

11 Tishre 5763
September 17, 2002

Mr. Ran Kroll
Committee Chairman

Mr. Uri Ulnick, Adv.
Director-General, The Ministry of
Communications

Members of the
Committee

Dear Sir / Madam,

Implementation of the Report of the Committee for Formulation of Policy and Rules for Opening Fixed-Line Communications to Competition

Having studied, examined and considered the recommendations of the Committee for Formulation of Policy and Rules for Opening Fixed-Line Communications to Competition (hereinafter: the Committee), I am adopting the recommendations of the Committee; the policy of opening the market to competition on the pattern proposed by the Committee is a correct policy that may be expected to lead to development of technological innovation and a reduction of Government involvement in the communications industry. The Report of the Committee will constitute the guiding policy document in the field of fixed-line communications, subject to a number of changes and emphases to be detailed below. The Ministry of Communications will prepare for implementation of those recommendations that can be put into effect shortly. Similarly, the requisite preparatory work has begun for changes of licenses, changes of subsidiary legislation and changes of main legislation connected to the implementation of the other recommendations, as these are required. Following are particulars of the emphases and changes in the recommendations of the Committee:

1. Infrastructure, relay and data communications services

Recommendation of the Committee: "The Committee recommends that the infrastructure, relay and data communications services be opened up for immediate competition by granting special licenses to new operators and expansion of the existing special relay licenses, to the extent possible (inter alia, by expansion of the definition of customer in such a way that it will include end users). In this way, operators of these services will be exempt from the requirement to provide their services in defined demand areas. The Committee recommends that the Ministry of Communications act for amendment of the legislation, to the extent required, so as to ensure that these services be opened up to competition."

Decision of the Minister of Communications:

Holders of special licenses will also be able to provide relay and data communications services, of categories that are not by their nature designated for the general population, to end users; access facilities to Internet Suppliers for end users will not be included as part of the special licenses but will be deemed as part of the telephony or data services provided as part of a general license (apart from exceptions which the Ministry of Communications will determine for this purpose).

The licensing arrangements in the sphere of MPA as concerns the cable companies will reflect the decisions of the Committee regarding the scope of the universal service to be required of them.

If the holders of special licenses provide relay or data communications services of significant amount and the same service is also provided by a general license holder, and the said general license holder is charged royalties with respect to his revenues from this service, I recommend that the royalties regulations be adapted such that the general license holder, as the special license holder, will not be charged royalties with respect to his revenues from the said service. In this respect and also in connection with the recommendation of the Committee for a reduction in the rate of the royalties applying to operators in the communications field, I shall apply to the Minister of Finance.

Explanatory notes: According to the recommendations of the Committee, the fixed-line market is to be fully opened to competition in all its strata, including telephony, without a demand areas requirement, in August 2004 but infrastructure, relay and data communications services are to be opened to competition at this juncture without a demand areas requirement. The Committee further recommended that the cable company be bound to provide a universal service with Internet access and telephony services. Considering the said recommendation and that Internet access and telephony services are intended for the general population, these services will be provided as part of a general license everywhere and to everyone. Similarly, regarding relay and data communications services of categories that by their nature are not intended for the general population (excepting Internet access services, as stated), the licensing arrangements of the cable companies will be adapted such that, with respect to these services, no obligation of demand areas and service for all shall apply. Regarding royalties, since the holders of special licenses are not liable for payment of royalties and in order not to discriminate against the holders of general licenses (including Bezeq Co. and the mobile phone network operators), it is recommended that such royalties regulations be changed in this matter.

2. Demand Areas

Recommendation of the Committee: “The Committee recommends revoking the obligation to provide a service in defined demand areas. The cancellation shall apply to new inland fixed-line operators (including existing operators, mobile phone network operators and others) who seek to act in the field of fixed-line communications services. The operators may provide infrastructure, relay, data communications and telephony services anywhere and without a service for all requirement, subject to restrictions, such as: allocation of frequencies, allocation of numbers and capital threshold conditions (example: a minimal equity capital, licensing fee and financial guarantee for compliance with the terms of the license) which will ensure that significant operators enter the market.

The Ministry of Communications will act for change to the legislation and regulations as required. It will be determined in these changes that revocation of the said demand areas requirement will come into effect on August 1, 2004.”

