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PART II

Statutory Notifications (S. R. O.)

GOVERNMENT OF PAKISTAN

MINISTRY OF INFORMATION TECHNOLOGY AND
TELECOMMUNICATION
(Digital Pakistan)

NOTIFICATION

Islamabad, the 9th October, 2020

S. R. O. 1474(I)/2020.— In exercise of powers conferred under section 8 of the Pakistan Telecommunication (Re-Organization) Act, 1996 (XVII of 1996), the Federal Government is pleased to issue the policy directives to the Authority on the matter relating to telecommunication policy, namely:—

1. **Short title and commencement.**—(1) This policy directive shall be called the “Public & Private Right of Way Policy Directive”.

2. It shall come into force at once.

2. **Definition.**—(1) In this policy directive, unless there is anything repugnant in the subject or context,—

(a) “Act” means the Pakistan Telecommunication (Re-organization) Act, 1996 (XVII of 1996);

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- (b) "BTS" means base transceiver station;
- (c) "Federal Capital" means the Islamabad Capital Territory;
- (d) "CNIC" means computerized national identity card;
- (e) "Division concerned" means the Division to which business of this policy directive relating to right of way stands allocated;
- (f) "NOC" means no objection certificate;
- (g) "PTA" means the Pakistan Telecommunication Authority;
- (h) "Public Switched Network (PSN)" means a telecommunication system which allows intelligence to be switched between members of the public;
- (i) Right of Way "(RoW)" means a right belonging to any person or public authority to pass over land or property of other person to provide telecom license services.

(2) All other words and expressions used but not defined in this policy directive shall have the same meaning as assigned there to in Pakistan Telecommunication (Re-organisation) Act, 1996 (XVII of II 1996), rules and regulations made thereunder.

3. **Policy objectives.**—The following shall be policy objective namely:—

- (a) The Government aims to promote modern telecommunication services by way of installation or maintenance of telecommunication equipment or for the purpose of establishing or maintaining telecommunication system in the country and to increase broadband penetration which is a critical foundation of the digital revolution and economic growth;
- (b) To resolve the issues of licensees concerning right of way (ROW) in installation or maintenance of their telecommunication equipment and establishment of their telecommunication systems across Pakistan under the provisions of the Pakistan Telecommunication (Re-organization) Act, 1996 and Telecommunications Policy, 2015;
- (c) To introduce a fast track process associated with the provision of rights of way including but not limited to space, land and

buildings, installation of telecommunications infrastructure etc. which will cover both developed, *i.e.* where a road, footpath, electric and railway infrastructure has been installed, and non-developed areas, on overground and underground telecommunication infrastructure including wireless network.

4. **Public switched network.**—For the purpose of rights and privileges available to Public Switched Network (PSN) under section 27 of the Act every licensee of PSN, subject to the conditions of the licence issued by the Authority, shall have the following rights and privileges, namely:—

- (a) A licensee of PSN has the privilege to install, establish, and maintain telecommunication systems, networks and equipment within the licensed area/ territory. However, sensitive security areas would be subject to security clearance by obtaining NOC from the concerned organization; and
- (b) A licensee of PSN, for the purpose of carrying out its licensed scope of work, may place, set up, repair, alter and maintain or cause to be placed, set up, repaired, altered, and maintained a telecommunication line, post, or works under, over, along, across or through any space, land, seashore, road, stream, water or any immovable property and such licensees may break, excavate and remove soil to the extent and depth required for placing or removing telecommunication system, equipment, and networks, and to construct, install, establishing or maintaining a telecommunication system, equipment, and networks, may dig earth, stone, and gravel and fell trees:

Provided that-

- (i) Any right granted by this clause shall be exercised equitably, ensuring payment of proper fee to the owner of the right of way and the access so provided to the Licensee will not adversely affect the owner of the right of way;
- (ii) the licensee shall not acquire any right other than that of a user only in the property under, over, along, across, in, or upon which the licensee places, installs, establishes, or maintains any telecommunication systems, equipment, or networks;
- (iii) except as hereinafter provided, the licensee shall not exercise those rights in respect of any property vested in or under the

control or management of any local authority, without the permission of that authority; and

- (iv) in the exercise of the rights granted by this clause, the licensee shall do as little damage as possible, and, when it has exercised those rights in respect of any property, shall pay full compensation to all persons interested for any damage sustained by them because of the exercise of those rights.

5. **Licenses other than PSN.**—Every Licensee, subject to section 27 of the Act, 1996 and conditions of the licence issued by the PTA, has the right to acquire and share (subject to permission, if not already provided in the agreement with the owner) any public or private right of way in the manner provided under the Act, 1996 against fee payable to the owners of the right of way.

6. **One Window operation.**—All civic bodies shall lay down a fast track or one window operation for receiving applications for granting permission of right of way to the respective telecommunication licence holders in light of the mechanism, documentation framed, formed and finalized under this directive. A revised application procedure needs to be devised within one month from the date of issuance of this policy directive. Timelines given in section 27 A of the Act shall be strictly complied with.

