



PAKISTAN TELECOMMUNICATION AUTHORITY
Headquarters, F-5/1 Islamabad
www.pta.gov.pk

No. 15-43/07(CA)/PTA

March 6, 2007

Naya Tel (Pvt) Ltd.

...Claimant

Versus

Pakistan Telecommunication Company Limited

...Respondent

**Claim under the Interconnection Dispute Resolution Regulations,
2004 for resolution of dispute relating to the Interconnection
Agreement dated 4th November 2004**

Date of preferring the Claim: 20.06.2006
Date of final hearing : 18.01.2007
Venue of hearing : Conference Room, PTA
HQs, Islamabad

The Authority present:

Major General (R) Shahzada Alam Malik: Chairman
S. Nasrul Karim Ghaznavi (Member Finance): Member
Dr. Muhammad Yasin (Member Technical): Member

The Issue:

“Dispute between Naya Tel and PTCL regarding the
Interconnection Agreement between both the parties dated
4th November, 2004”

DECISION OF THE AUTHORITY

Brief Facts:

1. On 20th March 2006, M/s Naya Tel approached the Authority apprising it of the fact that it is deploying first Fibre To The Home (FTTH) network in Islamabad, which is ready for commissioning. However, Clause 1.2 of Schedule 9 of Attachment D of PTCL Reference Interconnect Offer, which was signed between PTCL and Naya Tel on 4th November 2004, restricts it to install up to only two optical fiber cables having a maximum of 8 strands in each fiber. According to Naya Tel's claim, this condition might have been valid for long haul network but was not valid for a local loop FTTH network where each home would have fiber connection which needs to be backhauled to the exchange. Naya Tel submitted that it has requested PTCL to revise this condition for Naya Tel under clause 17 of PTCL RIO but PTCL refused to do so. Such categorical refusal of PTCL to review the agreement makes clause 18 of the main body of the interconnection agreement applicable and three months maximum time period, under

clause 18 of RIO before the Authority could intervene, is applicable as PTCL has not entered into discussion with Naya Tel.

2. It was highlighted by Naya Tel that PTCL's stance is that its collocation space is only for interconnection between PTCL and private operators. Naya Tel claimed that such stance is not valid as PTCL's own Collocation policy dated 1st September 2002 and Circular of 5th April 2004 provides that basic purpose of collocation facilities is to offer telecom grade space for new operators so that they could roll out their network and service in quick time frame and minimum capital investment in real estate. Naya Tel also stated that Para 4.5.1 of Deregulation Policy also mentions interconnect and collocation of incumbent as separate facilities.

3. It was claimed by Naya Tel that PTCL is also offering its space to be used by ISPs, DSL operators, Premium Rate Services for installation of data switches, PRI switches, web hosting servers and data ware-housing applications. However, local loop (LL) operators are restricted to bring optical fibre cables to collocation facilities. Naya Tel believed that PTCL, being incumbent and SMP, cannot have discriminatory and contradicting policies for one set of licensees (ISPs, DSL etc.) while denying similar facilities to other set of licensees i.e. LL operators.

4. Based on these points, Naya Tel requested the Authority to direct PTCL to remove the restriction imposed by Clause 1.2 of Schedule 9 of Attachment D of PTCL RIO.

Comments from PTCL:

5. The Authority forwarded the said request of Naya Tel to PTCL on 5th April, 2006 to obtain its comments and suggestions in order to resolve the issue amicably for the best interest of the consumers keeping in view the aims and targets of the government to proliferate broadband. PTCL provided its response to the Authority on 12th April, 2006 stating that facilitation of broadband proliferation, under the Broadband Policy, is an obligation of PTCL to the extent of PTCL's copper network availability which PTCL has already been doing. PTCL claimed that collocation space is limited and it has to take care of its own planned expansion and cannot offer collocation space for access network termination. PTCL submitted that in order to resolve the issue, Naya Tel should develop its own independent core network at other than PTCL premises. PTCL also requested the Authority to impress upon Naya Tel to abide by the interconnection agreement signed with PTCL.

First meeting convened by the Authority:

6. The Authority conducted a meeting on 26th May 2006 where both parties were advised to mutually resolve the issue. The parties were also advised that in case of disagreement, the aggrieved party may proceed the case in the light of the Interconnection Dispute Resolution Regulations, 2004 (the "Regulations").

Filing of Claim by Naya Tel under the Regulations:

7. On 20th June 2006, Naya Tel submitted its Claim to the Authority under the Regulations. The Claim provided the details of the dispute between Naya Tel and PTCL,

the negotiations process along with the relief sought from the Authority. Naya Tel prayed to the Authority that:

- (a) *PTCL be directed to agree to removal of the restriction on the number of cable/fibre strands under clause 1.2 of Attachment D of Schedule 9 of the interconnection agreement; or*
- (ii) *Clause 1.2 of Attachment D of Schedule 9 of the interconnection agreement may be deleted in its entirety; or*
- (iii) *It may be declared that PTCL Collocation Policies be equally applicable to the Naya Tel for use of the collocation space by Naya Tel free of restriction and free of any discrimination, regardless of such collocation space having been available under the interconnection agreement; or*
- (iv) *It may be declared that the collocation space obtained by Naya Tel under the interconnection agreement be treated as collocations obtained under the PTCL Collocation Policies.*

Admission of the Claim to regular hearing:

8. On 3rd June 2006, the Authority after reviewing the Claim and satisfying that the requirements given under Regulation 3 Sub-Regulation 3 of the Interconnection Disputes Resolution Regulation 2004 have been met, admitted the Claim for hearing. The Authority also forwarded the Naya Tel's Claim to PTCL for its review and Reply within fifteen (15) days in the form and manner prescribed under Interconnection Disputes Resolution Regulation, 2004.

