

The Gazette  **of Pakistan**

**EXTRAORDINARY
PUBLISHED BY AUTHORITY**

ISLAMABAD, WEDNESDAY, MARCH 1, 2006

PART I

Acts, Ordinances, President's Orders and Regulations

SENATE SECRETARIAT

Islamabad, the 1st March, 2006

F. No. 9(18)/2005-Legis.—The following Act of Majlis-e-Shoora (Parliament) received the assent of the President on 22nd February, 2006, is hereby published for general information:—

ACT NO. II OF 2006

an Act further to amend the Pakistan Telecommunication (Re-organisation) Act, 1996

WHEREAS it is expedient further to amend the Pakistan Telecommunication (Re-organization) Act, 1996 (XVII of 1996) for the purposes hereinafter appearing;

It is hereby enacted as follows:—

1. Short title and commencement.—(1) This Act may be called the Pakistan Telecommunication (Re-organization) (Amendment) Act, 2006.

(29)

(2) It shall come into force at once.

2. **Amendment of section 2, Act XVII of 1996.**—In the Pakistan Telecommunication (Re-organization) Act, 1996 (XVII of 1996), hereinafter referred to as the said Act, in section 2,—

(a) for clause (a) the following shall be substituted, namely:—

“(a) “Access Promotion Contribution (APC)” means the payments made by LDI Licensees to LL Licensees or to the Universal Service Fund pursuant to the rules made under this Act;”;

(b) after clause (a), substituted as aforesaid, the following new clauses shall be inserted, namely:—

“(ab) “appropriate Government” means—

(i) in relation to a right of way owned or managed by any person, local authority within its territory, corporation or other public bodies created by or under any provincial law, the respective Provincial Government; and

(ii) in relation to any, right of way owned or managed by any person, local authority not within any province or corporations or other bodies created by or under any Federal law, the Federal Government;

(ac) “Approved Crypto Apparatus” means the hardware or software or combination of both, or the ciphering facilities, used for conversion of plain text into cypher text and *vice versa* and of which Federal Government has granted approval and the Electronic Certification Accreditation Council established under section 18 of the Electronic Transaction Ordinance, 2002 (LI of 2002), has granted accreditation certificate for its use for private sector;

(ad) “Authority” means the Pakistan Telecommunication Authority established under section 3;”;

(c) after clause (f), the following new clauses shall be inserted, namely:—

“(fa) “Federal Government” means the Federal Government in the Ministry of Information Technology and Telecommunication

Division, unless for any specific purpose specified otherwise by notification in the official Gazette notification or amendment in the Rules of Business, 1973;”;

(d) after clause (m), the following new clauses shall be inserted, namely:—

“(ma) “Private Right of Way” means the right of way which is owned, managed, maintained or repaired by anyone other than a public authority;

(mb) “Public Authority”, in relation to right of way, means the local authority, corporation, provincial or Federal Government or any other public body which owns that right of way or which is responsible for its maintenance, repair or management;

(mc) “Public Right of Way” means the right of way which is owned, managed, maintained or repaired by a public authority;”;

(e) in clause (p),—

(i) for the word “telegraphy” the word “intelligence” shall be substituted; and

(ii) after the word “and” the words “could be” shall be inserted;

(f) after clause (q), the following new clauses shall be inserted, namely:—

“(qa) “R&D Fund” means the Research and Development Fund established under sub-section (1) of section 33C;

(qb) “Right of Way” means a right belonging to any person or public authority to pass over land or property of other person to provide telecom license services;

(qc) “scarce resources” means radio frequency spectrum, right of way and numbering;”;

(g) after clause (x), the following new clause shall be inserted, namely:—

“(xa) “USF” means the Universal Service Fund established under sub-section (1) of section 33A;”.

3. **Amendment of section 3, Act XVII of 1996.**—In the said Act, in section 3,—

- (a) in sub-section (2), for the full stop at the end a colon shall be substituted and thereafter the following proviso shall be added, namely:—

“Provided that the Federal Government may increase the number of members of the Authority and prescribe their qualifications and mode of appointment.”