7. **Fee determination.**—Every right of way, so enjoyable by the licensee, be it a public switched network or any other licensee, shall be exercised against a fee payable to the owners of the right of way. However, the following directions shall be adhered to—

- (a) The licensee, in the absence of any agreement, shall pay to private owner a fair fee (in compliance with Clause (b) which shall be determined considering the following factors, namely:—
- i. The rent of similar premises situated in the similar circumstances, in the same or adjoining locality;
 - ii. The rise in the cost of construction and repair charges, in case of building;
 - iii. The rental value of the building or land entered in the property tax Assessment register of the taxation department or the local authority relating to the period, if any, and the space occupied by the licensee for installing network within the building; and

iv. Clause (b), (c), and (d) shall also be applicable to private owners of rights of way;

- (b) In case of Public right of way, the public authority shall assess the right of way fee under sub-section (4) of section 27A of the Act, on the basis of no profit no loss and such fee shall include charges for application processing, surveying, marking of the route, preparation of drawings, issuance of approval, maintaining quality control during the execution of works, ensuring proper restoration by the licensee, maintenance of office, maintenance of field records and such other costs as may incur during or after the execution work:

Provided that for the purpose of sub-section (2) of section 27 of the Act, the costs will not include the cost of land as the licensees provide service for "public purpose".

- (c) The Public Authority shall not discriminate any licensee towards charging of right of way fee and there shall not be any differential or preferential treatment in right of way fee for any type of licensees including other utility service providers and those wholly or partially owned by the Federal or Provincial Government or the Public Authority; and
- (d) As opposed to taxes that are a general revenue-generating measure for any Public Authority, an element of quid pro quo is required in the levy of fees, and that fees are a charge for service and consequently their quantum ought to be commensurate with the extent of service provided by the public authority to the licensee. The public authority, therefore, will not treat grant of permission to licensees for use of right of way as a means of commercial benefit of the right of way, imposition of tax or revenue generation.

8. **Dispute of right of way.**—(1) Where any dispute arises between the owner of public or private rights of way and the licensee with respect to the provision of right of way, determination of fee or reasonableness of any condition, application or complaint could be submitted to the respective appropriate government and addressed to Cabinet Secretary, Secretary of the Division concerned or any other officer appointed by the respective appropriate government within the territory of the respective Provincial Government in accordance with sub-sections (6) and (7) of section 27A of the Act. However, considering the nature of cases, a complaint system shall also be established at the Federal Capital, Provincial and district level including compliance of corresponding timelines as mentioned in sub-section (6) of Section 27A of the Act. Establishment and availability of an online complaint system shall also be encouraged.

(2) The complaint or application submitted to the respective appropriate government shall be decided within a period of sixty days as provided in sub-section (6) of section 27A of the Act and decision of the appropriate government thereon shall be final and binding.

9. **National security.**—In order to cater for national security concerns related to the right of way of Public Authority in areas having strategic military installations, the licensees shall ensure that before the commencement of an activity related to survey, digging, installation, operation, maintenance, modification, and up-gradation of a telecommunication system, line, post, or work under, over, along, across or through any space, land, sea, road, stream, water or any immovable property, following conditions are ensured, namely:—

- (a) manpower nominated for the undertaking of said work by the licensee shall own a valid CNIC, authority letter and valid identification card of the respective licensee to undertake the said task;
- (b) Contractor(s) involved in the said work shall be verified from local police authorities;
- (c) list of individuals shall be shared by the concerned licensee with the public authority in whose area the said work is being carried out;
- (d) in case of involvement of any foreigners in undertaking the said work, security clearance shall be obtained from Interior Division and Inter-Services Intelligence. Foreigners shall only be allowed to undertake said work after the receipt of security clearance from Interior Division and Inter-Services Intelligence and such clearance shall be actualized within a period of one month.
- (e) every licensee shall liaise and obtain security permission before undertaking any of the above work in areas where armed forces are operationally deployed and a local authorized representative of armed forces deputed in that area shall act as the focal person for security-related matters; and
- (f) Network operation or control centers, if established for the network being laid, will be established in Pakistan.

10. **Measures for the safety and protection from health hazardous effects.**— All telecommunication licensees shall be under an obligation to lay down their network in a proper manner in accordance with preventive measures for safety and protection from health-hazardous effects and maintain the place in

good form by ensuring that it shall not adversely affect the owners of the right of way and the public at large. PTA will issue guidelines or regulations prescribing or updating preventive measures to be adhered to by telecommunication licenses in the manner as already available in the Protection from Health Related Effect of Radio Base Station Antennas Regulations, 2008.

11. Criticality of telecommunication infrastructure and services.—

(1) Telecommunication infrastructure shall be treated as a critical telecommunication infrastructure. Any person acting to incapacitate, restrict, destruct, damage, or interfere with smooth operations of such infrastructure systems and assets would be deemed to be debilitating privacy, national security, public health or safety, or any combination of these matters.

12. Relocation, removal or alteration of right of way.—(1) In the event that a situation arises requiring an installed telecommunication infrastructure, on-ground, underground or above, over any immovable property to be removed, relocated, or altered, the owner of the right of way may serve not less than one hundred and eighty days' notice to the grantee of a right of way that it may be removing or altering its location as such.