PTCL's response:

9. PTCL provided its response on 18th August 2006 stating that the *so-called* claim of Naya Tel does not come within the ambit and scope of section 2(c)(i) of the Regulations. PTCL was of the view that the Regulations imposes a mandatory requirement upon the Authority not to entertain a claim until and unless the parties have exhausted the remedies for dispute settlement provided under the interconnection agreement. PTCL maintained further that Clause 27 and 28 of the main body of interconnection agreement signed between PTCL and Naya Tel prescribes a Dispute Resolution mechanism, which has not been followed by Naya Tel before invoking the jurisdiction of the Authority.

10. PTCL also submitted that there exists no claim against PTCL and the admission of the same by the Authority is uncalled for, unwarranted, illegal, without the backing of Law and in blatant contravention of the Regulations itself. It was stated by PTCL that Naya Tel does not have any cause of action against PTCL and lacks the foremost requirement of locus standi to invoke the pre conditioned jurisdiction of the Authority under the Regulations. Based on these points, PTCL believed that it is not obligatory upon PTCL to respond to the *so-called* claim of Naya Tel.

PTCL required again to file its response to the Claim:

11. As PTCL's response failed to comply with the requirements of Regulation 6 of the Regulations, another opportunity was given to PTCL on 24th August 2006 to submit its Reply by 25th August 2006.

12. PTCL submitted its Reply on 25th August 2006 maintaining its previous point of view and prayed that the claim of Naya Tel may be dismissed by the Authority and Naya Tel be directed to fulfill its obligations arising out of the existing interconnection agreement. PTCL also requested the Authority for grant of permission to terminate the lease of collocation space to Naya Tel as it has violated the terms of interconnection agreement by using collocation equipment for purposes other than for the interconnection of its network to PTCL's network.

Technical Survey Conducted by the Authority:

13. In order to assess the technical bottlenecks with PTCL, a technical survey was conducted by the Authority on 25th August 2006 of the PTCL IBA-1 Exchange. The survey was carried out in the presence of both the parties. It was observed that enough space was available with PTCL to meet the demands of Naya Tel. It was also noted that Naya Tel has deployed Passive Optical Network (PON) which uses passive splitters to distribute fibre to individual homes, whereas switching and routing is done at the carrier's central office. However, other new operators were noted to deploy Active FTTH, which uses one equipment cabinet for 400-500 subscribers.

Hearings conducted in the matter:

14. A hearing on the case was conducted by the Authority on 28th August 2006 for hearing the point of view of both parties on the disputed issue. The hearing was attended by both the parties in person. Naya Tel apprised that it is installing an ultra broadband fiber to the home (FTTH) based network in Islamabad, which is a very new and cutting edge technology and being deployed for the first time not only in Pakistan but in the whole South Asian Region. Naya Tel informed the Authority that being a leading broadband DSL operator through its sister company, i.e., Micronet Broadband (Pvt) Ltd., it is currently buying 60 Mbits of IP bandwidth from PTCL in Islamabad, which makes it the largest customer in this city.

15. It was highlighted by Naya Tel that its optical fiber cables are being terminated into PTCL collocation sites and multiple fibers along with virtually unlimited capacity of this network increases strategic value of PTCL exchanges many folds. Naya Tel claimed that the said capacity is available for other operators to interconnect with PTCL, which would bring large volumes of voice and data traffic to PTCL and hence more revenues.

16. Naya Tel continued to mention that its fiber ring connects five key PTCL exchanges in ITR (IBA-I, F-8, F-11, I-10 and Satellite Town). The core ring is redundant and self healing and it can offer any capacity or dark fiber/s to PTCL from this network at very preferential and highly discounted rates. Naya Tel apprised that it is installing NGN Softswitch, offering voice services, interconnecting this network with PTCL and would bring a decent amount of revenue to PTCL on account of interconnect charges.

17. Naya Tel stated that it has installed state of the art Video Headend from Scientific Atlanta for Cable TV services at its facility in Blue Area, Islamabad and no other operator in ITR has invested so much in the headend and installed such modern equipment. Naya Tel claimed that it can offer signals of this video headend for PTCL's forthcoming Triple Play IPTV project and can deliver the signals at all exchanges of PTCL through its FTTH network making it conveniently feasible for PTCL to deliver the TV services.

18. Naya Tel explained that it is not demanding additional collocation spaces or resources from PTCL in any exchanges and it has already made manholes and laid ducts according to PTCL's SOPs leaving free ducts for PTCL or use of other operators. It was learnt during the hearing that Naya Tel had requested PTCL to review the terms of interconnection agreement relating to restriction of number of optical fibre cables. However, PTCL refused to consider Naya Tel's request on the ground that the Authority has given approval of PTCL RIO after due deliberations and consultation with the industry and it should not be changed at the request of one party i.e. Naya Tel.

19. Naya Tel requested the Authority in the hearing to direct PTCL to amend Clause 1.2 of Attachment D of Schedule 9 of interconnection agreement between PTCL and Naya Tel, for the purpose of removing the restriction to install up to only 2 optical fiber cables having a maximum of 8 strands in each cable at PTCL collocation spaces.

20. PTCL was of the view that the said claim of Naya Tel does not meet the definition of "Claim" as given in the Interconnection Disputes Resolution Regulation 2004 and should not be entertained by the Authority, as there is duly signed interconnect agreement between the parties. Moreover, PTCL stated that Naya Tel has not served review notice in accordance with the requirements of interconnect agreement. Therefore, PTCL should not be expected to make amendments in the interconnection agreement as a result of general discussions with the operators.