- (b) for sub-section (7) the following shall be substituted, namely:—

“(7) The member of the Authority shall be paid the salary and shall be entitled to the privileges of an officer in MP-II and the Chairman shall be paid the salary and be entitled to the privileges of an officer in MP-I.”;

- (c) for sub-section (8) the following shall be substituted, namely:—

“(8) The powers of the Authority in the matters relating to its administration and the staff of the Authority shall be exercised by the Chairman, including those mentioned in section 10, in accordance with regulations made by the Authority pursuant to sub-section (3) of section 10 and other relevant regulations made by the Authority from time to time.”; and

- (d) for sub-section (10) the following shall be substituted, namely:—

“(10) Notwithstanding anything contained in sub-section (8), no act, proceeding or any decision of the Authority shall be invalid by reason only of the existence of a vacancy in, or a defect in the constitution of, the Authority.”

4. **Amendment of section 4, Act XVII of 1996.**—In the said Act, in section 4, in sub-section (1),—

- (a) in clause (g), the word “and” occurring at the end shall be omitted;
- (b) in clause (h), for full stop at the end, a semicolon shall be substituted; and
- (c) after clause (h), following new clauses shall be added, namely:—

“(i) regulate arrangements amongst telecommunication service providers of sharing their revenue derived from provision of telecommunication service;

- (j) ensure effective compliance by licensees with Universal Service Obligations;
- (k) regulate Access Promotion Contribution;
- (l) settle disputes between licensees; and
- (m) regulate competition in the telecommunication sector and protect consumer rights.”.

5. **Amendment of section 5, Act XVII of 1996.**—In the said Act, in section 5, in sub-section (2),—

- (a) in clause (n), the word “and” at the end shall be omitted;
- (b) in clause (o), for the full stop at the end, a semicolon shall be substituted; and
- (c) after clause (o), the following new clauses shall be added, namely:—
 - “(p) levy fee and other charges at such rates and in respect of such services as may be fixed by it from time to time not exceeding the limits as specified by a Committee of the Cabinet;
 - (q) regulate the allocation of revenues from international telephony service, other than revenues from leased circuits, between interconnecting licensees that handle international telephony service and between any such licensee; and
 - (r) if it considers it appropriate to do so, undertake an auction, on such terms and conditions as the Authority may determine from time to time, or other open and transparent competitive process to determine eligibility for licensing the Board’s allocated or assigned specific portions of the radio frequency spectrum.”.

6. **Amendment of section 6, Act XVII of 1996.**—In the said Act, in section 6, for clause (e), the following shall be substituted, namely:—

- “(e) fair competition in the telecommunication sector exists and is maintained; and”

7. **Amendment of section 7, Act XVII of 1996.**—In the said Act, in section 7,—

(a) in sub-section (1),—

(i) after the words “High Court”, occurring for first time, the words and comma “or to any other Tribunal established by the Federal Government for the purpose.” shall be inserted; and

(ii) after the word “Court”, occurring twice, the words and comma “or the Tribunal,” shall be inserted; and

(b) sub-section (3) shall be omitted.

8. **Amendment of section 8, Act XVII of 1996.**—In the said Act, in section 8,—

(a) in sub-section (2),—

(i) in clause (a), the word “and” at the end, shall be omitted;

(ii) after clause (a), the following new clause shall be inserted, namely:—

“(aa) framework for telecommunication sector development and scarce resources;” and

(b) after sub-section (2), amended as aforesaid, the following new sub-section shall be inserted, namely:—

“(2A) Notwithstanding anything contained in sub-section (2), the Cabinet, or any committee authorized by the Cabinet, may issue any policy directive on any matter related to telecommunication sector, not inconsistent with the provisions of this Act, and such directives shall be binding on the Authority.”

