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[TEXT IN RED IS AS PER PAKISTAN TELECOMMUNICATION (RE-ORGANISATION) (AMENDMENT) ACT, 2005]

THE GAZETTE OF PAKISTAN

EXTRAORDINARY

PUBLISHED BY AUTHORITY

PART I

Acts, Ordinances, President's Orders and Regulation

NATIONAL ASSEMBLY SECRETARIAT

Islamabad, the 17th October, 1996

The following Acts of Majlis-e-Shoora (Parliament) received the assent of the President on the 13th October, 1996, and are hereby published for general information:-

Act No.XVI 1996

An Act further to amend the Pakistan Penal Code, 1860

WHEREAS it is expedient further to amend the Pakistan Penal Code, 1860 (Act XLV of 1860) for the purposes hereinafter appearing:

It is hereby enacted as follows:-

1. **Short title and commencement.**—(1) This Act may be called the Pakistan Telecommunication (Re-organization) (Amendment) Act, 2005.

(2) It shall come into force at once.

1. **Amendment of Section 381, (Act XLV of 1860).**—In the Pakistan Penal Code, 1860, (Act XLV of 1860), in section 381A, the following explanation shall be added at the end, namely:-

"Explanation:—Theft of an electric motor of a tube well or transformer shall within the meaning of this section."

Act No.XVII OF 1996
An Act to provide for re-organization of telecommunication system

WHEREAS it is expedient to provide for re-organization of telecommunication system in Pakistan by establishing the Pakistan Telecommunication Authority, the Frequency Allocation Board, National Telecommunication Corporation and the Pakistan Telecommunication Employees Trust, regulation of telecommunication industry, transfer of telecommunication services to private sector and for matter connected therewith or incidental thereto;

It is hereby enacted as follows:-

CHAPTER I
PRELIMINARY

(1) Short title and commencement.—(1) This Act may be called the Pakistan Telecommunication (Re-organization) (Amendment) Act, 2005.

(2) It shall come into force at once.

2. Definitions: - In this Act unless there is anything repugnant in the subject or context.

a. "Access Promotion Contribution (APC)" means the payments made by LDI Licensees to LL Licensees or to the Universal Service Fund pursuant to the rules made under this act;

(ab) "appropriate Government" means—

- i. in relation to a right of way owned or managed by any person, local authority within its territory, corporation or other public bodies created by or under any provincial law, the respective Provincial Government: and
- ii. in relation to any right of way owned or managed by any person, local authority not within any province or corporations or other bodies created by or under any federal law, the Federal Government;

(ac) "Approved Crypto Apparatus" means the hardware or software or combination of both, or the ciphering facilities, used for conversion of plain text into cipher text and vice versa and of which Federal Government has granted approval and Electronic Certification Accreditation Council established under section 18 of the Electronic Transaction Ordinance, 2002 (LI of 2002), has granted accreditation certificate for its use for private sector;

(ad) "Authority" means the Pakistan Telecommunication Authority established under section 3;

b. "basic telephone service" means the provision of any telecommunication service which consists of:-

- i. two-way live voice telephone service, in digital form or otherwise, over any public fixed switched network or between base stations or switches or modes of any public mobile switched network,
- ii. real-time transmission or reception of facsimile images over a public fixed switched network,

- iii. international telephony service, and
- iv. the lease of circuits for the provision of the services specified in sub-clauses(i) ,(ii) and (iii)
- c. "Board" means the Frequency Allocation Board established under section 42,
- d. "Company" means the Pakistan Telecommunication Company Limited established and incorporated in accordance with section 34,
- e. "Corporation" means the Pakistan Telecommunication Corporation established under the Pakistan Telecommunication Corporation Act, 1991 (XVII of 1991),
- f. "effective date" for the Authority, Board, Company, National Telecommunication Corporation, or the Trust means the date on which property, right and liabilities of the Corporation are vested under section 35 in the Authority or, as the case may be, Board, company, National Telecommunication Corporation or the Trust;
“(fa)“Federal Government” means the Federal Government in the Ministry of Information Technology and Telecommunication Division, unless for any specific purpose specified otherwise by notification in the official Gazette notification or amendment in the Rules of Business, 1973:
- g. "intelligence" means any speech, sound data signal, writing, image or video;
- h. "licence" means an authorization granted by the Authority for the establishment, operation or maintenance of any telecommunication system or provision of any telecommunication service;

- i. "international telephony service" means any direct or indirect telecommunication service, whether or not in digital form, conveyed by any means between a point in Pakistan and a point in another country, other than radio/broadcasting or television broadcasting;
- j. "licensee" means the grantee or holder of a licence;
- k. "network termination point" means any point of termination on a telecommunication system at which terminal equipment may be connected;
- l. "National Telecommunication Corporation" means the corporation to be established under section 41:
- m. "prescribed" means prescribed by rules made under this Act;
 - a) "Private Right of Way" means the right of ways which is owned, managed, maintained or repaired by anyone other than a public authority;
 - b) "Public Authority" in relation to right of way means the local authority, corporation, provincial or Federal Government or any other public body, which owns that right of way or which is responsible for its maintenance, repair or management;
 - c) "Public Right of Way" means the right of way which is owned, managed, maintained or repaired by a public authority";
- n. "public switched network" means a telecommunication system which allows intelligence to be switched between members of the public;
- o. "public fixed switched network" means any public switched network other than a public mobile switched network;
- p. "public mobile switched network" means a public switched network using wireless telegraphy where the terminal equipment used for the emission or reception of intelligence may be connected to the network and used while in motion.
 - i. for the word "telegraphy" the word "intelligence" shall be substituted; and
 - ii. after the word "and" the words "could be" shall be inserted;
- q. "regulations" means the regulations made under this Act;
 - "R&D Fund" means the Research and Development Fund established under sub-section (1) of section 33C;
 - (qb) "Right of Way" means a right belonging to any person or public authority to pass over land or property of other person, to provide telecom license services:
 - (qc) "Scarc resources" means radio frequency spectrum, right of way and numbering;"; and
- r. "telecommunication equipment" means switches, equipment, wires, cables, apparatus, poles, structure, ducts, man-holes and other tangible property, software and data, other than terminal equipment, comprising any telecommunication system or used in connection with any telecommunication service;
- s. "terminal equipment" means any apparatus directly or indirectly connected to any network termination point and used for sending, processing or receiving intelligence;