21. PTCL also claimed that Naya Tel is required to first exhaust the remedies for dispute resolution as given under clauses 27 and 28 of the interconnect agreement, and then approach the Authority for resolution of any dispute. PTCL pointed out that all the services such as interconnection, leasing of DPLC as wells as IPLC and provision of collocation to Naya Tel by PTCL are governed through interconnect agreement, which is based on PTA approved PTCL RIO. However, other licensees such as ISPs and DNOPs are governed under different agreements. Hence, both are different categories and cannot be intermingled as perceived by Naya Tel. Moreover, data operators have been given special treatment by PTCL on the basis of Government of Pakistan policies since the pre-deregulated period. PTCL pointed out that Naya Tel has placed extra equipment in PTCL collocation sites which are not used for the purpose of interconnection of Naya Tel system with that of PTCL and should immediately be moved out by Naya Tel.

The issues involved in the matter:

22. In light of pleadings and the arguments extended by both parties, two major issues surfaced during the hearing. First, the legal issue i.e. to the extent of admissibility of claim by the Authority for hearing and second is relating to technical issue i.e. to the extent of collocation, as per PTCL's collocation policy and RIO. During the hearing, both

the parties were given seven (7) days' time to resolve the later issue amicably and report to the Authority as per Regulation 7 sub-clause 3 of the Regulations.

23. However, as no response was received after the conducting of first / preliminary hearing, a reminder was sent to both the parties to report the status to the Authority within three days so that the Authority can take appropriate action accordingly.

24. In response to PTA' reminder, Nayatel submitted that several rounds of negotiations were held with PTCL to arrive at an amicable solution but the negotiations did not lead to a solution acceptable to both parties. They pleaded that the dispute submitted in the claim is still alive and has not been settled.

PTCL's demand of removing all unauthorized installations from PTCL's collation:

25. During the process of negotiations and deliberations between the parties, PTCL served a notice on Nayatel on 1st September 2006 to remove all unauthorized installations from PTCL's collocation space failing which it will terminate the lease of the collocation space. Nayatel requested the Authority that since the matter is already under hearing by the Authority therefore, the Authority should issue an interim order under Regulation 23(a) of the Regulations for restraining PTCL from taking any action against Nayatel.

26. On 7th September 2006, Naya Tel informed the Authority that PTCL has blocked its E1 links despite the fact that it has fulfilled all the requisite requirements / formalities as per the terms of interconnect agreement including Commencement Certificate by PTA, provision of Bank Guarantee, Interconnect Testing Report and payment of PTCL's Demand Note. Naya Tel informed that PTCL has also issued Advice Note for Interconnect E1s and CDR Reconciliation Report was also sent by Computer Region of PTCL to GM (Interconnect Implementation). Naya Tel apprised that it has requested PTCL several times to open its interconnect E1s so that it can start commercial traffic on this link but PTCL is not responding to its requests. Naya Tel stated that GM (Interconnect Implementation) PTCL in a verbal discussion, has informed Naya Tel that since Naya Tel has filed an Interconnect Dispute Resolution Claim with PTA against PTCL on installation of multiple optical fiber cables to PTCL collocations, its interconnect E1s would not be opened by PTCL till resolution of dispute.

27. It was highlighted by Naya Tel that upon intervention from the MoIT, PTCL gave a draft settlement agreement to Naya Tel according to which it was prepared to give three months time to Naya Tel for removal of extra equipment and cables from its collocations. It was learnt that Naya Tel has made commercial offers to PTCL for settlement of dispute that included provision of dark fiber on its metro network in ITR for one year and/or higher rent of collocation spaces. Naya Tel wanted PTCL to give more time so that it could build its own POPs and shift the OSP network to new locations which is quite a time consuming task. As a minimum requirement, Naya Tel wanted PTCL to allow operations from within PTCL's collocations spaces for 12 months. Naya Tel claimed that PTCL has not responded positively to any of these proposals and is not letting commissioning of Naya Tel voice services which is resulting in sheer loss of business to Naya Tel.

28. Naya Tel also drew attention of PTCL to Section 31(1)(k) of Pakistan Telecommunication (Re-organisation) Act, 1996 on intentional stoppage of our telecom services, on which PTCL issued it a threatening legal notice, para 'f' of which states that unless Nayatel removes the 'extra' equipment and fiber cable installed in PTCL collocations, it would not 'even consider' opening of Naya Tel's E1 interconnect links.

29. Naya Tel pointed out that under Clause 19.2 of RIO, PTCL can not suspend any of its services without the approval of PTA and even such suspension should be relevant to address that particular relevant event, which is collocation in its case. Since, that matter is sub-judice and under IDRR 2004 hearing in the Authority, hence PTCL can not take any adverse action against Naya Tel.

30. Based on these factors, Nayatel requested the Authority to direct PTCL to open its E1s as the delay was causing huge financial losses to the company.

31. PTCL was directed on 8th September 2006 to open interconnect E1s of Nayatel provided that all the relevant requirements of the agreement for the provision of said service were completed by Nayatel.

32. However, PTCL submitted that the opening of Nayatel's E1s are very much linked to the unauthorized and extra equipment / cables installed in collocation spaces. PTCL claimed that E1s would be used for traffic collection from and distribution to the retail customers though these extra cables and equipment were terminated/installed unauthorized in collocation space. Therefore, the de-linking the opening of E1s from removal of unauthorized cables and equipment is not practicable keeping in view the customers' inconvenience and their rights.

33. Nayatel on 12th September 2006 requested the Authority to enforce its order regarding opening of interconnection E1s and urged the Authority to take punitive action against PTCL for intentionally obstructing and blocking telecom services.

34. PTCL was issued another directive on 13th September 2006 to maintain the status quo and not to remove the existing requirements of operators (including Nayatel) from collocation sites unless and until the Authority finalizes the issue. PTCL was also informed that it is following different collocation policies for different set of operators which has raised concerns among operators on discriminatory policies of PTCL. PTCL was also reminded that as per approved PTCL RIO, suspension rights shall not be exercised by PTCL without the Authority's approval.

35. However, PTCL refuted the directive given by PTA and stated that PTCL never agreed to continuation of existing or new installation of any unauthorized equipment. Moreover, PTCL's commitment to provide proposal on collocation and Tele-housing in no way construes for installation of unauthorized equipment.

