

Pakistan Telecom Laws

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Mr. Naeem Shaikh has written a very good account of the historical background of Telecommunication Laws in Pakistan. I am reproducing the entire article with the author's express permission below. You can contract the author directly via the email address provided at the end of the article.

Historical Background and Development:

Consequent to the Lord Mountbatten's 3rd June 1947 Plan the Indian Independence Act, 1947 was enacted by the British Parliament and Pakistan emerged on the world map as an Independent & Sovereign Dominion. In terms of Section 18 (3) of the Act of 1947 the Laws of British India were applicable and continued as law of the Dominion (Pakistan) with necessary adaptations until the other provisions are made by the Legislature in Pakistan. The then Governor General (Mountbatten of Burma) was empowered in Section 9 (1) to carry into effect the operation of the Act of 1947 who accordingly issued "The Pakistan (Adaptation of Existing Pakistan Laws) Order dated 14th August 1947" (G.G.O. No. 20 of 1947).

Section 3 of the Order of 1947 read as "As from the appointed day, all existing Pakistan Laws shall, until repealed or altered or amended by a competent Legislature or other competent authority, in their application to Pakistan and any part or parts thereof, be subject to the adaptation directed in this Order". Through this legislative mechanism Pakistan inherited plethora of colonial and other legislative instruments, hundreds of which were repealed and the remaining were retained/adopted, adapted and extended through various Acts, Ordinances promulgated in different phases of time by the Legislature in Pakistan.

At the time of independence the laws in force in Pakistan relating to Telecommunication were "**The Telegraph Act, 1885 (XIII of 1885)**" and "**The Wireless Telegraphy Act, 1933 (VII of 1933)**". These were extended and adapted in Pakistan through "**The Adaptation of Central Acts and Ordinances Order, 1949**" (G.G.O. No. 4 of 1949) and "**Central Laws (Statute Reforms) Ordinance 1960 (XXI of 1960)**".

The **Act of 1885** was the primary governing telecommunication statute. There was a joint Director General of Posts, Telegraph & Telephone under the Act of 1885. The Act granted exclusive privilege to Government (Posts, Telegraph & Telephone [PTT] Department to establish, maintain, working, licencing, regulating the Telegraph within or any part of Pakistan. The government was the governing and controlling authority of telecom sector in Pakistan. Likewise, The Wireless Telegraphy Act was enacted in order to regulate the possession of wireless telegraph apparatus.

In 1962 **Posts and Telegraph (Amendment) Act, 1962 (V of 1962)** was enacted which amended Telegraph Act, 1885, **The Post Office Act, 1898** and **The Wireless**

Telegraphy Act, 1933. The purpose of the Amending Act was to split up the Postal Department and the Telegraph and Telephone Department. The PTT Department slumbered for about 30 years with no active, substantial and innovative development in telecom sector.

The arena of development, innovation and liberalization starts from 1990-1991. By 1991 the scenario changes, The **Pakistan Telecommunication Corporation Act, 1991 (Act XVIII of 1991)** was promulgated which created the independent statutory corporation named “Pakistan Telecommunication Corporation (PTC)” and Telegraph & Telephone Department was merged into PTC. The Corporation with perpetual succession took over all the assets and liabilities of the PTT Department. In pursuance to government competitive and liberalization policy in relation to telecom opened field to private sector and PTC started out-sourcing few of its services i.e card payphones services and pre paid calling card operations to private companies. Although in the Act of 1991 there was no regulator in its true sense but attributes of regulator, to some extent, were existent in PTC. The PTC was responsible in the field of telecommunication for development, research, improvement in quality, advice to government and determination of tariff subject to approval of government, maintain liaison with foreign government and other obligations as any regulator performs.

In 1994 in order to further liberalize and open the telecom industry and to transfer the telecommunication services to private sector and the matters connected thereto the Presidential Ordinance “**Telecommunication Ordinance, 1994 (Ordinance LI of 1994)**” was promulgated on **13th July 1994**. To promote, maintain fair competition and regulate the telecom industry and telecom services the regulatory bodies “**The Pakistan Telecommunication Authority (PTA)**”, “**Frequency Allocation Board (FAB)**” and “**National Telecommunication Corporation (NTC)**” were established.

The independent regulator (PTA) was established for the first time in the history of telecommunication field in Pakistan under the 1994 Ordinance. The Ordinance also caused the federal government to incorporate the “Pakistan Telecommunication Company Limited (PTCL)” under the company ordinance, 1984 which replaced the PTC. The Company was provided the exclusivity to provide the basic telephone services in Pakistan for a period of seven years.

