



PAKISTAN TELECOMMUNICATION AUTHORITY

Headquarters, F-5/1 Islamabad

www.pta.gov.pk

No. 15-7/06(CA)/PTA

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**DETERMINATION ON DISCRIMINATORY MOBILE ON-NET AND
OFF-NET TARIFFS**

INTRODUCTION

1. The Pakistan Telecommunication Authority (the "Authority") established under Section 3 of the Pakistan Telecommunications (Re-organization) (Amendment) Act 2006, (the "Act") is a corporate body, which has been entrusted to perform the following functions amongst others:

- (i) regulate the establishment, operation and maintenance of telecommunication systems and the provision of telecommunication services in Pakistan;
- (ii) promote and protect the interests of users of telecommunication services in Pakistan;
- (iii) promote the availability of a wide range of high quality, efficient, cost effective and competitive telecommunication services throughout Pakistan;
- (iv) promote rapid modernization of telecommunication systems and telecommunication services; and
- (v) regulate competition in the telecommunication sector and protect consumer rights.

2. Section 26 of the Act empowers the Authority to regulate tariffs of telecommunication services in accordance with the following general principles, in addition to the others mentioned in above quoted section:

- (i) the regulations shall be made with a view to achieving the greatest possible degree of pricing flexibility and stability compatible with safeguarding and protecting the interests of consumers;
- (ii) the regulations shall apply equally to comparable providers or users of any regulated telecommunication service; and
- (iii) tariffs shall be at a level which provides a reasonable rate of return on investments taking into account the cost of operation.

3. The Government of Pakistan issued Mobile Cellular Policy (the "Policy") in January 2004 with following objectives, as mentioned in section 2 of the Policy:

- (i) increased choice for customers of cellular mobile services at competitive and affordable price;
- (ii) fair competition amongst cellular and fixed-line operators; and
- (iii) an effective and well defined regulatory regime that is consistent with international best practices.

4. Para 6.7 of the Policy, provides that a customer of a mobile network should be able to make a call to the same or other network (cellular as well as fixed) at reasonable retail rates. Para 5.9 of the Policy, states that "*the retail price cap on mobile licensees, fixed from time to time, by PTA will continue till such time the market, in the view of PTA, becomes sufficiently competitive*". As per Policy, the cellular market will be considered sufficiently competitive when PTA determines that the cellular user has a real choice in terms of quality of service, pricing and coverage.

THE ISSUE

5. With the introduction of Calling Party Pays (CPP) regime in year 2000, the Authority regulated the mobile tariffs by setting price caps for 'airtime' at Rs.6.25/minute, which was later reduced to Rs.5.75/minute in year 2002. With the issuance of two (2) new mobile licenses in year 2004, the total number of mobile operators in Pakistan has reached the figure of six (6). In view of the

Authority, although competition has considerably increased in this segment resulting in reduction in tariffs, it is not yet fully competitive.

6. The Authority vide its Determination No. 15-46/01(Tariff)/PTA dated 25th August 2004, determined Mobilink as Significant Market Power (SMP) operator in mobile telecommunication market, with the objective of protecting the interests of other mobile operators and to encourage effective competition. The Authority, vide its directive dated 3rd September 2004, directed the mobile SMP operator i.e. Mobilink to get prior approval of its proposed tariffs in order to ensure that its tariffs are not anti-competitive. Mobilink, on the contrary, did not comply with the said directive of the Authority. However, the Authority vide its Determination No. 15-30/05(CA)/PTA dated 7th July 2005 withdrew the mobile 'airtime' ceiling considering downward pressure on mobile tariffs due to competition among all mobile operators.

7. In February 2002, Mobilink levied extra Re.1/minute for off-net local calls to other fixed and mobile networks, in the name of 'Other Network Access Charge'. The Authority took cognizance of the issue and observed that 'Other Network Access Charge' was levied by Mobilink without any justification. The Authority also observed that levying of 'Other Network Access Charge' in addition to 'airtime' and 'termination charges' would tantamount to increase the effective retail tariffs. The Authority issued Determination No. 15-7/99(Tariff)/PTA dated 4th July 2002 and directed Mobilink to withdraw the 'Other Network Access Charge' on its local calls w.e.f. 4th February 2002.