Final Hearing:

36. On 11th December 2006, in order to resolve the dispute between Naya Tel and PTCL, a final hearing was decided to be conducted on the two disputed issues i.e. number of cables and collocation. In response to PTA's notice for hearing, PTCL submitted that

Nayatel has violated the provisions of interconnection agreement by acting outside the purview of the interconnection agreement and thus does not constitute a dispute. PTCL prayed that the claim as raised by Nayatel may be dismissed and Nayatel be directed to fulfill its obligations arising out of the interconnection.

37. Nayatel submitted its claim for the damages and losses incurred on account of blocking of voice interconnect E1s by PTCL from 1st September 2006 to 22nd January 2007 which amounts to Rs.14,416,500.

Certain queries put to PTCL and PTCL's response to the queries:

38. The final hearing was conducted on 18th January 2007. During the hearing, PTCL was directed to respond to the queries regarding collocation, opening of voice interconnect E1 raised within four days. PTCL submitted following comments on the queries raised during the hearing on 22nd January 2007, which is reproduced in verbatim:

Query: *What are the technical, financial and/or business implications for PTCL if PTCL allows more than 2 cables with 8 strands each to Nayatel?*

PTCL Response: "PTCL was obligated to provide collocation facilities to OLOs for efficient and cost effective Interconnection with PTCL network subject to technical feasibility and availability of space on first come first serve basis. In this regard the relevant RIO provision as per Schedule 9 "co-location" states as under:

5.5 *PTCL may immediately terminate a lease of Co-Location Space at a Co-Location Site if:*

(d) *the Co-Location Equipment is used for a purpose other than for the interconnection of the Operator's Network to the PTCL Network.*

LL operator is obligated to construct local network facilities in the licensed Region and to establish (build & operate) atleast one Network connection point (Point of interconnect: **POI**) within 18 months from the effective date of the license. The Point of Interconnections are *premises at which other licensed operators can send to or receive from the LL licensee voice or data traffic originated by or destined for the LL licensee's customers*) at acceptable technical and quality standards.

Thus an LL operator has to establish its own PoI and to construct the local network, aggregate the traffic destined for various other networks (like PTCL, CMOs, LDIs etc.) to at least one of its POI and then seek interconnection with other operators at their designated POIs for traffic exchange. In order to accomplish this task the LL operator requires collocation space to house the required equipment which enables LL operator to exchange interconnect traffic in accordance with RIO. Usually this interconnect is at E1 levels. Transporting bunch of E1s on copper from LL operator's POI to interconnect operator's POI (like PTCL) is not a cost effective way. Thus RIO allows operators to bring their optical fiber into PTCL's premises specifically to exchange interconnect traffic to or from PTCL's POI.

Theoretically optical fiber cables have unlimited capacity, as such only one pair of fiber (2 strands) is sufficient to handle all the interconnect traffic. As per RIO two cables with eight fiber strands each are allowed for interconnection. Two cables are allowed to offer redundancy in case one cable is cut or remain out of order for any other reason. Four fiber strands required to be terminated at the line card, if the same cable is being used in ring configuration. The remaining four cables are for the backup for the active fibers. This scenario provides ultimate resiliency to avert any kind of failure and to ensure 100% availability at all the times.

As such in order to ensure transparency and to avoid excessive allocation of PTCL's scarce resources with any specific operator, PTCL desires that each OLO should be dealt strictly in accordance with RIO provisions and each OLO collocate minimum equipment at PTCL's POI which is absolutely required for the exchange of interconnect traffic only.

PTCL reiterates the fact that provision of obligatory collocation facilities through RIO are for the purpose of interconnection only and these facilities are different from the perceived Telehousing services which are being offered in many countries on purely commercial basis and on mutual consent / agreement between the two operators. M/s. Nayatel or PTA can't force PTCL to offer any service which is not covered by RIO and does not suit PTCL's commercial / business interest.

The insistence of M/s. Nayatel to allow more fiber cables with higher number of fiber strands clearly spells that Nayatel is trying to install and operate telecommunication equipment in addition to what is essentially required for interconnection purpose only. This is against the norms of Telecom Deregulation policy whereby licenses were awarded to LL & LDI operators to bring new investment in the telecommunication sector. Instead of making the required infrastructure investments after acquiring the LL license, M/s. Nayatel is asking for undue favors by forcing the issues which are outside the ambit of RIO through the good offices of PTA.

So far PTCL has concluded RIO agreements with more than 75 OLOs and if any deviation is allowed for any specific operator for one or more clause(s) of RIO, PTCL will be flooded by such specific and tailor-made requests from a variety of operators which will suit their individual / unique business requirements. This will be against the norms of natural justice, transparency and offering level playing field to each OLO and will lead to the demise of the concept of a standard PTA approved RIO applicable to all OLOs.

The Deregulation Policy aims at proliferation of infrastructure and was surely not meant to place too onerous a burden on the incumbent.

The legal instruments including Interconnect Agreements are meant for orderly execution of the business activities and to avoid unpredictable moves by the parties in inter-operator relations. Altering agreements to justify unauthorized actions encourages occupation mentality leading to anarchy in the telecom sector.

Actions must follow the Agreement while the Agreement need not be modified to accommodate illegal acts.

Not every provision in an agreement is to be viewed and evaluated in terms of profit and loss and commercial parameters but rather be looked into the perspective of the objectives of the Agreement”.

Query: *Whose decision was it (i.e. Board, CEO or an officer of PTCL) to not implement the Authority’s directives to PTCL dated 7th September 2006 regarding opening of EIs of Nayatel?*

PTCL Response: “It was the decision of the management of company since the company being the artificial person appoints officials to act on its behalf”.

