



## Telecommunication Newsletter Switzerland

# Communication Commission Orders Swisscom to Offer Sub-loop Unbundling

By interim decision of March 19, 2008, the Swiss Communication Commission (ComCom) ordered Swisscom (the former Swiss monopolist) to make an offer for sub-loop unbundling by July 1, 2008.

Swisscom has so far denied its obligation to make an offer for sub-loop unbundling, arguing that the Swiss Telecommunication Act provided no legal basis for a sub-loop unbundling. Consequently, upon enactment of the revised Swiss Telecommunication Act in April last year, Swisscom refused to make a corresponding offer.

In connection with proceedings initiated by an alternative provider for the determination of the terms and conditions for the unbundling (including the unbundling of the sub-loop), after the negotiations with Swisscom have failed, the ComCom ordered Swisscom by interim decision to submit an offer for sub-loop unbundling by July 1, 2008.

In its reasoning the ComCom rejected the arguments raised by Swisscom, namely that the ComCom was not competent to issue an interim order against Swisscom without a party's explicit request and that there was no sufficient legal basis in the Swiss Telecommunication Act for a sub-loop unbundling.

The ComCom held that it was competent to order interim measures even without a party's explicit request. The ComCom argued that Art. 71 of the Swiss Telecommunication Ordinance provided for a clear legal basis. In addition, the authority to order interim measures without a party's explicit request is a standard in administrative proceedings.

Furthermore, the ComCom reasoned that the sub-loop unbundling is not explicitly mentioned in the Swiss Telecommunication Act, but likewise contains no restrictions as to the point of presence where the full unbundling is to be offered. The ComCom concluded therefore that the sub-loop unbundling forms part of the full unbundling and that it was not

the intention of the legislator to restrict the full unbundling to the local switch.

The decision of the ComCom is not yet final and is subject to appeal. Thouvenin rechtsanwälte acts as counsel to the alternative provider in these proceedings.

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