9. **Amendment of section 9, Act XVII of 1996.**—In the said Act, for section 9, the following shall be substituted, namely:—

“9. **Delegation of powers** .—The Authority may, by general or special order, delegate any of its powers, functions or duties as it may deem

fit, from time to time, to the Chairman, member, or any of its officers subject to such conditions as it may deem fit to impose:

Provided that the delegation of such powers, functions or duties shall not include the powers, functions or duties under clauses (a), (d), (e), (f), (h), (n) and (o) of section 5."

10. **Amendment of section 10, Act XVII of 1996.**—In the said Act, in section 10, in sub-section (1), the words and comma "within the sanctioned strength," shall be omitted.

11. **Amendment of section 12, Act XVII of 1996.**—In the said Act, in section 12, in sub-section (1), for the word "approval" at the end, the word "information" shall be substituted.

12. **Amendment of section 21, Act XVII of 1996.**—In the said Act, in section 21,—

(a) in sub-section (3),—

(i) the words and comma "Except for the licence granted to the Company for basic telephone service," shall be omitted; and

(ii) for the word "no" the word "No" shall be substituted;

(b) in sub-section (4),—

(i) in clause (k), the word "and" at the end shall be omitted;

(ii) in clause (l) for the full stop at the end, a semicolon shall be substituted; and

(iii) after clause (l), amended as aforesaid, the following new clauses shall be added, namely:—

"(m) conditions requiring the licensee to contribute to Research and Development Fund and Universal Service Fund; and

(n) conditions as to the security provided by a licensee to support the fulfilment of the licensee's obligations in the licence, and the realization on such security by the Authority."

13. **Amendment of section 22, Act XVII of 1996.**—In the said Act, in section 22,—

- (a) in sub-section (1), for the colon a full stop shall be substituted and the proviso shall be omitted; and
- (b) for sub-section (2) the following shall be substituted, namely:—

“(2) If the Authority and a licensee cannot agree to modification proposed by the Authority to a licence condition, the Authority and the licensee shall resolve their difference or dispute through consultation and negotiation. If the licensee and the Authority fail to amicably resolve such difference or dispute, either party may make an application to the High Court or a Tribunal established by the Federal Government for the purpose and the High Court or, as the case may be, the Tribunal shall exercise exclusive jurisdiction to adjudicate and settle all matters connected therewith and in exercise of such jurisdiction the High Court or the Tribunal as the case may be shall follow the procedure, as nearly as possible, as provided in the Code of Civil Procedure, 1908 (Act V of 1908):

Provided that no such amendment shall vary the tenure or scope of a licence.”; and

- (c) after sub-section (2), substituted as aforesaid, the following new sub-section shall be added, namely:—

“(3) After the expiry of the initial or renewed term, the licence may be renewed on terms and conditions consistent with the policy directive, if any, of the Federal Government at the relevant time.”.

14. **Amendment of section 23, Act XVII of 1996.**—In the said Act, in section 23, after the word “Authority”, wherever occurring, the words “or any of its officers not below the rank of Director” shall be inserted.

15. **Insertion of new section 27A, Act XVII of 1996.**—In the said Act, after section 27, the following new section shall be inserted, namely:—

“27A. **Right of Way.**—(1) For the purpose of the installation or maintenance of its telecommunication equipment or for the purpose of establishing

or maintaining its telecommunication system, every licensee shall, subject to the conditions provided in this section and the policy directive issued by the Federal Government under section 8, have the right to share any public Right of Way or Private Right of Way.

- (2) In order to enjoy the rights granted by this section, the licensee shall request the owner of such Right of Way to approve the mode of execution of the works it proposes to undertake. If the owner of such Right of Way does not respond to such request within a period of thirty days, such request shall be deemed to have been granted. While granting such request the owner of the Right of Way may impose such conditions as to the payment of fees and the mode or timing of the execution of such work as may be reasonable in the circumstances:

Provided that any right granted by this section shall be exercised equitably, ensuring proper compensation of the owner of Right of Way and the access so provide to the licensee will not adversely affect the owner of the Right of Way.