Query: *Why PTCL did not object, in the first place, to the placement of equipment by Nayatel in PTCL sites when Nayatel explicitly provided the details of such equipment in their request for collocation to PTCL in February 2005 and demand notices issued by PTCL were paid by Nayatel?*

PTCL Response: “Right from the beginning PTCL has been stressing upon adherence to the contractual obligations. PTCL expected faithful adherence by Nayatel as well, however in breach of good faith and contractual obligations it surreptitiously brought in extra cables and installed unauthorized equipment. On learning of this violation, PTCL promptly informed M/s. Nayatel to remove the unauthorized equipment and cables. Instead of remedy to its unauthorized action, Nayatel asked for contract amendments and subsequently filed a claim with the Authority under IDRR”.

Query: *What are the implications/problems at the end of PTCL in modifying the interconnection agreement with Nayatel where the modification is technically and economically justified?*

PTCL Response: “RIO as per telecom de-regulation policy is a default document for interconnection and was approved by the Authority after prolonged discussions and debate. The change / amendment suggested by Nayatel were prompted by its attempt to legalize its breach of the contract and if agreed would set a very dangerous trend and every licensee would first commit a breach then pressurize the other party for amendment and failing in such attempt would approach the Authority by raising a dispute to legalize such breach.”

Directives of the MoIT:

39. The Ministry of Information Technology (MoIT) issued a directive on 6th September 2006 and advised PTA to ensure that the interconnection services are duly provided by the SMPs for timely commencement of commercial services of new operators once they complete all requirements for interconnection and SMPs do not discontinue or suspend an interconnection service or collocation facility arbitrarily, provision of interconnection or collocation services to new or existing operators within

the approved framework by the incumbents continues without prejudice to any other outstanding issues.

40. MoIT issued another policy directive on 4th October 2006, which required the Authority to ensure that the services of licensed operators are commenced forthwith once a certificate for commencement is issued by PTA and the SMP incumbents do not discontinue or suspend a service or facility offered to licensed operators without first getting the required approval of PTA.

The Authority's directive:

41. In light of MoIT's directives, the Authority issued a directive to all fixed-line operators regarding conformance of the incumbents with collocation and non-discriminatory interconnection obligations of the Deregulation Policy. The Authority also warned all the incumbent operators to ensure strict compliance with its directives failure of which shall be taken as contravention of the terms and conditions of the license and shall be dealt with under section 23 of the Act.

Findings of the Authority:

42. The Authority is of the view that since the matter of awarding damages in relation to E1 does not fall within the scope of dispute under the Regulations, the Authority is not inclined to take up Naya Tel's claim for damages in the instant determination/decision. This issue shall be dealt with by the Authority separately.

43. After perusing the record and pleadings of the parties, in light of the submissions put forward by the parties, we are of the view that PTCL's stance that the instant dispute does not fulfill the requirements of the definition of the term dispute as given under the Regulations is not valid as the Regulations clearly state that a dispute can relate to an existing Interconnect Agreement. Moreover, turning down of Naya Tel's continuous request for reviewing RIO by PTCL for no cogent ground is a dispute which falls within the ambit of the definition of the dispute given under the Regulations.

44. So far as the constitution of the Coordination Committee is concerned, the same is not required here as forming the Committee is optional and PTCL has 'summarily rejected' the request of Naya Tel.

45. Given background of Nayatel business proposal and PTCL issuing demand notices on that basis without reference to Schedule 9 of PTCL RIO, when sufficient network was rolled out, PTCL started objecting.

46. As per our understanding of the matter, Naya Tel's claim doesn't say that PTCL has breached the contract. Naya Tel's claim is that giving PTCL's refusal to review the contract gives jurisdiction to PTA to consider if refusal is un-reasonable.

47. PTCL's claim that PTA approved RIO doesn't mean that it cannot be revised – PTA and its statutory role as a regulator will become redundant if that claim is accepted. The very purpose of review provisions was that for changing circumstances the regulator as an independent body should intervene to perform its statutory functions.

48. At the time RIO was ‘generally’ approved, FTTH was not considered. It has its own implications, as a result of which the Government of Pakistan issued a separate broadband policy with the objective to proliferate the broadband in the country. The Ministry also examined and concluded that broadband technology requires more number of fibers to be terminated to collocations.

49. More importantly, PTCL has failed to provide any technical or commercial/financial justification that could form the basis for PTA to take the view that reviewing Schedule 9 of RIO could cause any commercial loss to PTCL. Instead, PTCL has confined itself to that with 75 OLOs PTCL will be flooded with unlimited number of fibers. Existing clause of Schedule 9 could be applicable in the case of long haul and countrywide fiber networks. But for FTTH networks, each home pass would have fiber connection which needs to be backhauled to the exchange. So the current Determination would only be applicable for FTTH FLL networks and no other such network has been forthcoming in the country. PTCL’s collocation policy is first come first served basis and FTTH network should not have any restrictions on number of fibers subject to space availability.

50. Further, PTCL earns revenue and is not being asked to provide the collocation for free. If there is spare capacity, which is not denied by PTCL, then there is no reason for PTCL to refuse. The only apparent justification is that it wants to hurt competition this way.

51. PTCL has admitted that it is providing unlimited collocation space unrestricted by fiber restrictions to DNOPs and ISPs because of Govt.’s policy to promote IT and Internet - Govt.’s policy is also to promote broadband through FTTH- One of the claims of Nayatel is that the Collocation policies – that do not place any restrictions on fiber – applied to DNOP and ISPs should be applied to Nayatel.

52. PTCL states that the purpose of RIO is to provide interconnection only and 16 fibers are sufficient. However, PTCL is using RIO to claim that in view of its existence it is not obliged to allow application of its general collocation policies to Nayatel. The options are either to leave RIO as it is and order application of general Collocation Policies applicable to DNOPs and ISPs to Nayatel or to revise the RIO. PTCL does not want to do either.