8. In December 2004, Mobilink lowered its on-net 'airtime' tariffs from Rs.5.75 per minute to Rs.4.75 per minute whereas the off-net 'airtime' tariffs were retained at Rs.5.75 per minute along with the 'termination charges', resulting in price differential between on-net and off-net calls to mobile networks from Rs.2.00 per minute to Rs.3.00 per minute. The comparison of tariffs, prior and subsequent to the revision, is illustrated in the following table:

	Before Revision November 2004	After Revision December 2004
On-net (Airtime)	Rs.5.75/min	Rs.4.75/min
Off-net calls to Cell. (Airtime + Termination)	Rs.5.75 + Rs.2.00 = Rs.7.75/min	Rs.5.75 + Rs.2.00 = Rs.7.75/min
Off-net calls to Fixed (Airtime + Termination)	Rs.5.75/min + Rs.2.01/five minutes	Rs.5.75/min + Rs.2.01/five minutes

9. Subsequent to the announcement of these tariffs by Mobilink without prior approval of the Authority, the other cellular mobile operators requested the Authority to stop Mobilink from charging discriminatory tariffs. In their view, it would result in discouraging Mobilink's customers to make off-net calls to other networks and would affect their revenues from incoming calls. Taking cognizance of the issue, Mobilink was directed by the Authority to charge same 'airtime' tariffs for both on-net and off-net calls. After several discussions and deliberations between Mobilink and the Authority, Mobilink agreed in principle with the Authority's view vide its letter dated 4th February 2005. However, due to introduction of similar tariff structure by Ufone, Mobilink continued charging discriminatory tariffs under the pretext of 'level playing field' for all competitors. Later on, upon launch of two (2) new cellular operators, Mobilink revised its off-net tariffs and reverted back to previously established basis of off-net tariff charging (i.e. 'airtime' plus 'termination charges').

10. On October 30, 2005, Mobilink once again reduced its prepaid tariffs without seeking prior approval of the Authority. For on-net calls, Mobilink reduced their 'airtime' tariffs from Rs.3.50 per minute to Rs.2.70 per minute, whereas for off-net calls to other fixed as well as mobile operators, Mobilink offered Rs.4.70 per minute. It is pertinent to mention that for postpaid customers, Mobilink charged tariffs equivalent to 'airtime' plus 'termination charges'. The on-net and off-net tariffs of Mobilink as a result of this change are tabulated below:

Off-net Calls to Cellular Networks

	Rs./min.
On-net Calls	2.70
Less: Off-net Call	4.70
Difference	2.00
Less: Mobile Termination Charge	1.60
Excess Charging	0.40

11. For off-net calls to cellular networks, Mobilink charged a differential of Rs.2.00 per minute, whereas the Authority has determined mobile termination rate at Rs.1.60 per minute. As a result, Mobilink was charging an excess of Rs.0.40 per minute as against the limit placed by the Authority.

Off-net Calls to Fixed-line Networks

	Rs./min.
On-net Calls	2.70
Less: Off-net Call	4.70
Difference	2.00
Less: Fixed Termination Charge	0.52
Excess Charging	1.48

12. Similarly, for off-net calls to fixed-line, Mobilink charged an excess of Rs.1.48 per minute as against the limit placed by the Authority.

13. The Authority took serious notice of the issue and directed Mobilink not to charge differential tariffs for off-net calls in excess of 'termination charges'. In response, Mobilink argued that the other cellular mobile operators were also charging off-net tariffs in excess of 'termination charges' and so Mobilink is justified in charging excessive tariffs.

14. After analyzing the issue, the Authority issued a directive to all cellular mobile operators directing them not to charge differential off-net tariffs in excess of 'termination charges'. The cellular mobile operators in their joint response requested the Authority for a meeting in order to submit their viewpoints.