- (3) The licensee shall exercise the powers conferred by this section in such a manner as to cause minimal interference of the enjoyment of the Right of Way by the owner or other users thereof and if no fee are to be paid by the licensee to the owner of the Right of Way, the licensee shall make reasonable reparation to the owner of such Right of Way.
- (4) The fee payable by a licensee to a Public Authority, for the use of a Public Right of Way, shall be such reasonable amount as is assessed by the Public Authority after taking all relevant factors into consideration, including the laws applicable to the Public Authority and the relevant laws applicable in the district in which such Right of Way is situated.
- (5) In consideration of the use of a Private Right of Way, the licensee shall pay such fee to the owner of such Private Right of Way as may be mutually agreed between the licensee and such owner or in the absence of such agreement, such reasonable amount as may be demanded by the owner of such Private Right of Way.
- (6) In the event of a dispute as to the refusal by the owner of a Right of Way to allow a licensee to exercise its powers under this section or the reasonableness of any condition imposed by the owner of the relevant Right of Way, the same shall be referred, by an application, to

the appropriate Government who shall decide the matter referred to it within a period of sixty days.

- (7) The appropriate Government shall nominate any officer not below the rank of Secretary to act on behalf of the appropriate Government under this section through a notification in the official gazette within sixty day of the commencement of the Pakistan Telecommunication (Re-organization) (Amendment) Act, 2006.”

16. Amendment of section 31, Act XVII of 1996.—In the said Act, in section 31,—

- (a) in sub-section (1), in clause (m) the comma at the end shall be omitted and thereafter the following new clause shall be added, namely:—
- (n) makes unauthorized use of the radio frequency spectrum where authorization from the Board is required, ;
- (b) in sub-section (2) for the word “two” the word “three” shall be substituted.

17. Amendment of section 32, Act XVII of 1996.—In the said Act, in section 32, in sub-section (1),—

- (a) after the word “equipment”, occurring for the first time, the words “or unapproved crypto apparatus” shall be inserted;
- (b) after the word “provided”, occurring twice, the words “or any licensed service is being used against the interest of national security and public safety” shall be inserted;
- (c) after the word “hovercraft” the words “or place” shall be inserted;
- (d) after the word “equipment”, occurring for the second time, the words “or crypto apparatus” shall be inserted; and
- (e) after the word “equipment”, occurring at the end, the words “or crypto apparatus” shall be added.

18. **Insertion of new Chapter III A, Act XVII of 1996.**—In the said Act, after Chapter III, the following new Chapter shall be inserted, namely:—

“CHAPTER III A

SPECIAL FUNDS

33A. Establishment of USF.—(1) As soon as may be, after the commencement of the Pakistan Telecommunication (Amendment) Act, 2006, the Federal Government shall, by notification in the Official Gazette, establish a Fund to be called the Universal Service Fund hereinafter referred to as USF.

(2) The USF shall be under the control of the Federal Government and therein shall be credited any sums of money mentioned under sub-section 4.

(3) The balance to the credit of the USF shall not lapse at the end of the financial year.

(4) The USF shall consist of—

- (a) grants made by the Federal Government and the Provincial Governments;
- (b) prescribed contribution by licensees;
- (c) sale proceeds from the auction of the right to use radio spectrum;
- (d) loans obtained from the Federal Government; and
- (e) grants and endowments received from other agencies.

33B. Administration and utilization of USF.—(1) The Federal Government shall have the power to administer the USF in such manner as may be prescribed.

(2) The USF shall be utilized exclusively for providing access to telecommunication services to people in the un-served, under-served, rural and remote areas and other expenditure to be made and incurred by the Federal Government in managing USF.

(3) The Federal Government shall be responsible for the co-ordination and ensuring timely utilization and release of sums in accordance with the criteria as may be prescribed.

33C. Research and Development Fund.—(1) As soon as may be, after the commencement of the Pakistan Telecommunication (Re-organization) (Amendment) Act, 2006, the Federal Government may by notification in the Official Gazette, establish a Fund to be called the Research and Development Fund.

(2) The Research and Development Fund shall be under the control of the Federal Government and therein shall be credited any sums of money mentioned under sub-section (4).