- t. "telecommunication employees" means the employees of the Corporation who are transferred to the employment of the Company under this Act, other than those to whom sub-section(3) of section 36 applies, and all persons who, on the effective date for the Company, were employees of the Corporation, the former Telegraph and Telephone Department of the Federal Government and are receiving, or are entitled to receive, pensionary benefits from the Corporation;
- u. "telecommunication system" means any electrical, electro-magnetic, electronic, optical or optio-electronic system for the emission, conveyance, switching or reception of any intelligence within, or into, or from, Pakistan, whether or not that intelligence is subjected to re-arrangement, computation or any other process in the course of operation of the system, and includes a cable transmission system, a cable television transmission system and terminal equipment;
- v. "telecommunication service" means a service consisting in the emission, conveyance, switching or reception of any intelligence within, or into, or from, Pakistan by any electrical, electro-magnetic, electronic, optical or optio-electronic system, whether or not the intelligence is subjected to re-arrangement, computation or any other process in the course of the service;
- w. "Trust" means the Pakistan Telecommunication Employees Trust established under section 44;
- x. "trustees" means the board of trustees of the Trust;
 - a) "USF" means the Universal Service Fund established under sub-section (1) of section 33A;
- y. "video" means any visual images which are such that sequences of them may be seen as moving images;
- z. "wireless telegraphy apparatus" shall have the same meaning as assigned to it in The Wireless Telegraphy Act, 1933 (XVII of 1933).

CHAPTER II

PAKISTAN TELECOMMUNICATION AUTHORITY

3. Establishment of Pakistan Telecommunication Authority.-(1) As soon as may be, after the commencement of this Act, the Federal Government shall, by notification in the official Gazette, establish an authority to be known as the Pakistan Telecommunication Authority which shall be a body corporate, having perpetual succession and a common seal with powers, subject to the provisions of this Act, to acquire and hold property, both moveable and immovable, and to sue and be sued by its name.

- (2) The Authority shall consist of three members one of whom shall be a professional telecommunication engineer and other shall be a financial expert, to be appointed by the Federal Government for a term of four years and shall be eligible for appointment for a similar term or terms;

Provided that the Federal Government may increase the number of members of the Authority and prescribe their qualification and mode of appointment.

- (3) The Federal Government shall, from amongst the members appointed under sub-section (2), appoint a member to be the Chairman of the Authority.
- (4) A member of the Authority shall not have any direct or indirect financial interest in, or have business connection with any person, any establishment or firm which renders telecommunication services in Pakistan or abroad or supplies telecommunication equipment to any telecommunication sector in Pakistan or abroad.

***Explanation:**-For the purpose of this sub-section, any involvement of the spouse or blood relation of any member of the Authority with any telecommunication establishment or firm shall be considered as a direct financial interest or connection of the member with such establishment or firm.*

- (5) A member of the Authority may resign from his office by writing in his hand addressed to the Federal Government, or may be removed from his office if, on an inquiry by the Federal Public Service Commission, he is found unable to perform the functions of his office because of mental or physical disability or misconduct, including corruption and dishonesty.
- (6) In case of death, resignation or removal of a member of the authority, another person may be appointed as such member for the term specified at sub-section (2).
- (7) The member of the Authority shall be paid the salary and be entitled to the privileges of an officer in MP-II and the Chairman shall be paid the salary and be entitled to the privileges of an officer in MP-I.
- (8) The powers of the Authority in the matters relating to its administration and the staff of the Authority shall be exercised by the Chairman, including those mentioned in section 10, in accordance with regulations made by the Authority pursuant to sub-section (3) of section 10 and other relevant regulations made by the Authority from time to time.
- (9) The decision of the Authority shall, subject to sub-section (8), be taken with the concurrence of the majority of its members.
- (10) Notwithstanding anything contained in sub-section (8), no act, proceeding or any decision of the Authority shall be invalid by reason only of the existence of a vacancy in, or a defect in, the constitution of the Authority."

4. Functions of the Authority.-(1) The Authority shall-

- (a) regulate the establishment, operation and maintenance of telecommunication systems and the provision of telecommunication services in Pakistan.
- (b) receive and expeditiously dispose of applications for the use of radio-frequency spectrum;
- (c) promote and protect the interests of users of telecommunication services in Pakistan;

- (d) promote the availability of a wide range of high quality, efficient, cost effective and competitive telecommunication services throughout Pakistan;
- (e) promote rapid modernization of telecommunication systems and telecommunication services;
- (f) 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.
- (g) make recommendations to the Federal Government on policies with respect to international telecommunications, provision of support for participation in international meetings and agreements to be executed in relation to the routing of international traffic and accounting settlements;
- (h) perform such other functions as the Federal Government may, from time to time, assign to it;
- (i) regulate arrangements amongst telecommunication service providers of sharing their revenue derived from provision of telecommunication service;
- (j) ensure effective compliance by licensees with Universal Service Obligations;
- (k) regulate Access Promotion Contribution;
- (l) settle disputes between licensees; and
- (m) regulate competition in the telecommunication sector and protect consumer rights.

5. Powers of the Authority:-(1) The Authority shall exercise all powers as shall enable it to effectively perform its functions specified in section 4.

- (2) In particular, and without prejudice to the generality of the foregoing power, the Authority shall :-
 - (a) grant and renew licences for any telecommunication system and any telecommunication service on payment of such fees as it may, from time to time, specify;
 - (b) monitor and enforce licences;
 - (c) receive applications for the use of radio frequency spectrum and, subject, where applicable, to grant of licences under clause (a), refer such applications to the Board for assignment of spectrum within a period of thirty days;
 - (d) modify licences or conditions thereof in accordance with section 21 of section 22;
 - (e) establish or modify accounting procedure for licences and regulate tariffs for telecommunication service in accordance with sections 25 and 26;
 - (f) regulate the transfer of licences;
 - (g) prescribe standards for telecommunication equipment and terminal equipment, certify compliance of such equipment with prescribed standards, and issue approvals of terminal equipment and of approved installers under section 29;
 - (h) provide guidelines for, and determine, the terms of inter-connection arrangements between licensees where the parties to those arrangements are unable to agree upon such terms;
 - (i) carry out inspections of telecommunication equipment and any premises owned or occupied by the licencees and summon any person for investigation and an enquiry;

- (j) appoint an Administrator in circumstances provided in section 23;
- (k) develop national telecommunication numbering plans;
- (l) collect information with respect to telecommunications within and outside Pakistan and review the impact thereof;
- (m) enter into contracts;
- (n) acquire, lease, encumber, dispose of, exchange, vest or otherwise deal with any moveable or immovable property or any interest therein;
- (o) issue regulations for exercising its powers and performance of its functions;
- (p) levy free and other charges at such rates and in respect of services as may be fixed by it from time to time not exceed the limits as specified by a Committee of the Cabinet;
- (q) regulate the allocation of revenues from international telecom service, other than revenues from leased circuits, b—interconnecting licensees that handle international telecom service and between any such licensee; and
- (r) if it considers it appropriate to do so, undertake an auction, on such terms and conditions as the Authority may determine from time to time, or other open and transparent competitive process to determine eligibility for licensing the Board's allocated or assigned specific portions of the radio frequency spectrum."

