TA, supported by the Office of the Telecommunications Authority (OFTA), is responsible for the regulation of telecommunications services and implementation of the telecommunications policy explained later in these guidelines. Any question concerning these guidelines may be directed to:

Telecommunications Engineer (Advisory and Support)
Office of the Telecommunications Authority
29/F Wu Chung House
213, Queen's Road East
Wanchai, Hong Kong

Telephone: 2961 6632
Fax: 2803 5113

38. The contacts in the network operators concerning access facilities are given in Annex 3.

18 May 1995

To Annex

Office of the
Telecommunications Authority

Annex 1

General Condition 31 of FTNS Licence

Provision, use and sharing of certain facilities

31. (1) Where the Authority reasonably forms the opinion that it is in the public interest that certain types of facilities ought to be provided, used or shared by more than one licensee or the Hong Kong Telephone Company Limited, he may issue directions requiring the licensee to co-ordinate and co-operate with any other licensee, the Hong Kong Telephone Company Limited or any other authorized person in respect of such provision, use or sharing of any such facility. The licensee shall comply with such directions. Prior to forming any opinion and issuing any direction under this paragraph, the Authority will provide a reasonable opportunity for the licensee, the Hong Kong Telephone Company Limited and any other interested parties to make representations on the matter to the Authority.

(2) In considering the public interest pursuant to paragraph (1), the Authority will take into account -

a. where the facility is a bottleneck;

b. whether the facility can be reasonably duplicated or substituted;

c. the existence of technical alternatives for the facility;

d. whether the facility is critical to the supply of service by the licensees;

e. whether the facility has available capacity having regard to the current and reasonable future needs of the licensee to which the facility belongs;

whether joint use of the facility encourages the effective and efficient use of telecommunications infrastructure; and

f. the costs, time penalties and inconvenience to the licensees and the public of the alternatives to the shared provision and use of the facility.

(3) Where a fixed telecommunication network service licensee, the Hong Kong Telephone Company Limited or another person authorized by the Authority reasonably requests to share a facility, the licensee shall endeavour to come to an agreement with the requesting party on the terms and conditions, including but not limited to providing for fair compensation to the licensee for the provision, use or sharing of any such facility. If an agreement cannot be reached within a reasonable time and the Authority requires sharing pursuant to paragraph (1), the terms and conditions shall be determined by the Authority.

(4) For the purposes of this General Condition, "facility" means -

a. ducts, pits, tunnels and manholes;

a. ducts, pits, tunnels and manholes;

b. towers, masts, poles and antennae;

c. land, buildings and ancillary equipment at sites on which radiocommunications facilities have been established;

d. reasonable space within the licensee's, or the Hong Kong Telephone Company Limited's, exchange buildings or other sites for the purposes of locating equipment of another licensee required to establish interconnection between the licensee's and that other licensee's or the Hong Kong Telephone Company Limited's network at that exchange or site;

e. other telecommunication or ancillary installations, including the in-building risers, cable trays and cable entry points into buildings, reasonably necessary for the efficient provision and establishment of fixed telecommunication networks.

Annex 2

Section 20A of Television Ordinance

1. The Telecommunications Authority may direct any licensee -

   a. to provide such transmission equipment, standby generators, towers, air-conditioning and fire-fighting equipment, buildings, ducts and other facilities (hereinafter referred to as "facilities") as the Telecommunications Authority may specify;

   b. in such manner as may be specified by the Telecommunications Authority -

      i. to co-ordinate; and

      ii. to co-operate with any other licensee or any other person who establishes or operates any means of telecommunication as may be specified by the Telecommunications Authority in,

   the sharing of any of the facilities provided, regardless of whether they have been provided, or are intended to be provided, by the licensee, or any other licensee or such other person referred to in subparagraph (ii).

2. A licensee may be required -

   a. by a direction given by the Telecommunications Authority under sub-section (1); or

   b. by a term or condition inserted in its licence for that purpose, to share the expenses incurred in connection with the planning, development, installation, testing, operation, maintenance and removal of any of the shared facilities.

CERTIFICATE OF SERVICE

I, Gunnar D. Halley, do hereby certify that on this 11th day of August, 1997, copies of the foregoing "Comments of Teligent, L.L.C." were delivered by hand to the following parties:

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