THE HEARINGS

15. First hearing was arranged at PTA Headquarters, chaired by Member (Finance) PTA, on 13th March 2006 in which the cellular mobile operators gave

their viewpoints. Mobilink was of the view that since the mobile sector is growing and sufficient competition is prevailing, therefore, the Authority should not intervene in regulating the tariffs. Mobilink also claimed that there are certain cost implications involved which could not be discussed in detail in the presence of other operators and sought an opportunity to meet the Authority's representatives separately. Mobilink also stressed that, due to increased number of mobile operators, the subscribers have the option to select the carrier of their choice. Therefore, the Authority should not intervene and regulate cellular tariffs at micro-level.

16. Ufone, Instaphone and Paktel supported PTA's directive, as they were offering same tariffs for on-net and off-net calls.

17. Warid and Telenor informed that they cannot afford to penalize their customers by charging higher off-net tariffs and it was only in case of fixed-line where their tariffs are slightly more than the 'termination charges'. However, they were charging only one tariff for off-net calls, regardless of type of called network (fixed or mobile). They requested the Authority not to impose such directive on non-SMP operators.

18. In the said hearing, it was decided that the Authority shall give an opportunity to Mobilink, Warid and Telenor to further explain their viewpoints and in case the cellular mobile operators did not agree with the Authority's directive, the Authority will issue a Determination in order to conclude the issue.

19. Another hearing on the issue was conducted with Mobilink on 16th March 2006 in which it highlighted the following points:

- (i) There is no regulatory limits on earning profit;
- (ii) Higher off-net tariffs help Mobilink in investing and expanding their network; and
- (iii) The Authority should allow operators to charge tariffs at their own will.

20. The Authority observed that Mobilink did not provide its cost to the Authority in support of its reasons, for which they had sought a separate meeting. Rather, Mobilink insisted that despite having higher on-net tariffs, which are higher than the competitors' off-net tariffs, their subscription was still growing. Later on, Mobilink lowered its on-net 'airtime' to bring it lower than the off-net tariffs of Ufone and Telenor, thus negating their own argument. The Authority also observed that the recent on-net tariffs offered by Mobilink are amongst the lowest tariffs offered by cellular mobile operators (except Warid).

21. The representative of Warid reiterated, during the hearing held on 24th March 2006, that they cannot afford to penalize their customers by charging higher off-net tariffs. Warid also stated that due to its limited network coverage, the charges actually paid for off-net calls to fixed-line networks are higher than Rs.0.52 per minute, as most of its calls are terminated on fixed network beyond metropolitan area. They argued that their tariffs are not intended to restrict the calling options of their subscribers and had that been the case, they would have at least received complaints from their subscribers. In addition, they contested that the said discrimination does not exist in case of less than 30 second calls for fixed-line networks. Later on, Warid informed that for off-net calls to fixed-line, they are offering 30 second pulse to their subscribers. For calls that are less than 30 seconds, Rs.1.50 per minute is being charged from the subscriber, which is less than 'airtime' plus 'termination charge' i.e. Re.1.00 + Rs.0.52 per minute.

22. On 28th March 2006, another hearing was conducted with Telenor, in which its representative emphasized that the Authority should regulate tariffs of SMP operators only, as they are in a dominant position to distort competition. They agreed with the Authority's right to intervene in case of burdensome tariffs but requested for a lenient view as they were absorbing mobile termination rate by Rs.0.60 per minute in their retail tariffs for off-net calls to cellular networks.

23. Telenor also informed that their off-net tariffs of Rs.3.45 per minute for cellular as well for fixed-networks are substantially less than the highest off-net tariffs of Rs.4.70 per minute prevailing in March 2006.

THE AUTHORITY'S POINT OF VIEW

24. The response of Mobilink referred above and their arguments, which they put forward in the hearings were examined by the Authority. It is observed that the reasons explained by Mobilink for charging higher off-net tariffs did not carry sufficient substance to justify levying of these charges.

25. The argument of Mobilink, that there is no ceiling on profit making cannot be acceded to as it is in violation of the section 26 (d) of the Act which requires tariffs to be set at a level which provides reasonable rate of return. Moreover, profit maximizing through reducing on-net calls while increasing off-net tariffs indicates discriminatory practice of SMP operator towards its subscribers and resulting in discouraging Mobilink's subscribers from moving to other cellular mobile operators. It also results in anti-competitive behaviour as it forces its subscribers to make their family members, who are using other operators' plans, to move to Mobilink.

