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PART II

Statutory Notifications (S. R. O.)

GOVERNMENT OF PAKISTAN

PAKISTAN TELECOMMUNICATION AUTHORITY

NOTIFICATION

Islamabad, the 12th February, 2010

[To the Gazette of Pakistan Extra-ordinary Part II, dated the 20th September, 2004, containing notification No.S.R.O 797(I)/2004, dated 9th July, 2004]

S. R. O. 74(I)/2010.— *The Pakistan Telecommunication Authority is pleased to notify following amendments in the Interconnection Dispute Resolution Regulations, 2004 No. S.R.O.797 (I)/2004:*

Short Title and Commencement.—(1) These Regulations shall be called the Interconnection Dispute Resolution (Amendment) Regulations, 2010.

(2) They shall come into force from the date of Gazette Notification.

At page 2757 clause (b) in sub-regulation (1) of regulation 2 shall be omitted.

At page 2757 clause (c) in sub-regulation (1) of regulation 2 shall be omitted.

(251)

At page 2757 clause (d) in sub-regulation (1) of regulation 2 shall be omitted.

At page 2757 in clause (e) in sub-regulation (1) of regulation 2 the word "**Claim**" shall be substituted with "**Dispute**".

At page 2757 after clause (e) in sub-regulation (1) of regulation 2 the following clause shall be inserted:

*"(ea) **Dispute**" means a written notification by the operator to the Authority claiming contravention by the relevant operator of the provisions of the Act, the rules made there under or its license as a consequence of the inability of the operator and the relevant operator to agree on:*

- (i) an interconnection arrangement; or*
- (ii) a dispute arising out of a subsisting interconnection agreement, and includes all evidence and materials annexed to the dispute;"*

At page 2758 in clause (i) in sub-regulation (1) of regulation 2 the word "**Claim**" shall be substituted with "**Dispute**".

At page 2758 clause (j) in sub-regulation (1) of regulation 2 shall be omitted

At page 2758 clause (k) in sub-regulation (1) of regulation 2 the word "**Claim**" shall be substituted with the word "**Dispute**".

At page 2758 clause (1) in sub-regulation (1) of regulation 2 shall be substituted as follows

"Reply" means the written reply by the Relevant Operator to the Dispute, and includes all evidence and materials annexed to the Reply;

At page 2758 clause (m) in sub-regulation (1) of regulation 2 shall be omitted

At page 2758 after clause (k) in sub-regulation (1) of regulation 2 a new clause as follows shall be inserted:

(ka) "Relevant Operator" means the person against whom the Dispute is filed;

At page 2758 clause (o) in sub-regulation (1) of regulation 2 shall be omitted

At page 2758, regulation 3 shall be substituted as follows:

3. ***Notification of Dispute.***—(1) An operator may notify the Authority of a Dispute if that operator is unable to reach to a consensus with the Relevant Operator on a proposed interconnection arrangement;

Provided such inability to agree on the proposed Interconnection Agreement continues for sixty days after the receipt of the request.

(2) An operator may also notify the Authority of a Dispute which arises between parties to an Interconnection Agreement in relation to that interconnection arrangement:

Provided that the Dispute notification shall be accompanied with an affidavit affirming, the accuracy of all factual information to the knowledge of the Operator. Where averments are made on the basis of Information and belief of the Operator the affidavit shall disclose the source of such Information and belief.

(3) An operator that notifies the Dispute to the Authority shall also provide a copy of the notification to the Relevant Operator on the same day stating that the Dispute has been submitted to the Authority.

(4) Upon receipt of such copy of notification, the Relevant Operator shall, within five working days, provide its Reply, if any, on why the Authority should not intervene to resolve the Dispute. The Relevant Operator shall also provide a copy of the Reply to the other party on the same day stating that the Reply has been submitted to the Authority.

At page 2760 regulation 4 shall be omitted.

At page 2761 the following new regulation shall be inserted:

4-A. ***Admission of Dispute.***—(1) The Authority upon admission of the notification shall give an opportunity of hearing, in person, to both the parties.

(2) If admission of the notification is declined, the operator may re-file the notification after removing the deficiency within fourteen days of the decline. A re-filed notification shall be regarded as a fresh Dispute and all time limits specified in these regulations shall be considered afresh from the date of re-filing.

At page 2761 regulation 5 shall be substituted as follows:

5. ***Directions following admission of Dispute.***— Upon admission of a Dispute for hearing:

- (a) a date shall be notified to the parties in writing not less than seven days prior to the hearing; and
- (b) the parties shall file the following documents, at least three days before the date of the first hearing:
 - (i) a statement of objections to admissibility of evidence relied on by the other party; and
 - (ii) a statement of the understanding reached between the parties, if any, by that date.