6. Responsibilities of the Authority.-In exercising its functions and powers under this Act, the Authority shall ensure that-

- (a) rights of licensees are duly protected;
- (b) all of its decisions and determinations are made promptly, in an open equitable, non-discriminatory, consistent and transparent manner;
- (c) all applications made to it are disposed of expeditiously;
- (d) the persons affected by its decisions or determinations are given a due notice thereof and provided with an opportunity of being heard;
- (e) it encourages, except subject to the exclusive right of the Company in basic telephone service, **fair competition in the tele-communication sector exists and is maintained; and**
- (f) the interest of users of telecommunication services are duly safeguarded and protected.

7. Appeal and revision:-(1) A person aggrieved by any decision or order of the Authority on the ground that it is contrary to the provisions of this Act, may, within thirty days of the receipt of such decisions or orders appeal to the High Court, **or to any other Tribunal established by the Federal Government for the purpose,** in the manner prescribed by the High Court for filing the first appeal before that Court and the Court **or the Tribunal** shall decide such appeal within ninety days.

- (2) A person aggrieved by any officer of the Authority acting under the delegated powers of the Authority may, within thirty days of the receipt of the decision or order, appeal to the Authority in prescribed manner and the Authority shall decide such appeal within thirty days.

8. Powers of the Federal Government to issue policy directives.-(1) The Federal Government may, as and when it considers necessary, issue policy directives to the Authority, not inconsistent with the provisions of the Act, on the matters relating to telecommunication policy referred to in sub-section (2) and the Authority shall comply with such directives.

- (2) The matters on which the Federal Government may issue policy directives shall be:-

- (a) the number and term of the licenses to be granted in respect of telecommunication systems which are public switched networks, telecommunication services over public switched networks and international telecommunication services, and the conditions on which those Licenses should be granted;
 - (aa) framework for telecommunication sector development and scare resources;"; and**
- (b) the nationality, residence and qualifications of persons to whom licenses for public switched networks may be issued or transferred or the persons by whom licensees may be controlled; and
- (c) requirements of national security and of relationships between Pakistan and the Government of any other country or territory outside Pakistan and other States or territories outside Pakistan.

"(2A) Notwithstanding anything contained in sub-section (2), the Cabinet or any committee authorized by eh Cabinet may issue any policy directive on any matter related to telecommunication sector, not inconsistent with the provisions of this Act, and such directives shall be binding on the Authority."

- (3) The Federal Government may, from time to time, call for reports on the activities of the Authority and Board and provide for representation in meetings of international telecommunication organizations.

9. The Authority may, by general or special order, delegate any of its powers, functions or duties as it may deem fit, from time to time, to the Chairman, member, or nay of its officers subject to such conditions as it may deem fit to impose:

Provided that the delegation of such posers, factions or duties shall not include the powers, factions or duties under clauses (a), (d), (e), (f), (h), (n) and (o) of section 5.”

10. Appointment of employees.-(1) For performance of its functions, the Authority may, from time to time, employ, such persons and on such terms and conditions as it may consider necessary.

- (2) Without prejudice to the generality of the foregoing powers, the Authority may:-
 - (a) appoint and remove its employees and exercise discipline and control over them;
 - (b) regulate and manage its internal organization, set up divisions within the Authority and make appropriate appointments to those divisions; and
 - (c) appoint advisory bodies, consultants and advisors on contract to advise the Authority in relation to its functions or powers.
- (3) The Authority may make regulations for appointment, promotion, termination and other terms and conditions of employment of its employees.

11. Members and employees.-The members and employees of the Authority shall be public servants within the meaning of section 21 of the Pakistan Penal Code (Act XLV of 1860).

12. Budget statement.-(1) The Authority shall, in respect of each financial year, prepare its own budget and submit to the Federal Government three months before the commencement of every financial year for information.

- (2) the budget statement shall specifically state the estimated receipts and expenditure and the sums which are likely to be required by the Authority from the Federal Government for the relevant financial year.
- (3) Any surplus of receipts over the actual expenditure in a year shall be remitted to the Federal Consolidated Fund and any deficit from the actual expenditure shall be made up by the Federal Government.

13. Pakistan Telecommunication Authority Fund.-(1) There shall be a fund to be known as the "Pakistan Telecommunication Authority Fund" which shall vest in the Authority and shall be utilized by the Authority and shall be utilized by the Authority to meet all its expenses and charges in connection with its functions under this Act, including the payment of salaries and other remuneration to its employees.

- (2) The bank accounts of the Pakistan Telecommunication Authority Fund shall be maintained with the National Bank of Pakistan.
- (3) The Pakistan Telecommunication Authority Fund shall be financed from the following sources, namely:-
 - (a) fees and other amounts received by the Authority.
 - (b) grants from the Federal Government and the Provincial Governments, including an initial grant of fifty million rupees by the Federal Government;
 - (c) loans obtained from the Federal Government;
 - (d) sale proceeds of bonds issued under the authority of the Federal Government; and
 - (e) loans and foreign aid obtained by the Authority with the approval of the Federal Government.

14. Maintenance of accounts.- The accounts of the Authority shall be maintained in such form and in such manner as the Federal Government may determine in consultation with the Auditor General of Pakistan.

15. Audit.-(1) The accounts of the Authority shall be audited at the close of each financial year by the Auditor General of Pakistan.

(2) The Authority shall produce such accounts, books and documents and furnish such explanations and information as the Auditor General or any officer authorized by him in this behalf may require for the purpose of audit.

(3) Copies of the Auditor General's report on the accounts shall be provided to the Authority and the Federal Government and shall also be available for public inspection.

(4) The Authority may, in addition to the audit under sub-section(1), cause its accounts to be audited by any other external auditors.

16. Authority to be deemed to be a local authority.-For the purpose of borrowing money, the Authority shall be a local authority within the meaning of the Local Authorities loans Act, 1914(IX of 1914), and any work undertaken in exercise of its powers under this Act shall be deemed to be a 'work' under that Act.

17. Liability of the Federal Government to be limited.-The liability of the Federal Government under this Act to the creditors of the Authority shall be limited to the extent of any grants made by it and the loans raised by the Authority with the approval of the Federal Government.