53. This is the source of contention, and as stated, PTA is empowered under the RIO itself to examine whether it should be revised. Given that in its present form it prevents proliferation of broadband and that no financial or technical harm will result to PTCL, it is better to revise RIO because it provides the framework for them to work with over the next 5 or so years.

Relevant provisions:

54. *The Pakistan Telecommunications (Re-organization) Act 1996:*

Section 4: “The Authority shall:

- (a) regulate the establishment, operation and maintenance of telecommunication systems and the provision of telecommunication services in Pakistan;***

- (b) *promote and protect the interests of users of telecommunication services in Pakistan;*
- (c) *promote the availability of a wide range of high quality, efficient, cost effective and competitive telecommunication services throughout Pakistan;*
- (d) *promote rapid modernization of telecommunication systems and telecommunication services;*
- (e) *investigate and adjudicate on complaints and other claims made against licensees arising out of alleged contraventions of the provisions of this Act, the rules made and licences issued thereunder and take action accordingly;*
- (i) *regulate arrangements amongst telecommunication service providers of sharing their revenue derived from provision of telecommunication service;*
- (l) *settle disputes between licensees; and*
- (m) *regulate competition in the telecommunication sector and protect consumer rights”.*

55. *Pakistan Telecommunication Rules 2000:*

Rule 13 (3): *“Network Connection Equipment, where reasonably practicable, shall, if requested by an operator, be located within the same space in order to maximise the efficient use of space in the relevant operator's premises and to minimise the cost and inconvenience to the relevant operator and the other operator. If the relevant operator demonstrates that physical co-location is not reasonably practicable, the relevant operator shall, if requested, instead offer interconnection on terms equivalent to physical co-location in terms of economic, operational and technical conditions by a date as soon as reasonably practicable which shall be agreed between the relevant operator and the other operator. All costs associated with the provision of equipment and space by the relevant operator in satisfaction of these requirements shall be included in the charges permitted under rule 16”.*

Rule 13 (12): *“If a dispute arises between parties to an interconnection agreement in relation to that interconnection agreement, then either party may refer the dispute to the Authority who shall determine that dispute by written notice, within ninety days after receipt of the notice in accordance with sub-rules (8) to (11). The determination of the Authority shall be final and binding. Neither party may refer a dispute to the Authority if the interconnection agreement contains a reasonable, independent and legally binding dispute resolution mechanism and any question as to whether such a mechanism is contained within the interconnection agreement shall be determined by the Authority following consultation with the parties to that interconnection agreement”.*

Rule 13 (13): *“All operators shall use their reasonable endeavours to amend any existing interconnection agreements to conform to these rules as soon as practicable after the effective date. For the avoidance of doubt, operators shall not be treated to have contravened any portion of these rules if any such amendment cannot be effected”.*

56. *Interconnection Guidelines 2004:*

Para 6.1: *“The operator with significant market power (SMP) is obliged to prepare and submit its RIO to the Authority within one month of its determination as SMP operator by the Authority. The SMP operator shall make the RIO publicly available within seven days after approval from the Authority”.*

Para 6.3: *“The Authority may decide amendments to be made in RIO considering the principles mentioned in these Guidelines”.*

Para 6.4: *“The requesting operator may adopt RIO in full, or may request for some modifications subject to the approval of the Authority”.*

Para 13.1: *“Where an operator alleges that the other operator has contravened or failed to comply with the provisions of the Act, the Rules, the Regulations, the License, these Guidelines or the Interconnect Agreement, then the Interconnection Disputes Resolution Regulations, 2004 shall apply”.*

57. *PTCL Reference Interconnect Offer (RIO):*

Main Body:

Clause 17.1: *“A Party may seek to amend this Interconnection Agreement by serving on the other a review notice if:*

- a) either Party’s Licence is materially modified (whether by amendment or replacement); or*
- b) a material change occurs in the law or regulations (including interconnection guidelines published by the Authority governing telecommunications in Pakistan); or*
- c) this Interconnection Agreement makes express provision for a review or the Parties agree in writing that there should be a review; or*
- d) a material change (including enforcement action by any regulatory Authority) occurs that affects or reasonably could be expected to affect the commercial or technical basis of this Interconnection Agreement; or*
- e) this Interconnection Agreement is assigned or transferred by the other Party except if prior written consent to the assignment or transfer is not required under clause 36 – Assignment; or*
- f) there is a general review pursuant to clause 17.3”.*

Clause 17.2: *“Save as provided in clause 17.1, a Party shall serve a review notice not later than the expiration of a 6 months period commencing on the date set opposite each clause as follows:*

<i>Clause</i>	<i>Period commencing on the date:</i>
<i>0</i>	<i>of publication of the modifications to the Licence</i>
<i>b)</i>	<i>of occurrence of material change</i>
<i>c)</i>	<i>of entitlement or occurrence of the date of written agreement</i>
<i>d)</i>	<i>of occurrence of the material change</i>
<i>e)</i>	<i>of notification of assignment or transfer</i>

Clause 17.3: “A Party may initiate a general review of this Interconnection Agreement by serving a review notice during the period of six (6) months commencing on the Effective Date and once every one (1) year thereafter”.

Clause 17.4: “On service of a review notice, the Parties shall forthwith negotiate in good faith the matters to be resolved with a view to agreeing the relevant amendments to this Interconnection Agreement”.

Clause 17.5: “For the avoidance of doubt, the Parties agree that notwithstanding service of a review notice this Interconnection Agreement shall remain in full force and effect”.

Clause 18.1: “If the Parties fail to reach agreement on the subject matter of a review notice pursuant to clause 17 within 3 months (or 6 months for a review notice under clause 17.3) in each case from the date of service of such review notice, either Party may, not later than 3 months after the expiration of the relevant period, request the Authority in writing to determine the matters upon which the Parties have failed to agree”.