26. Levying of higher off-net charges by Mobilink also violates section 6(f) of the Act, which requires the Authority to ensure that the interests of users of telecommunication services are duly safeguarded and protected. This also contravened Para 6.7 of the Mobile Policy, which provides that a customer of a mobile network should be able to make a call to the same or other network at reasonable retail rates.

27. The Authority noticed that Mobilink's justification that higher off-net tariffs help them in investing and expanding their network is a baseless argument and it is at the cost of hurting other operators, which results in extracting money through restricting competition and exploiting the consumers. The Authority, therefore, cannot allow SMP operator to charge higher off-net

tariffs in disguise of simplifying off-net tariffs while keeping them at a higher differential than on-net calls.

28. Regarding the Mobilink's argument that the Authority should allow operators to charge tariffs at their own will, the Authority has already forborne tariffs of non-SMP operators who are free to set their tariffs. However, the Authority is regulating tariffs of only SMP operators in order to prevent them from abusing their dominant position.

THE ANALYSIS

29. As a result of competition among cellular mobile operators, the tariffs of cellular mobile operators have significantly reduced during the past few years. The Authority, vide its Determination No. 15-30/05(CA)/PTA dated 7th July 2005, removed the retail price caps on 'airtime' tariffs.

On-net Tariffs (Min-Max)

30. The following table shows minimum and maximum on-net tariffs prevailing on March 31, 2005 and 2006.

Date	Min Rs./min.	Max Rs./min.	Min - Max Differential (%)
March 31, 2005	3.00	3.99	33.00%
March 31, 2006	2.00	2.70	17.50%

31. The minimum and maximum tariff for on-net calls as of March 31, 2005 was Rs.3.00 per minute and Rs.3.99 per minute respectively. The minimum-maximum differential as a percentage of minimum on-net stood at 33%. Increase in competition in mobile call rates has reduced the minimum-maximum differential to 17.50%, thus not only the on-net tariffs have reduced significantly but minimum-maximum differential has also reduced by approximately 50%.

Off-net Tariffs (Min-Max)

32. The following table depicts minimum and maximum off-net tariffs prevailing on March 31, 2005 and 2006:

Date	Min Rs./min.	Max Rs./min.	Min - Max Differential (%)
March 31, 2005	3.99	7.76	94.48%
March 31, 2006	2.50	4.70	74.00%

33. The above analysis for off-net calls does not depict similar trend as that of on-net tariffs and the minimum-maximum differential, which was 94% on 31st March 2005 has only reduced to 74% on 31st March 2006. This clearly indicating that competition is not yet intensified in this particular segment.

Off-net Tariffs of Non-SMP Operators vis-à-vis On-net tariffs of SMP Operator

34. While analyzing off-net tariffs, it is important to assess whether the traffic among cellular mobile operators is in balance or not. The Authority observed that, other things remaining equal, customers of non-SMP operators would always be expected to make more off-net calls than the customers of a larger network (SMP), as there are more people to call on the larger network. This is supported by the fact that most of the non-SMP operators have absorbed termination rate in their retail tariffs to encourage their customers to make off-net calls as easily as on-net calls.

35. It was also noticed that the non-SMP operators generally kept their off-net tariffs lower than on-net tariffs of SMP operator. This was evident from the tariffs of Ufone and Telenor, whose off-net tariffs of Rs.2.50 per minute and Rs.2.45 per minute were lower than the on-net tariffs of Mobilink of Rs.2.70 per minute prevailing in March 2006.

Incoming Traffic of Non-SMP Operators

36. The Authority also observed that non-SMP operators normally receive relatively more incoming calls from other networks as compared to their own network, other factors remaining same. In the event, SMP operator try to force its customers to make less off-net calls by having comparably higher off-net tariffs, the smaller networks' incoming traffic fell short of outgoing traffic, which result in restrictive impact on competition due to considerable difference between the size of respective networks.