18. Submission of yearly report, returns, etc.-(1) As soon as possible after the end of every financial year but before the last day of September next following, the Authority shall submit a report to the Federal Government on the conduct of its affairs, including action taken for protection of consumers interests, for that year.

(2) A copy of the report specified in sub-section (1) together with a copy of the audit report referred to in section 15 shall be placed before the National Assembly with three months after the finalization of the audit report by the Auditor General.

(3) The public Accounts Committee of the national Assembly may scrutinise and examine the reports referred to in sub-section (2) in the same manner as it examines and scrutinises the reports of various Ministries and Divisions of the Federal Government.

(4) For the purpose of carrying on its functions under this Act, the Federal government may require the Authority to supply any return, statement, estimate, statistics or other information in respect of any matter under the control of the Authority or a copy of any document in the custody of the Authority.

19. Exemption from taxes.-Notwithstanding anything contained in any other law for the time being in force, the Authority shall not be liable to pay, and shall be exempt from the payment of, any taxes, duties, levies, charges and fees payable under, or in pursuance to any law, in respect of any of its business, assets, income, or wealth.

CHAPTER III LICENSING

20. Licensing of telecommunication services.-(1) No person shall establish, maintain or operate any telecommunication system or provide any telecommunication service unless he has obtained a licence under this Act:

provided that no licence shall be required for-

- (a) provision of terrestrial wireless radio broadcasting and Television broadcasting within Pakistan;
 - (b) the establishment, maintenance or operation of a telecommunication system or the provision of any telecommunication service which does not include or use any wireless telegraphy apparatus and is not connected to any other telecommunication system and where all the telecommunication equipment comprised in the former system is established or provided by a person for his own use and under his own control and is situated either in a single set of premises in single occupation within a single unbroken boundary or in a vehicle, vessel, aircraft or hovercraft;
 - (c) the operation by an individual of a telecommunication system which is wholly under his control and all information conveyed by it is solely for his own domestic purposes;
 - (d) the operation of a telecommunication system or provision of a telecommunication service by the police, national security or armed forces; or
 - (e) the connection by any person of terminal equipment to a telecommunication system other than a public switched network or for its connection to a public switched network if such equipment is approved for connection to that network; or
 - (f) national and international telecommunication systems of the Ministry of Foreign Affairs, Intelligence Bureau and Inter-Services Intelligence Directorate of the Government of Pakistan.
- (2) No licensee shall establish, maintain or operate any telecommunication system or provide any telecommunication service which is not authorized under the licence;

Explanation.-Any breach of this sub-section shall, for the purposes of this Act, the rules or the licence, be treated as a contravention of the conditions of the licence.

21. Exclusive power of the Authority to grant licenses.-(1) All licenses referred to in section 20 shall be granted by the Authority which, in consideration any application shall take into account the following factors, namely:-

- (a) the technical and financial resources of the applicant;
 - (b) the public interest and benefits to users of telecommunication services; and
 - (c) policy directives of the Federal Government issued under section 8 above;
- (2) A licence granted by the Authority under this section may be granted either to a person, class of persons, company or corporation.
- (3) No licence shall confer exclusive rights.
- (4) Every licence granted under this Act may, inter alia, contain-
- (a) conditions requiring the licensee to adhere to the provisions of this Act and the rules and regulations made thereunder;
 - (b) conditions requiring the licensee to pay the fees for grant or renewal of the licence;

- (c) conditions requiring the licensee to allow inspection by the Authority of any premises or telecommunication equipment, wherever situated, and to furnish to the Authority such information as may be required by the Authority;
 - (d) restrictions as to the types of telecommunication system or telecommunication service to be provided by the licensee, the area and period of operation and the types of telecommunication equipment that may be included in its telecommunication system;
 - (e) obligation to monitor use of the licensed telecommunication service or telecommunication system and to disconnect telecommunication service from any user who, after written notice, misuse it.
 - (f) obligations to provide telecommunication service to particular persons or areas to meet minimum standards for quality and grade of service requirements;
 - (g) obligations to provide telecommunication services to particular persons or areas to meet minimum standards for quality and grade of service requirements;
 - (h) obligation not to interrupt service except for failure of the customer to comply with his contractual obligations or out of genuine technical necessity or by reason of circumstances to which section 54 applies;
 - (i) restrictions on the licensee giving undue preference to, or unfairly discriminating against, any person;
 - (j) restrictions or limitations on transfer or assignment of the licence;
 - (k) conditions relating to the preservation or the transfer or disposition of telecommunication equipment and other assets used in connection with any public switched network;
 - (l) obligations for protection of consumers interest; and
 - (m) conditions requiring the licensee to contribute to Research and Development Fund and Universal Service Fund: and
 - (n) conditions as to the security provided by a licensee to support the fulfilment of the licensee's obligations in the license, and the realization on such security by the Authority.”
- (5) Subject to sub-section (7) and section 39 any person who, on commencement of this Act, holds an authorization, licence or permit validly issued under any law in force on that date for the establishment, maintenance or operation of any telecommunication system or the provision of any telecommunication service shall, unless it is contrary to the provisions of this Act and the rules and regulations made thereunder, be deemed to hold a licence in accordance with the provisions of this Act for a period of twelve months from the commencing date.
- (6) Every person deemed to be a licensee under sub-section (5) shall, within three months from the commencement of this Act, supply to the Authority full details of his authorization, licence or permit, as the case may be, and apply for continuance of the licence under this Act.
- (7) Where the Authority, on reviewing the authorization, licence or permit referred to in sub-section (6), is satisfied that such authorization, licence or permit, as the case may be, had been validly issued under the laws, rules or regulations in force at the commencement of this Act, the Authority shall, within nine months of the date of the application made to it, issue an order that the person authorized thereunder, licensee or the permit-holder shall be a licensee under this Act till the expiry of the term of the authorization, licence or permit with such modifications thereto as the Authority may consider appropriate.

- (8) If the Authority is not satisfied that an authorization, licence or permit referred to in sub-section (5) was validly issued for any reason, it shall, by an order, direct that the deemed licence shall expire from the date of such order.
- (9) The Authority shall maintain a register of licences, showing applications for licences received, enforcement orders relating to licences issued and details of licence revoked.
- (10) The register referred to in sub-section (9) shall be open to public inspection and a person may obtain a copy thereof to payment of such fee as may be prescribed by regulations.

22. Modification of licence conditions.-(1) Subject to sub-section (2), the Authority shall have the right to modify a licence or its conditions with the consent of the licensee.

Provided that the licence for basic telephone service of the Company shall not, except with its consent, be amended during the period of its exclusive rights.