Decision of the Minister of Communications: On August 1, 2003, a test station will be determined when the Minister of Communications will examine the progress of the actual deployment and the preparations for supply of telephony services by the cable company. If, in the said examination, it should turn out that the rate of actual deployment and the preparations of the cable company for supply of widely-deployed telephony services answers the provisions of the general license for supply of telephony services and the said deployment is at least in accordance with the business and engineering plans that the cable company submitted with its application for a license, extension of the date for revocation of the demand areas requirement to August 1, 2005, will be considered; if, in the examination, it should turn out that the rate of actual deployment does not sit well with the provisions of the license or with the business plan or engineering plan or the general readiness for supply of the services country wide, as stated, the date for revocation of the demand areas requirement will be shortened to September 1, 2003. Considering that the Minister is adopting the recommendation of the Committee for postponement of revocation of the demand areas for the purpose of the supply of telephony services by the said adjustments, mobile phone network operators will not be permitted to make direct fixed-line connections between a customer's switchboard and the mobile phone networks.

3. Structural Separation

Recommendation of the committee:

1. "The obligation of (corporate and managerial) structural separation shall apply only to a body that operates as a monopoly in the sphere of telecommunications, this obligation being required in order to ensure the existence of competition.
2. The obligation of structural separation shall not apply to new operators in the inland fixed-line communications market. Nevertheless, the Ministry of Communications may demand corporate separation or accounting separation from a substantive operator whose activity could prejudice competition.
3. At this time, the obligation of structural separation which is imposed on the Bezeq Co. should continue to be upheld, excepting cancellation of the restrictions associated with participation of office-holders on the boards of directors of companies in the Bezeq Group.
4. The Ministry of Communications will consider in the future granting further concessions in the obligation of structural separation applying to companies in the Bezeq Group, in accordance with development of the competition at the various levels of the communications market. For example, it is proposed that cancellation of the obligation of structural separation between Bezeq and Bezeqkal be considered, when significant competition develops in fixed-line telephony services in the business sector. As to Bezeq International, it is proposed that the obligation of

structural separation be removed with the entry of additional operators from the sphere of fixed-line or mobile telephony, after expansion of the competition in the field of international communications, at the beginning of 2004 (as stated in the recommendation of the Committee on this matter, below). It is also proposed that cancellation of the obligation of structural separation applying to Bezeq and to the cable company in the sphere of Internet services (ISP) be considered at the beginning of 2004.

5. Should it be decided, as stated, to make concessions to Bezeq Co., the obligation of structural separation will be converted into an obligation of corporative or accounting separation that will ensure complete transparency in the reports on separate activity sectors in the various fields.
6. Should it be decided to remove the structural separation applying to Bezeq Co. in the international arena, the Ministry will examine the need for setting up rules that will ensure that confidential commercial information regarding other competing customers in the international market, which is available to Bezeq Co. by virtue of its activity in the fixed-line inland market, not reach those dealing with the field of international calls in the Bezeq Group....”.

Decision of the Minister of Communications: The obligation of corporative separation will be required of substantive operators including substantive operators of mobile phone networks who seek to act in the fixed-line inland sphere. In the future, if concessions are decided upon regarding structural separation in Bezeq Co. and in the cable company, a concession will also be considered with respect to the corporative separation in the mobile phone network companies; concessions can also be considered regarding the scope of the structural separation between Bezeq Co., and Bezeq International Co., in all matters of the supply of international telecommunications services, prior to January 2004.

Explanatory notes: The activity of each of the substantive mobile phone network operators exceeds that of the cable company. The latter is required by the Communications Law to separate its activities in the sphere of broadcasts and those in the fixed-line sphere. The Minister of Communications is of the opinion that, for the purpose of ensuring competition, corporative separation is also required of the substantive mobile phone network operators and other substantive operators.

4. **Funding of the Universal Service**

Decision of the Minister of Communications: The Report of the Committee does not refer to the issue of funding of the universal service. The conditions enumerated in Section 14f (c) of the Communications Law being upheld, the Minister of Communications will use his discretion according to the power

accorded him in the said Section 14f (c)¹. Similarly, the Minister will act for amendment of Section 14(f) (c), as specified below:

- a. The Minister may require a special license holder who supplies fixed-line communications facilities to participate in funding of the universal service.
- b. Section 14f (c) (1) (b) will be altered as follows: “There are areas in which a service in the basket of services is given to the general public by one or two general license holders.”