The Ordinance of 1994 repealed The Telegraph Act, 1885 (XIII of 1885) and certain sections of Pakistan Telecommunication Corporation Act, 1991. The 1994 Ordinance was to face its constitutional death upon expiry of four month as declared in Article 89 of the Constitution of Islamic Republic of Pakistan 1973, therefore, before its constitutional expiry life was given to it afresh through another **Presidential Ordinance No. LXXVII of 1994** dated **7th November 1994**. This Presidential Legislation under Article 89 of the Constitution continued until the Ordinance was presented in the Parliament. The Presidential Ordinances are Ordinances Nos. (**XXIII of 1995** dated **7th March, 1995**), (**LXIII of 1995** dated **5th July, 1995**), (**CIII of 1995** dated **30th October, 1995**) and **Pakistan Telecommunication (Re-Organization) Ordinance, 1995 (CXV of 1995)** dated **27th November, 1995**. (**XXX of 1996** dated **7th March, 1996**) and **Ordinance**

No. LXXVII of 1996 dated **4th July, 1996**. Every subsequent ordinance repealed the previous one. Finally the “**Pakistan Telecommunication (Re-organization) Act, 1996 (XVII of 1996)**” was passed on **17th October 1996**.

Some of the salient features of the Act of 1996 are:

- Creation of Regulator
- Regulation of Telecommunication Industry and Services
- Transfer of telecommunication regime to private sector
- Powers of Federal Government to Issue Policy Directives
- Licensing
- Establishment of PTCL as Company under the Companies Ordinance, 1984
- Creation of National Telecommunication Corporation (NTC) to provide telecom services to armed forces, defence projects, federal government, provincial governments and local authorities etc.
- Formation of Frequency Allocation Board (FAB) with the responsibility of allotment and management of frequency spectrum. The FAB replaced the Pakistan Wireless Board established under “The Wireless Telegraphy Act, 1933” and took over the function of the Wireless Board.
- Creation of Pakistan Telecommunication Employees Trust with the object of to take care of the interests of the employees of the Company.

Deregulation Policy 2003:

Section 8 of the Act of 1996 empowers the federal government to issue policy directives and PTA is under obligation to adhere and comply with the directives. Deregulation implies the removal of control of the government. It also implies the liberalization of the telecom market.

The exclusivity of Pakistan Telecommunication Company Limited (PTCL) to provide basic telephone services under the Act of 1996 expired on 31st December 2002. In July 2003 the Government of Pakistan (GoP) announced “Deregulation Policy for the Telecommunication Sector”. The Policy sets out the following objectives :

- To increase service choice for customers of telecommunication services at competitive and affordable rates;
- To promote infrastructure development, especially infrastructure that will increase teledensity and the spread of telecommunication services in all market segments.
- To increase private investment in private sector.
- To encourage local telecom manufacturing/service industry.
- Recognizing the challenge to incumbent, PTCL.
- Accelerate expansion of telecom infrastructure to extend services to un-served and under-served areas.
- Liberalize the telecommunication sector by encouraging fair competition amongst service provider.
- Maintain and effective well defined regulatory regime that is consistent with best

international practice.

- Maintain consistency with Pakistan's IT and Interconnect promotion policy of low prices for bandwidth to make internet access affordable.
- Safeguard Pakistan's national and security interest.

Mobile Cellular Policy 2004:

GoP has announced its Cellular Policy. The policy objectives are:

- Promotion of efficient use of radio spectrum;
- Increased choice for customers of cellular mobile services at competitive and affordable price;
- Private investment in the cellular mobile sector;
- Recognition of the rights and obligations of mobile cellular operators;
- Fair competition amongst mobile and fixed line operators;
- An effective and well defined regulatory regime that is consistent with international best practices;

In pursuance and compliance of the Cellular Policy, the Regulator has issued licenses to the foreign companies.