(2) If the Authority and a licensee cannot agree to modification proposed by the Authority to a licence condition, the Authority and the licensee shall resolve their difference or dispute through consultation and negotiation. If the licensee and the Authority fail to amicably resolve such difference or dispute, either party may make an application to the High Court or a Tribunal established by Federal Government for the purpose and the High Court or as the case may be the Tribunal shall exercise exclusive jurisdiction to adjudicate and settle all matters connected therewith and in exercise of such jurisdiction, the High Court or the Tribunal as the case may be shall follow the procedure, as nearly as possible, as provided in the Code of Civil Procedure, 1908 (Act V of 1908):

Provided that no such amendment shall vary the tenure of scope of a licence.”; and

(3) After the expiry of the initial or renewed term, the license may be renewed on terms and conditions consistent with the policy directive, if any, of the Federal Government at the relevant time.

23. Issue of enforcement orders and penalties.- (1) Where a licensee contravenes any provision of this Act or the rules made thereunder or any term or condition of the licence, the Authority **or any of its officers not below the rank of Director** may by a written notice require the licensee to show cause within thirty days as to why an enforcement order may not be issued.

(2) The notice referred to in sub-section (1) shall specify the nature of the contravention and the steps to be taken by the licensee to remedy the contravention.

(3) Where a licensee fails to-

(a) respond to the notice referred to in sub-section (1); or

(b) satisfy the Authority **or any of its officers not below the rank of Director** about the alleged contravention; or

(c) remedy the contravention within the time allowed by the Authority **or any of its officers not below the rank of Director**, the Authority **or any of its officers not below the rank of Director** may, by an order in writing and giving reasons –

(i) levy fine which may extend to three hundred and fifty million rupees; or

(ii) suspend or terminate the licence, impose additional conditions or appoint an Administrator to manage the affairs of the licensee, but only if the contravention is grave or persistent.

(4) Without prejudice to the provisions of sub-section (1) and sub-section(), the Authority **or any of its officers not below the rank of Director** may, by an order in writing, suspend or terminate a licence or appoint an Administrator, if the licensee-

(a) becomes insolvent or a receiver is appointed in respect of a substantial part of the assets;

(b) being an individual, become insane or dies.

Explanation.-*For the purpose of this section, the Administrator shall be appointed from amongst the persons having professional knowledge and experience of telecommunication.*

24. Powers of Administrator.- (1) An Administrator appointed under sub-section (3) or sub-section (4) of section 23 shall have such powers relating to the management of the licensee, the preservation of assets and for the purpose of remedying any contravention of the conditions of any licence and for ensuring compliance with any orders issued by the Authority as may be prescribed.

- (2) Having satisfied that the contravention leading to the appointment of Administrator has been remedied or the order of the Authority has been complied with, the Authority shall withdraw the order appointing the Administrator and the Administrator shall forthwith hand over the management of the licensee to the person from whom such management was taken.
- (3) The Authority or the Administrator shall not be liable for any loss or damages caused by any act or omission of the Administrator undertaken in good faith.

25. Accounting procedures, investments and contracts.- (1) The Authority may require any licensee to establish and maintain specified accounting procedure in order to enable the Authority to obtain all relevant information required for determining the tariff under section 26 or for exercise any other power of the Authority under section 5.

(2) Accounting procedures once established may only be modified by the Authority after providing reasons and an opportunity of being heard to the licensee.

(3) No licensee shall enter into any agreement or arrangement which is inconsistent with any obligation of the licensee under this Act, the rules or any condition attaching to its licence; and any such agreement or arrangement shall to such extent be void.

26. Tariffs.-The level of tariffs for telecommunication services including basic telephone service shall be regulated by the Authority in accordance with the regulations and the following general principles, namely:-

(a) the regulations shall be made with a view to achieving the greatest possible degree of pricing flexibility and stability compatible with safeguarding and protecting the interests of consumers;

(b) the regulations shall apply equally to comparable providers or users of any regulated telecommunication service;

(c) the criteria used for the establishment of tariff shall regularly be published three months before the criteria is adopted;

(d) tariffs shall be at a level which provides a reasonable rate of return on investments taking into account the cost of operation; and

(e) there shall be no cross-subsidization of other telecommunication services by basic telephone service.

27. Privileges of licensee of public switched network.- (1) Every licensee of public switched network shall subject to the conditions of the licence, be entitled to such rights and privileges as were available to the Federal Government and the Corporation on the commencing day in respect of telecommunication services and telecommunication system under the Easement Act, 1882(V of 1882), Telegraph Act, 1885(XIII of 1885), the Pakistan Telecommunication Corporation Act, 1991 (XVIII of 1991), or any other law for the time being in force.

(2) For the purpose of Land Acquisition Act, 1894 (1 of 1894), acquisition of land or any interest in land by a licensee of a public switched network for the purposes of the licence shall be deemed to be acquisition for a "public purpose".

27A, Right of Way.—(1) For the purpose of the installation or maintenance of its telecommunication equipment or for the purpose of establishing or maintaining its telecommunication system, every licensee shall, subject to the conditions provided in this section and the policy directive issued by the Federal Government under section 8, have the right to share any public Right of Way or Private Right of Way.

(2) In order to enjoy the rights granted by this section, the licensee shall request the owner of such Right of Way to approve the mode of execution of the works it proposes to undertake. If the owner of such Right of Way does not respond to such request within a period of thirty days, such request shall be deemed to have been granted. While granting such request the owner of the Right of Way may impose such conditions as to the payment of fees and the mode or timing of the execution of such work as may be reasonable in the circumstances:

Provided that any right granted by this section shall be exercised equitably, ensuring proper compensation of the owner of Right of Way and the access so provide to the licensee will not adversely affect the owner of the Right of Way.

- (3) The licensee shall exercise the powers conferred by this section in such a manner as to cause minimal interference of the enjoyment of the Right of Way by the owner or other users thereof and if no fee is to be paid by the licensee to the owner of the Right of Way, the licensee shall make reasonable reparation to the owner of such Right of Way.
- (4) The fee payable by a licensee to a Public Authority for the use of a Public Right of Way, shall be such reasonable amount as is assessed by the Public Authority after taking all relevant factors into consideration, including the laws applicable to the Public Authority and the relevant laws applicable in the district in which such Right of Way is situated.
- (5) In consideration of the use of a Private Right of Way, the licensee shall pay such fee to the owner of such Private Right of Way as may be mutually agreed between the licensee and such owner or in the absence of such agreement, such reasonable amount as may be demanded by the owner of such Private Right of Way.
- (6) In the event of a dispute as to the refusal by the owner of a Right of Way to allow a licensee to exercise its powers under this section or the reasonableness of any condition imposed by the owner of the relevant Right of Way, the same shall be referred, by an application, to the appropriate government who shall decide the matter referred to it within a period of sixty days.
- (7) The appropriate government shall nominate any officer not below the rank of Secretary to act on behalf of the appropriate government under this section through a notification in the official gazette within sixty days of the commencement of the Pakistan Telecommunication (Re-organization) (Amendment) Act, 2005.”