Clause 18.2: “The Parties shall enter into an agreement to modify or replace the Interconnection Agreement in accordance with any order, direction, determination or consent of the Authority unless such order, direction, determination or consent is subject to a legal challenge”.

Clause 18.3: “If the order, direction, determination or consent is subject to a legal challenge, then the Parties shall modify or replace the Interconnection Agreement at the conclusion of the legal proceedings in accordance with the Authority’s order, direction, determination or consent and the result of the legal proceedings”.

Clause 18.4: “For the avoidance of doubt, order, direction, determination or consent of a charge may include an order, direction, determination or consent of the basis for calculating that charge”.

Clause 18.5: *“The provisions of these paragraphs are intended to establish a framework for the review and determination of the provisions of this Interconnection Agreement, but are not intended to prejudice the rights, liabilities and obligations of the Parties created by and under their Licences”.*

Clause 19.1: *“Subject to clause 19.2, either Party (the “Suspending Party”) may suspend this Interconnection Agreement or any Schedule of this Interconnection Agreement by providing notice to the other Party if:*

- (a) other Party’s Network has a material adverse affect on the normal operation of the Suspending Party’s Network, or*
- (b) the other Party’s Network or the supply of a Service to the other Party under this Interconnection Agreement poses an imminent threat to the network of the Suspending Party; or*
- (c) the other Party’s Network causes or is likely to cause physical or technical harm to any telecommunications network, system or services (whether of the Suspending Party or any other person) including but not limited to causing damage, interfering with or causing deterioration in the operation of the Suspending Party’s Network; or*
- (d) the other Party is in material breach of this Interconnection Agreement (including, but not limited to failure to pay any sum, whether in respect of any one or more Services, for which the other Party has been invoiced or billed or requested to make any payment in respect thereof), the Suspending Party has given twenty-one (21) Calendar Days notice of such breach (which period may operate concurrently with the period mentioned in Schedule 12– Billing) and the other Party has failed to rectify such breach within that time; or*
- (e) if, in the Suspending Party’s reasonable opinion, the other Party attempted to use, is likely to use, or has used any Service supplied under this Interconnection Agreement (whether with or without the authorization and/or permission of the Suspending Party) in contravention of law and the Suspending Party has the necessary confirmation from the relevant Governmental Agency that the other Party is in contravention of law; or*
- (f) compliance with legal or regulatory obligations requires immediate action; or*
- (g) continued operation of this Interconnection Agreement would be unlawful or would pose a serious threat to health or an imminent threat to life or property; or*
- (h) any material information provided or representation made by either Party to the other Party is untrue, false, misleading or inaccurate and has an adverse material impact on the other Party in relation to its provision of Services under this Interconnection Agreement”.*

Clause 19.2: “A Suspending Party will only suspend this Interconnection Agreement or any Schedule or any licence granted under a Schedule to the extent necessary to address the relevant event. Prior to suspending this Interconnection Agreement or any Schedule or any licence granted under a Schedule, the Suspending Party will notify the Authority and request the Authority’s written approval of such suspension. Suspension rights shall not be exercised without the Authority’s approval unless serious threat to health, imminent threats to life or property or compliance with other legal or regulatory obligations require immediate action, in which case the Suspending Party may immediately suspend the operation of this Interconnection Agreement or Schedule or licence, and shall forthwith notify the Authority of such suspension seeking ex post approval of such suspension. In the event such suspension is ordered to be lifted by the Authority or it is otherwise determined that the suspension was unwarranted, the Suspending Party shall be liable for compensation to the other Party as determined by the Authority”.

Clause 19.3: “If the Authority issues an order granting in whole or in part the request under clause 19.2, the Suspending Party may immediately suspend (for such period of time as the Authority approves, or indefinitely if the Authority does not specify a period of time) this Interconnection Agreement, or Schedule, or licence, or those parts of this Interconnection Agreement or Schedule or licence covered by the Authority’s order by giving written notice to the other Party”.

Clause 19.4: “A Party shall not be required to pay charges for any Service for as long as it remains suspended, unless directed otherwise by the Authority. Any charges for reconnection or reinstatement of the Service after lifting of suspension shall be payable (i) if the suspension was validly made or made pursuant to an order of the Authority, by the Party whose Services were suspended, and (ii) in any other case, by the Suspending Party”.

Clause 19.5: “If this Interconnection Agreement or a Schedule, is suspended under clause 19 for more than sixty (60) Calendar Days, the Suspending Party may, subject to clause 20.2, terminate this Interconnection Agreement or Schedule (as the case may be) with immediate effect by giving the other Party written notice”.

Clause 27.1: “The dispute procedure specified in this clause shall not apply to disputes arising out of change of charge of any of the PTCL Services or to disputes relating to invoices which shall be dealt with in accordance with the relevant Schedule”.

Clause 27.2: “It is understood and agreed that the Parties shall carry out this Interconnection Agreement in the spirit of mutual co-operation and good faith and shall seek to resolve amicably any disputes arising between them”.

Clause 27.3: “During any period of dispute, before or until resolution, a Party, without prior approval of the Authority, shall not disrupt services being provided to the other Party, or take any other actions, that might materially and adversely affect that Party’s service. Each Party will continue to fulfill its obligations under this Interconnection Agreement during the pendency of a dispute or any procedures”.

Clause 27.4: “The procedures set out as under are without prejudice to any other rights and remedies that may be available in respect of any breach of any provisions of this Interconnection Agreement including urgent interlocutory relief”.

Clause 27.5: “Any time limits or provisions contained herein may only be varied by agreement of the Parties”.

Clause 27.6: “Either Party (the “Disputing Party”) may invoke the dispute procedure specified in this clause, and if it wishes so to do it shall send written notice of the Dispute to the other Party’s commercial contact (the “Disputed Party”). The notice shall contain all relevant details including the nature and extent of the Dispute. The Disputed Party shall acknowledge the receipt of such notice of the Dispute within seven (7) Business Days. In the absence of acknowledgement from the Disputed Party within such timeframe, the Disputing Party may notify the Disputed Party that the notice has been deemed received”.

