



## Telecommunications Newsletter Switzerland

# Swisscom Announces a Reduction of the Interconnection Charges by 5% for the Year 2006

On October 11, 2005, Swisscom AG, the former Swiss monopolist, announced to reduce the interconnection charges for the year 2006 by roughly 5%. According to the Swisscom competitor Sunrise, the reduction announced by Swisscom appears to take into account only the cost savings achieved through the optimization of the processes and networks by Swisscom. According to Sunrise, these interconnection charges requested by Swisscom are still in excess of LRIC.

No final decision has yet been rendered by the Federal Supreme Court in the interconnection disputes which were launched already in the beginning of 2000 by TDC Switzerland AG and MCI WorldCom AG against Swisscom. The Federal Communication Commission ("ComCom") has, after a proceeding which lasted for more than three years, come down with a decision on November 6, 2003. In its decision the ComCom concluded that Swisscom has overstated the interconnection charges by roughly 30% and ordered Swisscom to reduce the interconnection charges retroactively. Swisscom filed an appeal against the ComCom decision and the Federal Supreme Court has remanded the case back to the ComCom for procedural reasons. By decision of July 2005, the ComCom reaffirmed its decision of November 6, 2003. Swisscom again filed an appeal which is now pending at the Federal Supreme Court.

Switzerland has not adopted the system of *ex ante* regulation. Under the Swiss legal framework for interconnection procedures and disputes, the parties seeking interconnection will first have to engage in interconnection negotiations, prior to filing a request for interconnection with the ComCom. Only if no agreement can be reached within a period of three months from the commencement of the interconnection negotiations, a request for interconnection can be filed with the ComCom (Art. 11 para. 3 Federal Telecommunication Act).

A ruling of the ComCom or the Federal Supreme Court in such matter is binding only upon the parties to the proceedings. Third parties who are not privy to the interconnection proceedings may not directly rely upon the decision to request also a reduction of their charges which they may have overpaid in the past. However, it cannot be excluded that the parties who were not privy to the interconnection proceedings may nevertheless seek a reimbursement from Swisscom for the charges they may have overpaid in the past. Such a claim could be based upon unjust enrichment or even intentional deceit, should Swisscom have misled the interconnection parties that the charges asked for in the past were in fact LRIC. Each case will have to be looked upon individually. In particular, it will have to be determined whether the applicable statute of limitation has not yet lapsed.

The parties who do not wish to accept the interconnection charges proposed by Swisscom for the year 2006 will have to commence interconnection negotiations with Swisscom and, if no agreement is reached, file a request for interconnection with the ComCom.

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