28. National standards.- (1) The Authority may, with the approval of the Federal Government, notify regulations for establishing national standards for telecommunication equipment.

Provided that the Authority may specify different standards for different classes of telecommunication equipment and may establish procedure for testing thereof;

Provided further that subject to the national standards established under this sub-section and the conditions of the licence, the Authority shall not restrict the type of telecommunication equipment that may be used for the establishment, maintenance or operation of telecommunication systems or the provision of telecommunication services.

(2) In determining the standards referred to in sub-section (1), the Authority shall have regard to the need for a safe, modern and efficient telecommunication environment and interoperability of network.

29. Terminal equipment and approved installers.- (1) No terminal equipment shall directly or indirectly be connected to a public switched network unless it has been approved by the Authority or an agency appointed by the Authority in this behalf subject to such conditions as it may impose, including conditions limiting its connection to specified types of telecommunication systems.

- (2) The Authority may, by regulations, specify technical standards for terminal equipment and procedure for approving test equipment and for testing any terminal equipment and to certify that it complies with the relevant technical standards.
- (3) No person may install any telecommunication equipment as part of, or connect terminal equipment (other than by a plug-into-socket connection (to any public switched network except in accordance with regulations made by the Authority.
- (4) The Federal Government may make rules equiring manufacturers, importers and dealers in terminal equipment to mark such equipment and indicate in advertising therefore whether or not the terminal equipment is approved for connection to a public switched network.
- (5) The Authority shall maintain a register of all terminal equipment and installers thereof approved under this section and shall be open to public inspection.

30. Recovery of arrears, etc.-All fees, fines or other amounts due or payable to the Authority may be recovered as arrears of land revenue.

31. Offences and penalties.- (1) Whoever-

- (a) establishes, maintains or operates a telecommunication system or telecommunication service or possesses any wireless telegraphy apparatus or carries on any other activity in contravention of this Act or the rules or regulations made thereunder, the Wireless Telegraphy Act, 1933 (XV of 1933) or the conditions of a licence;
- (b) knowingly or having reason to believe that any telecommunication system or telecommunication service has been established or is maintained or is being operated in contravention of this Act, transmits or receives any intelligence by means thereof, or performs any service incidental thereto;
- (c) dishonestly obtains any telecommunication service, with the intent to avoid payment of a charge applicable to the provision of that service;
- (d) unauthorisedly transmits through a telecommunication system or telecommunication service any intelligence which he knows or has reason to believe to be false, fabricated, indecent or obscene;
- (e) engaged in the operation of a public switched network otherwise than in the course of his duty intentionally modifies or interferes with the contents of a message sent by means of that network;
- (f) prevents or obstructs the transmission or delivery of any intelligence through a telecommunication system or telecommunication service;
- (g) intercepts, acquaints himself with the contents of any intelligence or unauthorisedly discloses to any person the contents of such intelligence;
- (h) commits mischief;
- (i) damages, removes, interferes or tampers with any telecommunication equipment;
- (j) unauthorisedly deciphers the contents of any message transmitted over a public switched network;
- (k) assaults or intentionally obstructs a person engaged in the operation of a public switched network or the establishment maintenance or operation of telecommunication services over a public switched network or intentionally obstructs the course of business of that person;

- (l) intentionally contravenes the rules made under sub-section (4) of section 29;
- (m) intentionally obstructs an officer of the Authority or the Board in the exercise of his functions or powers under this act in relation to the inspection of any premises or telecommunication equipment or who, after ten days written notice, fails or refuses without due cause to provide any information which the Authority or the Board is entitled to obtain under this act or the rules or regulations made there under;
- “(n) make unauthorized use of the radio frequency spectrum, where authorization from the Board is required;”;

shall be guilty of an offence under this Act.

- (2) Every offence specified in sub-section (1) shall be punishable with imprisonment which may extend to three years, or with fine which may extend to ten million rupees, or with both.
- (3) Whosoever conspires to commit or attempts to commit or aids or abets the commission of any offence punishable under this Act shall be liable to same punishment as is provided in sub-section(2).
- (4) Where the court imposes fine under sub-section (2), it may direct that whole or any part thereof shall be paid to the person who has suffered any mental or monetary loss because of commission of any offence specified in sub-section (1).
- (5) No court shall take cognizance of any offence punishable under this Act except on a complaint in writing by an officer authorized by the Authority or the Board.
- (6) Where the accused is a company registered under the Companies Ordinance, 1984 (XLVII of 1984), every Executive Director, Chief Executive, principal Officer and Secretary of such Company shall be liable to the punishment specified in sub-section (2) and the summons for the trial of the case shall be served on the Chief Executive, Principal Officer or the Secretary of that Company in accordance with the provisions of the case of Criminal procedure, 1898 (Act V of 1898).

32. Warrants for search.-(1) Where on information furnished by the Authority or Board, the Court has reason to believe that any unlicensed telecommunication system, wireless telegraphy apparatus or unapproved terminal equipment **or any licensed service is being used against the interest of national security and public safety** is being kept or concealed or any unlicensed telecommunication service is provided **or any licensed service is being used against the interest of national security and public safety**, it may issue a search warrant; and the person to whom such warrant is directed, may enter the premises, vessel, aircraft, or hovercraft **or place** where such telecommunication system, wireless telegraphy apparatus or terminal equipment **or crypto apparatus** is allegedly kept or concealed or unlicensed telecommunication service is provided **or any licensed service is being used against the interest of national security and public safety** there from carry out search and inspection thereof and seize such telecommunication system, wireless telegraph apparatus or terminal equipment **or crypto apparatus**.

- (2) Any telecommunication equipment, wireless telegraphy apparatus or terminal equipment seized under sub-section(1) having no ostensible owner shall vest to the Authority, or as the case may be, the Board.

33. Indemnity.- No suit, prosecution or other legal proceedings shall lie against the Authority or any member or employee of the Authority in respect of anything done or intended to be done by the Authority in good faith under this Act.