At page 2761 sub-regulation (1) of regulation 6 shall be substituted as follows:

(1) **The Reply by the Relevant Operator shall address each issue highlighted in the Dispute notification.**

At page 2761 sub-regulation (2) of regulation 6 shall be substituted as follows:

(2) **The Relevant Operator shall deliver a copy of the Reply complete in all respects to the other operator forthwith but in any event not later than the next working day following the filing of the Reply with the Authority.**

At page 2762 sub-regulation (4) and (5) of regulation 6 shall be omitted.

At page 2762 regulation 7 shall be substituted as follows:

7. ***First hearing.***—(1) **At the first hearing, both parties shall be given an opportunity to present their case in relation to the Dispute along with any additional evidence and Information the party may consider necessary during the arguments.**

(2) **If the parties are unable to reach on an agreement at the conclusion of the first hearing, the proceedings shall stand adjourned for a date to be notified subsequently by the Authority. In the interim, the parties may reach agreement and shall in such case file a copy of their agreement**

with the Authority.

At page 2762 regulation 8 shall be substituted as follows:

8. *Decision by Authority for the Final Hearing.*—(1) Unless the parties have reached to an agreement by the 14 days after the first hearing, excluding the day of first hearing, a final hearing shall be convened.

(2) The final hearing date shall be notified to the parties at least seven days prior to the hearing.

(3) All time limits specified in this Part shall be calculated as if the first day was the day next after the fourteen days time period stated in sub-regulation (1).

(4) A party may, not later than the 14 days, object in writing to one or more issues or propose additional issues for inclusion in the scope of Dispute.

(5) The Authority shall, after considering the comments of the parties on the scope of Dispute, circulate the final version of the scope of Dispute to the parties.

At page 2762 regulation 9 shall be omitted

At page 2763 regulation 10 shall be substituted as follows:

10. *Final hearing.*—(1) At the final hearing, the parties shall state their positions by referring to their Pleadings in the context of the scope of Dispute.

(2) Except for good cause, a party shall not be allowed to refer to any evidence or material not made part of its Pleadings or address any argument on any matter not sufficiently expressed in its Pleadings.

(3) A party may address oral arguments only on matters announced by the Authority at the outset of the final hearing as requiring oral arguments. All matters sufficiently expressed in the Pleadings shall be considered heard by the Authority, notwithstanding absence of oral reiteration or argument thereon.

(4) The parties may be directed to conduct their respective cases and examine and cross-examine witnesses within the time limits set and conveyed to the parties in the form of a hearing timetable at least three days before the final hearing by the Authority.

(5) In the case of Dispute on a proposed Interconnection

Agreement, if the parties are unable to reach to an agreement following the first hearing, the Authority shall if required resolve the terms and conditions of the agreement taking into account the following matters:

- (a) the promotion of non-discrimination between operators in similar circumstances providing similar services;
- (b) the promotion of competition;
- (c) Relevant Operators should allow flexibility to the other operators as to the points of connection, manner of conveyance of traffic and the routing of intelligence;
- (d) protection of the interest of customers;
- (e) maintenance of the public switched network and inter-operability of services; and
- (f) the relative market position of the parties.”

At page 2763 regulation 11 shall be substituted as follows:

11. *Final Decision.*—(1) The final decision of the Authority shall be announced not later than the (90) day.

(2) The final decision may specify the time limit within which compliance therewith is to be reported to the Authority:

Provided that an operator and the relevant operator shall ensure clearance of dues payable to the Authority in accordance with the terms and conditions of their respective licensee:

Provided further that the dues to the Authority shall not be deferred on the basis of pendency of a Dispute with the Authority.

At page 2764 regulation in regulation 12 the word ‘*Claim*’ shall be replaced with the word ‘*Dispute*’

At page 2764 regulation 13 shall be omitted.

At page 2764 regulation 14 shall be omitted

At page 2765 regulation 15 shall be omitted

At page 2765 regulation 16 shall be omitted

At page 2766 sub-regulation (3) of regulation 17 shall be omitted.

At page 2766 sub-regulation (4) of regulation 17 shall be substituted as follows:

(3) The Authority shall within seven days of the date of the application either give its ruling or notify the parties that the matter is taken under consideration and that the ruling would be incorporated in the final decision.

At page 2766 sub-regulation (1) of regulation 18 shall be substituted as follows:

(1) An Information Direction may be issued:

- (a) of its own motion by the Authority, at any stage of the proceedings; or**
- (b) on application of a party, at least five days before the final hearing date.**

At page 2766 sub-regulation (2) of regulation 18 shall be substituted as follows:

(2) The party receiving an Information Direction shall furnish the Information specified therein to the Authority within ten days of the Information Direction.