(3) The balance to the credit of the Research and Development Fund shall not lapse at the end of the financial year.

(4) The Research and Development Fund shall consist of—

- (a) grants made by the Federal Government;
- (b) prescribed contribution by licensees;
- (c) loans obtained from the Federal Government; and
- (d) grants and endowments received from other agencies.

33D. Administration and utilization of Research and Development Fund.—(1) The Federal Government shall have the power to administer the Research and Development Fund in such manner as may be prescribed.

(2) The Fund shall be utilized exclusively for prescribed research and development activities in the field related to Information and Communication Technology and other expenditure incurred by the Federal Government in managing Research and Development Fund.

(3) The Federal Government may co-ordinate with relevant entities to ensure timely utilization and release of sums in accordance with the criteria as may be prescribed.

33E. Audit and public information.—(1) The accounts of USF and Research and Development Funds shall be—

- (a) maintained in such form and manner as the Federal Government may determine; and

- (b) audited by a Chartered Accountant as defined in the Chartered Accountants Ordinance 1961 (X of 1961), and the Auditor-General of Pakistan.

(2) The Federal Government shall, after the end of every financial year, submit to the National Assembly the audited annual statement of accounts of both the Funds, together with the report of the Auditor-General of Pakistan.

(3) The Federal Government shall also publish after the end of every year a report on the state of universal service and research and development and on its activities in this regard during that year."

19. **Amendment of section 37, Act XVII of 1996.**—In the said Act, in section 37, the figure and comma "90," shall be omitted.

20. **Insertion of new section 37A, Act XVII of 1996.**—In the said Act, after section 37, the following new section shall be inserted, namely:—

"37-A. **Company shares deemed validly issued.**—The "A" ordinary shares and "B" ordinary shares issued by the Company shall be deemed to be validly issued in terms of the Companies Ordinance, 1984 (XLVII of 1984)".

21. **Amendment of section 41, Act XVII of 1996.**—In the said Act, in section 41,—

- (a) in sub-section (1) for the word "Ordinance" the word "Act" shall be substituted; and
- (b) in sub-section (6), for the figures, brackets letters and word "1969 (XXIII of 1969)" the figures, brackets, letters and word "2002 (XCI of 2002)" shall be substituted.

22. **Amendment of section 43, Act XVII of 1996.**—In the said Act, in section 43, in sub-section (2),—

- (a) for clause (i), the following shall be substituted, namely:—

"(i) Chairman who shall be appointed by the Federal Government;"

- (b) in clause (iv), after the words "Ministry of Interior" the comma and words "Information Technology and Telecommunication Division and Pakistan Electronic Media Regulatory Authority" shall be added and for the full stop at the end, a colon shall be substituted; and
- (c) after clause (iv), amended as aforesaid, the following proviso shall be added, namely:—

"Provided that the Federal Government may increase the number of members of the Board and may prescribe their qualifications and mode of appointment."

23. **Amendment of section 45.**—In the said Act, in section 45, in sub-section (1), in the proviso, for the words "five per cent of the" the words "*pro rata*" shall be substituted.

24. **Amendment of section 57.**—In the said Act, in section 57,—

- (a) in sub-section (1), the words "and where provided for hereinbefore" shall be omitted; and
- (b) in sub-section (2), after clause (a), the following new clauses shall be inserted, namely:—

- "(ab) the manner in which the USF and Research and Development funds may be administered;
- (ac) the criteria based on which sums may be released from USF and Research and Development Fund.
- (ad) preventing, prohibiting and remedying the effects of, anti-competitive conduct by licensees;
- (ae) regulating agreements or arrangements by licensees in respect of international telephony service;
- (af) requiring licensees that handle international telephony service to make payments (i) to prescribed categories of licensees that terminate international telephony service calls in Pakistan in form of APC and (ii) to the USF in respect of international telephony

service calls that prescribed categories of licenses terminate in Pakistan;

- (ag) enforcing national security measures in telecommunication sector; and
- (ah) regarding lawful interception.”

RAJA MUHAMMAD AMIN,
Secretary.