“CHAPTER III A

SPECIAL FUNDS

33A. Establishment of USF.—(1) As soon as may be, after the commencement of this Pakistan Telecommunication (Amendment) Act, 2005, the Federal Government shall,

by notification in the Official Gazette, establish a Fund to be called the Universal Service Fund hereinafter referred to as USF.

- (2) The USF shall be under the control of the Federal Government and therein shall be credited any sums of money mentions under sub-section 4.
- (3) The balance to the credit of the USF shall not lapse at the end of the financial year
- (4) The USF shall consist of—
 - (a) grants made by the Federal Government and the Provincial Governments;
 - (b) prescribed contribution by licensees;
 - (c) sale proceeds from the auction of the right to use radio spectrum;
 - (d) loans obtained from the Federal Government; and
 - (e) grants and endowments received from other agencies.

33B. Administration and utilization of USF.—(1) The Federal Government shall have the power to administer the USF in such manger as may be prescribed.

- (2) The USF shall be utilized exclusively for providing access to telecommunication services to people in the un-served, under-served, rural and remote areas and other expenditure to be made and incurred by the Federal Government in managing USF.
- (3) The Federal Government shall be responsible fro the co-operation and ensuring timely utilization and release of sums in accordance with the criteria as may be prescribed.

33C. Research and Development Fund.—(1) As soon as may be, after the commencement of this Pakistan Telecommunication (Re-organization) (Amendment) Act, 2005, the Federal Government may by notification in the Official Gazette, establish a Fund to be called the Research and Development Fund.

- (2) The Research and Development Fund shall be under the control of the Federal Government and therein shall be credited any sums of money mentions under sub-section (4).
- (3) The balance to the credit of the Research and Development Fund shall not lapse at the end of financial year.
- (4) The Research and Development Fund shall consist of—
 - (a) Grants made by the Federal Government
 - (b) Prescribed contribution by licensee;
 - (c) Loans obtained from the Federal Government; and
 - (d) Grants and endowments received from other agencies.

33D. Administration and utilization of Research and Development Fund.—(1) The Federal Government shall have the power to administer the Research and Development Fund in such manner as may be prescribed.

- (2) The Fund shall be utilized exclusively for prescribed research and development activities in the field related to Information and Communication Technology and other expenditure incurred by the Federal Government in managing Research and Development Fund.

- (3) The Federal Government may co-ordinate with relevant entities to ensure timely utilization and release of sums in accordance with the criteria as may be prescribe.
- 33E. **Audit and public information.**—(1) The account of USF and Research and Development Funds shall be—
- (a) maintained in such form and manner as the Federal Government may determine; and
- (b) audited by a Chartered Accountant as defined in the Chartered Accountants Ordinance 1961 (X of 1961), and the Auditor General of Pakistan.
- (2) The Federal Government shall, after the end of every financial year, submit to the National Assembly the audited annual statement of accounts of both the Funds, together with the report of the Auditor-General of Pakistan.
- (3) The Federal Government shall also publish after the end of every year report on the state of universal service and research and development and on its activities in this regard during the year.”

CHAPTER IV

PAKISTAN TELECOMMUNICATION COMPANY LIMITED

- 34. Establishment of the Company, etc.**—(1) As soon as may be, after the commencement of this Act, the Federal Government shall establish a company to be known as the Pakistan Telecommunication Company, limited by shares and cause it to be incorporated under the Companies Ordinance, 1984(XXLVII of 1984), with the principal object of provision of domestic and international telecommunication and related services consistent with the provisions of this Act.

- (2) The Federal Government shall nominate seven persons to subscribe to the Memorandum and Articles of Association of the Company.
- (3) Initially, all shares of the Company shall be issued to, or held in trust for, the President of the Islamic Republic of Pakistan.
- (4) The Federal Government may, whenever it thinks appropriate, transfer its shares in the Company to private investors or general public on such terms and condition and in such manner as it may determine.
- (5) No person shall, except and to the extent permitted by the Articles of Association of the Company, control, directly or indirectly, the right to cast on a poll ten per cent or more of the votes at a general meeting of the Company.
- (6) The Federal Government shall, immediately on incorporation of the Company, fix a date by a notice in the official Gazette for election of the Board of Directors of the Company consisting of seven directors in accordance with the provisions of the Companies Ordinance, 1984(XL VII of 1984).

Provided that, notwithstanding the election of the Board of Directors of the Company, the Board of Directors appointed under section 4 of the Pakistan Telecommunication Act, 1991 (XVIII of 1991), shall continue to function until the effective date for the Company.

35. Vesting of the rights, property and liabilities of the Corporation.-(1) The Federal Government may, by orders, direct that all or any property, rights and liabilities to which the Corporation was entitled or subject to immediately before such orders, and identified therein, shall, on such terms and conditions as the Federal Government may determine, vest in-

- (a) the Company;
- (b) the National Telecommunication Corporation;
- (c) the Authority;
- (d) the trust; or
- (e) the Board through the Federal Government.

and become the property, rights and liabilities of the respective entity.

- (2) An order issued under sub-section(1) shall specify the employees of the Corporation who shall, as from the effective date of the order, be transferred to and become employees of the entity referred to in the order; Provided that such order shall not vary the terms and conditions of service of such employees to their disadvantage.
- (3) An order issued under sub-section (1) in favour of the Company shall provide for-
 - (a) the continuation by the Company of the operations and undertaking of the corporation on the same basis as were carried on immediately prior to the date of the order save in respect of the operations and undertakings to be carried on by the national Telecommunication Corporation pursuant to section 41; and
 - (b) the dissolution of Corporation as from the effective date of the order.
- (4) In consideration of the vesting in the Company of the property of the Corporation, the Company shall issue such securities in the name of the President of the Islamic Republic of Pakistan as the Federal Government may direct.
- (5) Unless an order so directs, the property vested under sub-section (1) shall be free from any charge, burden, hypothecation or encumbrances to which it may be subject at the effective date of the order.

- (6) If any property of the Corporation vests in the Company subject to any charge, burden, hypothecation or encumbrance, the same shall be deemed to be on the assets of the Company and the provisions, of section 121 of the Companies Ordinance, 1984 (XLVII of 1984), shall apply to such charge, burden, hypothecation or encumbrances as if it had been created on the assets of the Company on the effective date for the Company.
- (7) If any property of the Corporation vests in the National Telecommunication Corporation, the Authority or the Trust subject to any charge, burden, hypothecation or encumbrance, the same shall be the first charge by way of hypothecation in favour of the creditor.
- (8) In this section, "property" includes assets, rights and entitlement of every description and nature wherever situated and "liabilities" includes duties, obligations, loans encumbrance, claims and charges of every description and nature (actual or contingent), whether or not they are capable, under any law of Pakistan or of any other State or under any agreement or otherwise, or being vested, transferred or assigned by the Corporation.
- (9) No stamp duty shall be payable under any law for the time being in force on or in relation to the transfer or vesting of property of the Corporation under any order issued under sub-section (1).