Impact on Fixed-line Networks

37. As outgoing traffic from mobile SMP operator to fixed-line networks is decreasing on a per subscriber basis, the fixed-line networks have voiced their concerns on higher off-net charges by mobile SMP operator. Resultantly, fixed-line operators demanded that termination rates should be same for mobile and fixed-line networks to normalize the traffic pattern between the two.

Consumers Viewpoints

38. The cellular mobile subscribers have also raised their apprehensions on higher off-net charges, which are anti-consumer in nature. In their opinion, higher off-net tariffs bar them to make calls to other network and are thus burdensome. Resultantly, the subscribers of SMP operator would be forced to reduce duration and frequency of off-net calls.

39. Higher off-net and lower on-net tariffs also plays an important role in making decision regarding subscribing a new connection and the consumers are forced to subscribe to SMP operators only.

Discrimination between Prepaid and Postpaid Subscribers

40. The Authority also noticed that Mobilink has different tariff structure for its postpaid and prepaid subscribers. For postpaid customers, Mobilink is charging 'airtime' plus 'termination charge' for off-net calls, whereas for prepaid customers, Mobilink has introduced tariff which is more than the 'airtime' plus 'termination charge'. Thus, Mobilink is further creating discrimination between customers of same class of service (mobile call service).

International Regulatory Practices

41. The Authority noted that TRAI (Indian Telecom Regulator) vide its Telecommunication Tariff Order 1999 directed that "*no service provider shall, in any manner, discriminate between subscribers of the same class and such classification of subscribers shall not be arbitrary*".

42. Further, it was noted that in most of the European Countries (Germany, Sweden, France, Italy, and Spain), the price differential between on-net and off-net calls was zero (*Reference: Western Wireless complaint relating to anti-competitive behavior of Mobitel, April 2004*).

43. The Authority also observed that it is the regulatory practice internationally that discrimination between on-net and off-net tariffs is not allowed when the market is not fully competitive. However, such regulation is withdrawn when full competition is experienced in the given market. Keeping in view the current position of mobile sector of Pakistan, the Authority is of the view that the competition in this segment is not yet perfect. Hence the regulatory intervention is justified.

Airtime Tariffs vis-à-vis Termination Charges

44. The cellular mobile operators charge 'airtime' tariffs for their on-net calls, which includes 'origination' and 'termination charges'. The Authority, vide its Determination No. 15-30/05(CA)/PTA dated 7th July 2005, determined mobile termination rate at Rs.1.60 per minute and Rs.1.25 per minute w.e.f. 1st August 2005 and 1st July 2006 respectively. In case of off-net calls, the cellular mobile operators save their on-net termination cost and, therefore, the operators should not charge additional tariffs in lieu of off-net calls. The argument gets further strengthened in the case of off-net calls to fixed-line networks where the termination rate is even less than the mobile termination rate.

45. The Authority, up till now, has adopted a lenient approach regarding regulation of off-net tariffs vis-à-vis on-net tariffs and has allowed cellular mobile operators to charge off-net calls at a level equal to the on-net tariff plus 'termination charge'. However, charging differential off-net tariffs against on-net tariffs over and above the 'termination charge' by SMP operator would tantamount to distorting fair competition in the market which is against the provisions of the Act and Mobile Policy.

THE ORDER

46. Based on the above analysis, deliberations with the operators, hearings held on 13th March, 16th March, 24th March and 28th March 2006, provisions of the Act and Mobile Policy, the Authority hereby determines the following:

47. The SMP operator (Mobilink) shall not unduly discriminate the on-net and off-net calls and shall not charge additional tariffs for off-net calls in excess of the 'termination charges' of the called network.

48. The SMP operator shall apply the same charging mechanism (in terms of time duration) for on-net and off-net calls.

49. This determination shall be applicable on all packages (existing as well as forthcoming) of SMP operator.

50. Mobilink shall make necessary revisions in its tariffs in compliance with this Determination, within ten (10) calendar days of this Determination and confirm compliance.

51. This determination shall be applicable with immediate effect.

Dr. Muhammad Yaseen
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Nasrul Karim Ghaznavi
Member (Finance)
Pakistan Telecommunication Authority

This determination is signed on this 7th day of July 2006.