Clause 27.7: “Following notice under clause 27.6, the Parties shall consult in good faith to try to resolve the Dispute involving appropriate senior managers within fifteen (15) Business Days”.

Clause 28.1: “If the Parties do not reach an agreement on an issue raised through correspondence within fifteen (15) Business Days, either Party may give ten (10) Business Days written notice to the other Party of its intention to escalate the issue and outlining the details of the issue. If the issue is not resolved prior to the expiry of the Notice Period, then either Party may notify the other Party that it wishes to refer the issue for discussion to a Co-ordination Committee established under this clause 28.1”.

Clause 28.2: “In the event that a dispute is referred to a Co-ordination Committee under clause 28.1, the Parties shall promptly form a committee with an equal number of appropriate representatives from each Party (“Co-ordination Committee”)”.

Clause 28.3: “The Co-ordination Committee to which an issue has been raised will meet within ten (10) Business Days of the receipt by the other Party of a notice under clause 28.1”.

Clause 28.4: “If the Co-ordination Committee has not resolved an issue within twenty (20) Business Days after it meets to review that issue under clause 28.2:

- i. either Party may refer the Dispute to the Authority, such dispute to be resolved in accordance with clause 29; or
- ii. Parties by mutual agreement may refer the Dispute to arbitration, such arbitration to be conducted in accordance with clause 30”.

Clause 28.5: “In the event of a reference to the Authority, both Parties shall compile a detailed dispute report, which shall include origin, nature, extent, issues and any proposals for resolution and make their respective reports available to the Authority and each other within 28 days of the referral”.

Clause 29.1: “The resolution of a dispute referred to the Authority will be conducted in accordance with the provisions of Interconnection Dispute Resolution Regulations, 2004, and be subject to any final binding resolution imposed on the Parties by the Authority”.

Clause 29.2: “If the Authority does not have the power under the Act or is unwilling to resolve the dispute, the Authority will refer the dispute back to the Co-ordination Committee, which may recommend reference of the case back to arbitration”.

Schedule 9:

Clause 3.1: “The Operator shall submit its request for Co-Location Space at a Co-Location Site for the POI listed in Attachment A, using a Co-Location Request Form in the form of Attachment B containing the following information:

- a. the Co-Location Site listed at which Co-Location Space is sought;
- b. confirmation that Co-Location Space is sought at that Co-Location Site for the purpose of:
 - (i) interconnection with a POI; or
 - (ii) accessing space segment capacity; or
 - (iii) accessing submarine cable capacity.
- c. the type of Co-Location Equipment proposed to be installed at that Co-Location Site;
- d. the space and power requirements;
- e. the floor loading of the Co-Location Equipment;
- f. the capacity of the Transmission Tie-Cable required;
- g. the type of optical fibre cable to be used, and the diameter of the fibre cable; and
- h. the Operator’s contact details”.

Clause 3.2: “PTCL shall acknowledge receipt of the Co-Location Request under clause 3.1 within seven (7) Business Days and indicate whether the Co-Location Request is preliminarily accepted on a non-binding basis or rejected. If the Co-Location Request is rejected, PTCL will provide written reasons for such rejection to the Operator. PTCL shall recover the Co-Location Request fee for the reasonable cost of processing the Co-Location Request as provided in PTCL’s published co-location price list, irrespective of the outcome of the Co-Location Request”.

Clause 3.3: “PTCL may reject a Co-Location Request if:

- (a) the Operator is not an LLO / LDI; or
- (b) the Co-Location Request is not in the prescribed form; or
- (c) the Co-Location Request does not contain the required information; or
- (d) there is no available space at the Co-Location Site as determined in accordance with clause 2;
- (e) acceptance of the Co-Location Request will give rise to significant health, safety, technical or engineering issues; or
- (f) the Operator has not satisfied clause 1.2 (in case of Satellite Earth Station) or clause 1.3 (in case of a Submarine Cable Landing Station / Frontier Station)”.

Attachment D of Schedule 9:

Clause 1.1 (d): “The Operator must not locate equipment other than Co-Location Equipment in the Co-Location Space”.

Clause 1.2 (a): “Unless otherwise agreed by the Parties, the Operator must not install more than two physical optical fibre cables in the Co-Location Space and up to the lead-in manhole outside Co-Location space”.

Clause 1.2 (b): “Unless otherwise agreed by the Parties, the Operator shall only be permitted to terminate eight (8) fibre strands per fibre cable at the Co-Location Space”.

Order of the Authority:

58. PTCL and Naya Tel shall modify their existing interconnection agreement to accommodate more number of fiber optic cables required for the deployment of FTTH networks for broadband services. PTCL shall allow Naya Tel to install the cables (fibers and strands) as per its demand required/necessary for FTTH networks.

59. In future, the increase in the number of cables shall be allowed keeping in view the availability of space in PTCL’s collocation sites, which shall be provided to other licensed operators on first-come-first-served basis.

60. Similar right of modification in the respective interconnection agreements with PTCL shall be available to all LL operators providing FTTX/broad band services.

61. PTCL in future shall ensure provision of adequate space to other operators (including Naya Tel) in its Tele-houses at it earliest. Naya Tel shall vacate its extra equipment from PTCL's collocation sites within six (6) months of this determination, if so required by PTCL.

Maj. Gen. (R) Shahzada Alam Malik
Chairman
Pakistan Telecommunication Authority

Dr. Muhammad Yaseen
Member (Technical)
Pakistan Telecommunication Authority

S. Nasrul Karim A. Ghaznavi
Member (Finance)
Pakistan Telecommunication Authority

This determination is signed on this ____ day of March, 2007.