



## Telecommunications Newsletter Switzerland

# Disagreement on the unbundling of the local loop between Swiss National Council and Swiss Council of States destroys the hopes for a swift resolution of this key issue in the pending revision of the Swiss Telecommunication Act

The debate in the Swiss National Council on September 22, 2005, revealed a stark discrepancy between the views of the Swiss National Council and the Swiss Council of States in the ever present unbundling debate.

Back in June 2005, the Swiss Council of States approved in its spring session a full unbundling which would have required the incumbent operator to fully unbundle the local loop and to grant bitstream-access, interconnection as well as access to leased lines and cable ducts at cost oriented prices. In order to prevent the new market entrants from having a "free ride", the key argument raised by the opponents and to create an investment incentive new market entrants requesting bitstream-access would have been required to invest Swiss-wide in their own infrastructure after a period of three years in order to avoid sanctions.

In the hearing of September 22, 2005, the Swiss National Council slashed the proposal made by the Swiss Council of States by a vast majority and favours a more restrictive unbundling limited to the copper pair and for bitstream-access for a period of two years. The Swiss National Council was concerned that with the opening of the local loop, in particular bitstream-access, new market entrants could benefit from a free ride to the detriment of the incumbent operator and of future investment in the regions outside the big cities.

The proposal by the Swiss Minister for Transportation and Communications, Moritz Leuenberger, to save the revision of the Swiss Law on Telecommunications

by a compromise which would have restricted bitstream-access to a period of three years did not find the support of the majority of the Swiss National Council.

The hopes that a clear legal basis for the unbundling of the local loop would be enacted soon have been destroyed. The disagreement between the Swiss National Council and the Swiss Council of States on this critical issue puts the entire revision of the Swiss Telecommunication Act in jeopardy. It remains to be seen, whether or not an acceptable compromise can still be found.

It must be noted that neither the full unbundling nor the bitstream-access has a sufficient legal basis in the law as in effect today. The Federal Supreme Court held that the law as in force today does not provide for a sufficient legal basis to require the incumbent operator to unbundle the local loop and that the introduction of the unbundling into Art 34 a bis, ter and quinquies of the Telecommunication Ordinance by the Federal Council on March 7, 2003, was without sufficient legal basis

October 7, 2005

David Känzig  
For further information, please contact:  
David Känzig ([d.kaenzig@thouvenin.com](mailto:d.kaenzig@thouvenin.com))