At pages 2766 and 2767, sub-regulations (5), (6) and (7) of regulation 18 shall be substituted as follows:

(5) The Authority shall examine a confidentiality request and may provide the reasons cited for confidentiality, with appropriate editing, to the other party and invite comments thereon within five days.

(6) The Authority shall endeavor to balance the interests of the party requesting confidentiality against its obligations under section 6(b) of the Act and shall rule accordingly.

(7) Where a party to the proceedings:

- (a) fails to respond to an Information Direction within the time specified; or**
- (b) states reasons for its inability to provide the Information within the time limit specified, or at all, and the Authority**

considers such reasons to be contumacious, the Authority may, without prejudice to any other action it may take, give the benefit of such failure or Contumacy to the other party.

At page 2767 regulation 19 shall be omitted.

At page 2767 regulation 20 shall be omitted.

At page 2768 regulation 22 shall be substituted as follows:

***Proceedings to continue.*—Where the Authority is of the view that the conduct of a party is contumacious in respect of any matter or circumstance and the Contumacy continues for three days after a warning in this regard is given, a note to that effect shall be made and the proceedings shall continue unaffected.**

At page 2768 regulation 23 shall be omitted.

At page 2769 regulation 25 shall be omitted.

At page 2769 regulation 27 shall be omitted

At page 2769 regulation 28 shall be omitted

At page 2769 a new regulation shall be inserted as follows:

29. *Rights of Third Parties.*— The proceedings of a Dispute shall not affect the rights of any third party, which the parties to the Dispute shall be obliged to fulfill under the respective agreement(s) with that third party.

At page 2770 the “ANNEX” to the regulations shall be substituted as follows:

ANNEX

FORM OF DISPUTE ¹

(regulation 3(1) of Interconnection Dispute Resolution (Amendment) Regulations, 2010)

BEFORE THE

PAKISTAN TELECOMMUNICATION AUTHORITY

DISPUTE NO. _____²

[Name of Operator, address]

...Operator(s)

Versus

[Name of Relevant Operator, address]

...Relevant

Operator(s)

DISPUTE under the Resolution of Interconnection Disputes Regulations for resolution of dispute relating to [proposed interconnection arrangement / a subsisting interconnection agreement]³

Authorized Representative for the Operator: [Give details]
Address for contact : [preferably the address of the
Authorized Representative]

Date on which the request for negotiation was first made:

SECTION A

SUMMARY OF DISPUTE⁴

SECTION B

THE DISPUTE

-
1. On A4 size paper. Font Times New Roman. Font size 12. Line spacing 1.5. Top and bottom margins 1.5. Right and Left margins 1.5.
 2. Number to be assigned by the Authority.
 3. Delete as appropriate.
 4. To be limited to two A4 size pages.

- Chronological summary of events up to the date of the Dispute
- the relevant interconnection service sought
- the relevant product /services market
- the commercial use of the proposed interconnection arrangement and a forecast of the likely usage thereof
- for proposed interconnection arrangements, a copy of the latest version of the agreement under negotiation, clearly identifying the provisions in dispute
- for subsisting interconnection agreements, a copy of the agreement clearly identifying the provisions which are sought to be varied, interpreted or applied
- in table format, a list of all issues in dispute and the respective position to date of the parties on each issue

- in table format, a list of all issues on which parties have reached agreement since the dispute was first raised

SECTION C

GROUNDS AND RELIEF

- the grounds on which the Operator believes the Relevant Operator is acting illegally or unreasonably
- relevant provisions of the Act, the Rules and Regulations made there under, the licences, guidelines, citations of superior court decisions, other statutory provisions, international regulatory practices, etc, relied on
- where relief sought consists of terms of interconnection, the proposed provisions of the interconnection agreement to be attached as an annex
- where relief sought is financial in nature, calculations or economic analysis to be appended

SECTION D

DESCRIPTION OF NEGOTIATIONS

- a description together with relevant evidence on an issue-by-issue basis detailing:
 - ◆ all attempts at negotiations
 - ◆ the current status of negotiations on each issue
 - ◆ the disagreement on each issue
 - ◆ the cause of failure of negotiations (including failure to provide information, delay in providing information, procedural delays in holding negotiations, insistence on functional or technical specifications not relevant or necessary, and the like)

SECTION E

OPTIONAL

[For matters considered relevant but not covered under the above sections]

1. On A4 size paper. Font Times Roman, Font size 12, Line spacing 1.5. Top and bottom margins 1.5 Right and Left margins 1.5.
2. Number to be assigned by the Authority;
3. Delete as appropriate; and
4. To be limited to two A4 size page.

ERUM LATIF,
Deputy Director (Law & Regulations).