(2) In case of re-location of the existing right of way, the owner of the right of way shall provide an alternate right of way to the licensee without any extra fee:

Provided that the cost for removal, relocation, or alteration of such telecommunication infrastructure shall be borne by the owners of the right of way intending such removal, relocation, or alteration.

(3) Owners of right of way shall adequately compensate for the required removal, relocations, or alterations due to the widening of roads and any other development activities being sponsored by any public or private authority. These relocations must be budgeted in project cost and the respective cellular or telecom operators must be approached at the time of planning of such projects in a fair, transparent, and non-discriminatory manner.

13. Sharing of right of way.—(1) Upon a request in writing by any licensee, an existing licensee holding of way shall share the right of way in accordance with sub-section (1) of section 27A of the Act, subject to the terms and conditions stipulated in the NOC issued by the owner of right of way for sharing the right of way.

(2) The compensation or fee to share a right of way, subject to NOC from the owner of the Right of Way, as may be demanded by the existing licensee shall not be more than 50% of the amount paid by the licensee holding right of way to the owner of the right of way.

(3) Any licensee whose request for sharing of right of way is rejected by the existing licensee holding a right of way may refer the dispute to the designated officer appointed by the appropriate Government to determine dispute pertaining to right of way.

14. **Safety and security of telecom infrastructure.**—(1) Any person who directly or indirectly communicates any action as provided for in section 31 of the Act shall be punished accordingly.

(2) No Government Agency or department is allowed to seal or dismantle or forcefully shutdown the BTS or causes damage to Telecommunication equipment, except for the execution of the court order or in the matter of National Security covered under Section 54 of the Act.

(3) Strict legal action shall be initiated as per applicable law, rules, and regulations by the licensee against any willful or negligent damage to the telecom infrastructure facility and causing interruption to the network connectivity.

15. **Establishment of common service corridors.**—(1) All civil infrastructure development organizations under the control of appropriate Governments and private sector developers, shall ensure the availability or provision of telecom service corridors for installation of telecom infrastructure or cables in all new lands (towns or societies) development, railways, roads or highways, buildings, and electric distribution poles.

(2) Private housing societies shall be bound through their bye-laws, at the time of their establishment, for the provision of Common Service Corridor while awarding them NOC by the appropriate Government.

(3) All new housing societies shall be encouraged to build telecom ducting infrastructure at the time of development as is outlined in the Telecommunications Policy, 2015 to be utilized by any telecommunication licensees.

16. **Miscellaneous.**—(1) The public authority shall not impose any conditions on a licensee that are discriminatory, anti-competitive, and will not give any preferential treatment to any licensee.

(2) The public authority can charge the licensee for expenses as prescribed in its schedule rates, for re-habilitation or re-instatement of any

damages to roads and other infrastructure by the licensee. In case licensee, at its own costs, undertakes the re-habilitation or re-instatement work to the satisfaction of public authority within the prescribed time frame, no such charges will be payable by the licensee to public authority.

(3) The licensees can use the poles of government and privately owned electricity distribution and supply companies (*DISCOs*) for aerial installation of optical fiber cables at the prescribed rent fixed by the Government of Pakistan in pursuance of the decision of Inter-Provincial Coordination Committee (IPCC) and approved by WAPDA vide Notification No. 1507-34 GMCSrrariff-62/voc-IV dated 3 November 2004.

(4) Licensees using electricity Distribution Company's poles and paying approved tariff to DISCOs shall not be required to pay any additional NOC and/or permission fee to the society or owner of the area in which the poles are located.

(5) The licensees installing BTS towers shall pay such reasonable amount by civic bodies to the owner of the high rise buildings and charges to housing societies for the installation of BTS towers including telecommunication network and no other charges shall be payable by the licensee to the public authority or the housing society for BTS towers installed on rooftops of commercial buildings or ground, whether public or private property.

(6) The private housing societies, public or private industrial estates, public or private multi-dwelling units, high rise buildings, apartment complexes shall be required to follow the above policy directives and public authorities shall be required to incorporate these clauses in the NOCs of their building and town plans. The public authorities issuing NOCs or approval plans shall be responsible for compliance of this policy directive from the private entities operating in their respective jurisdictions. However, the right of denial, only to the owner of house or property, may be allowed in such circumstances, where alternate is available. Public or private multi-dwelling units, high rise buildings, flats, and apartment complexes shall not charge any fee for the installation of optical fiber cables within buildings except fair and non-discriminatory rental of actual space occupied by the fiber cables and cabinets in cable risers, service corridors and basement utility rooms.

(7) Once right of way granted and fee and other terms agreed, the owner of Private Right of Way or the public authority shall not unilaterally change or alter the terms and conditions or right of way permission for the licensees.

(8) Any intentional obstruction to the course of business of the licensee for telecommunication network installation, operations and maintenance, coercive shut down of BTS towers, cutting of cables, etc. by the Public Authority or owner of Private right of way, after the grant of right of way and up to date payment of all fees by the licensee, shall be treated as an offence under Section 31 of Act.

[No. 7-5/2016-Legal.]

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