Explanatory notes: Bezeq Co. and the cable company are required, according to the recommendations of the Committee, to provide a basket of services with universal deployment. Opening up to competition without the obligation of demand areas, as the Committee has recommended, necessitates, in the opinion of the Minister, technical adjustments in Section 14f (c) of the Communications Law that will permit establishment of a fund, should such be necessary, to finance the universal service to be provided by the two companies, Bezeq and cables, in such a way that every competitor will participate in its funding. Amendment A permits special license holders who supply infrastructure, relay and data communications services, who compete with these services of Bezeq Co., to be required to participate in financing the fund. Amendment B also permits operation of the fund for the purpose of telephony and Internet access services since, according to the current text of the Section in the Law, it is within the power of the Minister to operate the fund only after he has become convinced, inter alia, that there are areas in which a service from the basket of services is given to the general public by **just one** general license holder. With respect to telephony and Internet access services, Bezeq Co., and the cable company are required to supply a universal service and therefore the Section in

¹ According to Section 14f (c) (1) of the Communications Law:

“(1) If the Minister is convinced that all the following exist:

- (a) A genuine competition has been established in provision of a service that is contained in the basket of services for the general public;
- (b) Areas exist in which a service in the basket of services is given to the general public by only one general license holder;
- (c) The cost of providing the said service by that said general license holder country wide exceeds the benefit deriving to it from provision of that service and that the intervention of the Minister is required;

He may determine that another license holder who provides a service not country wide should participate in paying for the cost of providing the service in the said areas;

- (2) If the Minister has so determined, he may determine provisions regarding the nature of realization of the participation in the funding and its amount;
- (3) A determination according to this sub-section requires the consent of the Minister of Finance and the approval of the Finance Committee of the Knesset.”

its present format will not exist. Hence, for operation of the fund, an amendment of the Section is necessary by decision of the Minister.

5. Utilization of Infrastructures of Bodies Owning Infrastructures

Recommendation of the Committee:

1. "Bodies owning infrastructures, such as the Electricity Corporation, Israel Rail, Mekorot, Cross-Israel Road, Oil Infrastructures and others will be allowed to supply communications services or to lease some of their infrastructures to license holders in the communications industry.
2. If the infrastructure-owning body is a monopoly in another sphere (other than communications), it will be required to maintain (corporate and managerial) structural separation between its activity in the sphere of communications and its other activities."

Decision of the Minister of Communications: For a combination of existing infrastructures (the infrastructure of the Electricity corporation, the infrastructure of the railways, etc.), development of competition in the inland communications market is very important, and there is, therefore, place to permit bodies holding these infrastructures to lease them to license holders in the communications market, without a grant of exclusivity. There is, however, no place to determine an all-encompassing rule according to which such infrastructure owners will be permitted to act as independent operators of communications. In due course there will be room to look at each case on its merits, with the guiding considerations being, inter alia, the structure of the division of the infrastructure owner seeking to enter the sphere of communications and the holdings therein.

6. Exclusivity of the International Communications Companies

Recommendation of the Committee:

1. "The Committee recommends extending the period of exclusivity of the international communications companies to January 1, 2004, subject to the rates for international communications not being raised in real terms during the extension period.
2. The Ministry of Communications will prepare for the granting of additional licenses by the end of the third quarter of 2003, such that provision of the service by new operators will be possible as of January 1, 2004."

Decision of the Minister of Communications: the Ministry of Communications will prepare for the granting of additional licenses by the end of the third quarter of 2003, such that provision of the service by new operators will be possible as of January 1, 2004.

7. **Privatization of Bezeq Co.**

Should the privatization of Bezeq Co. not be put into effect, I recommend that the various governmental bodies consider a reduction of the governmental supervision over the modus operandi of Bezeq Co., as concerns the restrictions applying to it as a government corporation.

I should like to express my thanks and great appreciation for the work of the Committee members.

Sincerely,

Reuven (Rubi) Rivlin
Minister of Communications

Cc:

Mr. Silvan Shalom, Minister of Finance

Mr. Alex Goldencorn, Acting Director-General, Government Corporations Authority

Adv. Davida Lachman Messer, Deputy Attorney-General

Mr. Moshe Galili, Deputy Director-General, Ministry of Communications

Dr. Yizhar Tal, Legal Advisor, Ministry of Communications