Subordinate Legislations:

The Act of 1996 sets and provides the broad framework, principles, authority and functions of the Regulator etc. The Act is silent about how the various telecom services, tariffs, interconnection guidelines and disputes arising therefrom, role and responsibilities of incumbent, accounting standards, reporting and problems faced by the companies inter are to be regulated and controlled? To meet the various situations, to control and regulate the services offered by the telecom companies and to create the fair competition environment, the rules and regulations have been framed by the Government and the Regulator. The various Rules, Regulations and Guidelines are:

i. Telecommunication Rules 2000

The Rules have been framed under Section 57 of the Pakistan Telecommunication (Re-Organization) Act, 1996. The Rules provide for the procedure of licencing procedure, its duration, renewal, modification, transfer, assignment or transfer and termination. The Rules further provide the Interconnection procedure, basis terms and conditions of Interconnection Agreement, Procedure in case of failure to agree and arrive at Interconnection Agreement, Interconnection Charges, and dispute resolution mechanism. The Rules also narrates the quality of services, exchange of information between the two operators, Tariff etc.

ii. Access Promotion Contribution Rules 2004:

Means the contribution made by Long Distance International (LDI) operator/licencee to Local Loop (LL) operator/licencee or Universal Service Fund (USF) created and maintained by Federal Government. USF has been established for providing access to telecom services to people living in un-served, underserved, rural and remote areas etc.

iii. Card Payphone Service Regulations 2004:

These have been issued by PTA under Section 5 (2) (O) of the Act of 1996. The Regulations deal with terms and condition of the licence, its modification, renewal and termination, monitoring procedure, accounting & auditing, Inspection by PTA, responsibilities, assignment, complaint systems, code of commercial practices, relationship with customers by the payphone operators and with other operators etc.

iv. Interconnection Dispute Resolution Regulations 2004:

The Regulations provide the comprehensive procedure of dispute resolutions between the operators .

v. Other Regulations and Guidelines:

The Pakistan Telecommunication Authority has framed and issued certain other regulations and guidelines. These are:

- Fixed Line Tariff Regulations 2004
- Vehicles Tracking Services Regulation 2004
- Burglar Alarm Services Regulations 2004
- Amateur Radio Services Regulations 2004
- Audio-tex Service Regulations 2004
- Non-voice Communication Network Service Regulations 2004
- Registration of Satellite Service Provider Regulations 2004
- Trunk Radio Services Regulations 2004
- Interconnection Guidelines 2004
- Access Promotion Regulation 2005
- Number Allocation and Administration Regulation 2005
- Mobile Number Portability Regulations 2005

Regulator:

Generally there are two types of Regulators, the first is called the “Economy Wide Competition Regulator” as the Monopoly Control Authority established under the Monopoly Control and Restrictive Trade Practices Ordinance, 1970; and the other one is called the “Industry Regulator” .

Although the Industry Regulator was established in the year 1994 with the Promulgation of the Telecommunication Ordinance, 1994 but the real objective behind the creation of such Regulator was the need of independent, technical, expert and legal body to cope

with some key issues, besides others, such as change over of telecom sector from monopoly to competition, protection of the rights of the companies competing with incumbents and to provide safeguard the interest of the users of the telecommunication services.

An Ideal Regulator is expected to :

- Determine the size of the telecommunications market by providing licences for the purposes of delivering telecommunication services.
- To foster healthy relations between the different service providers by overseeing interconnection agreements so that service providers have equal access to the network provider by the dominant operator.
- To resolve disputes and maintain a level playing field or regulate for fair competition so that the dominant operator does not abuse his or her dominance in the market place.
- To meet the policy goals so that consumers are protected against high prices, poor quality of services, inadequate infrastructure, limited services, unsafe equipment and neglect by the service provider.
- To address consumer complaints and solve them amicably.
- To ensure efficient use of frequency spectrum and space for the provision of information technology services.
- To encourage investment, innovation and optimum growth of the sector (or related sectors) and operators' performance.
- To administer the numbering plan so that there are sufficient numbers available.
- To monitor compliance with national and international telecommunications equipment supplier and service providers.
- To monitor compliance with national and international telecommunications equipment suppliers and service providers.

PTA has all the traits of a good regulator and its primary functions, powers and responsibilities are:

To regulate the establishment, operation and maintenance of telecommunication systems and the provisions of telecommunication services; receive and dispose of application for the use of radio-frequency spectrum; promote and protect the interest of the users of telecommunication; promote and available the high quality, efficient and cost effective telecommunication services; investigate and adjudicate on complaints; grant, renew, modify, transfer, monitor and enforce the telecom licences; regulate tariffs and prescribe telecommunication equipments; provide guidelines and determine the terms of interconnect arrangements .

In the larger context, we hope, that PTA shall keep up, adhere to, perform and enforce the telecom laws without any discrimination between the incumbents and the other telecom operators so that the healthy competitive environment could flourish and shall further keep herself abreast of the latest development, law and technology, in telecom sector.

The author has about 12 years of experience in various fields of law most particularly in banking, corporate and telecom. Besides handling other legal matters he is presently managing legal affairs of the largest Telecom Operator in Pakistan.