36. Terms and conditions of service of employees.- (1) No person transferred to the Company pursuant to sub-section(2) of section 35, hereinafter referred to as "Transferred Employee", shall be entitled to any compensation as a consequence of transfer to the Company:

Provided that the Federal Government shall guarantee the existing terms and conditions of service and rights, including pensionary benefits of the Transferred Employees.

- (2) Subject to sub-section (3), the terms and conditions of service of any Transferred Employee shall not be altered adversely by the Company except in accordance with the laws of Pakistan or with the consent of the Transferred Employees and the award of appropriate compensation.
- (3) At any time within one year from the effective date of the order, vesting property of the Corporation in the Company, the Federal Government may, with the prior written agreement of a Transferred Employee, require him to be transferred to or revert him back and be employed by the Authority, National Telecommunication Corporation, Trust or the Federal Government on the same terms and conditions to which he was entitled immediately before such transfer.
- (4) Subject to proviso to sub-section (1) of section 45 on transfer of a Transferred Employee under sub-section (3), the Federal Government shall assume responsibility for his pensionary benefits without recourse to the Pension Fund referred to in that section.
- (5) Under the order vesting property of the corporation in the Company, the Federal Government shall require the Company to assume the responsibility of pensionary benefits of the telecommunication employees and the Company shall not after such pensionary benefits without the consent of the individuals concerned and the award of appropriate compensation.

37. Special Provisions.-For the purposes of this Act, the Company shall be exempt from the provisions of sections 62, 77, 178, 187, 206 and 235 of the Companies Ordinance, 1984(XLVII of 1984) and further, notwithstanding anything contained in the Companies Ordinance, 1984, the Federal Government may, by notification in the official Gazette, exempt the Company from the application of such other provisions of that ordinance, as may be specified in this regard.

37-A. Company shares deemed validly issued.—The "A" ordinary shares and "B" ordinary shares issued by the Companies Ordinance, 1984 (XLVII of 1984)".

38. Exemption from taxes, audit, etc.-(1) The Company shall not, till the 30th June, 1999, be liable to pay any income tax, super tax or wealth tax on its income, profits or gains.

- (2) The value ascribed to the property vested in the Company by the Federal Government under the order made under section 35 shall represent the actual acquisition cost of the property for the purposes of taxation and depreciation.
- (3) Notwithstanding anything contained in the Pakistan (Audit and Accounts) Order, 1973 (21 of 1973), the accounts of the Company shall not be audited by the Auditor-General of Pakistan, but shall be subject to audit in accordance with the provisions of the Companies Ordinance, 1984(XLVII of 1984).

39. Licence to the Company.-(1) With effect from the effective date for the Company, the Company shall be entitled, until issue of any licence under sub-section (2), to the same authorizations as the Corporation enjoyed immediately prior to that date.

- (2) Within six months of the commencing date of this Act, the Authority shall grant a licence to the Company in Pakistan, excluding the Northern Areas, Azad Jammu and Kashmir, for a period of twenty-five years on payment of licence fee determined by the Authority.
- (3) *No licences to provide basic telephone service shall be issued by the Authority for a period of seven years from the effective date referred to in section 35 vesting property in the Company other than to the National Telecommunication Corporation and the Company.*

40.Special Communication Organisation.-Notwithstanding anything contained in section 39, the telecommunication services, within the Northern Areas and Azad Jammu and Kashmir shall be operated by the Special Communication Organization and the Authority shall issue a licence to the Organization accordingly.

CHAPTER V

NATIONAL TELECOMMUNICATION CORPORATION

41.National Telecommunication Corporation.-(1) As soon as may be but not later than thirty days from the commencing day of this Act, the Federal Government shall establish a corporation to be known as the national Telecommunication Corporation which shall be a body corporate, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire and hold property, both moveable and immovable and shall sue and be sued by its name.

- (2) The National Telecommunication Corporation shall be managed by a Management Board consisting of a Chairman and two other members, to be appointed by the Federal Government.
- (3) The Authority shall grant a licence to the National Telecommunication Corporation for provision of telecommunication services within Pakistan on a non-exclusive basis only to the armed forces, defence projects, Federal Government, Provincial Governments or such other Governmental agencies or Governmental institutions as the Federal Government may determine; and during the exclusivity period of the Company specified in section 39, the National Telecommunication Corporation shall not sell its capacity on the telecommunication system to any person other than such Government agencies or the Company.

- (4) The National Telecommunication Corporation shall have the power to-
 - (a) appoint, promote, remove and exercise discipline and control over its staff;
 - (b) set-up its internal organizations, including bureaus, divisions or offices and make appointments thereto;
 - (c) enter into contracts;
 - (d) acquire, lease, encumber, dispose of, exchange, invest or otherwise deal with any moveable or immovable property or any interest therein or thereto; and
 - (e) levy and collect fee and other charges for the service provided by it at such rates as may be determined by the Federal Government.
- (5) For the purpose of its functions, the National Telecommunication Corporation may, subject to regulations made by it providing for procedure of appointment, promotion, termination and terms and conditions of service, employ such persons, as it may consider necessary.
- (6) The officers and employees of the National Telecommunication Corporation shall, for the purpose of this Act, be public servants within the meaning of section 21 of the Pakistan Penal Code(Act XLV of 1860), and the Industrial Relations Ordinance, 2002 (XVI of 2002), shall not apply.
- (7) The National Telecommunication Corporation shall, in respect of each financial year, prepare its own budget and submit it for the approval of the Federal Government before the 1st June every year.
- (8) The budget statement, referred to in sub-section (8), shall specifically state the estimated receipts, current and development expenditure and the sums which are likely to be required by the National Telecommunication Corporation,, if any, from the Federal Government for the relevant financial year.
- (9) Any surplus of receipts over the actual expenditure in a year shall be remitted to the Federal Consolidated Fund and any deficit from actual expenditure shall be made up by the Federal Government.
- (10) There shall be a fund to be known as the "National Telecommunication Corporation Fund" which shall vest in the National Telecommunication Corporation and shall be used by the National Telecommunication Corporation to meet all its expenses and charges in connection with its functions under this Act, including the payment of salaries and other remuneration to its employees.
- (11) The National Telecommunication Corporation Fund shall consist of-
 - (i) grants made by the Federal Government and the Provincial Governments and Corporation.
 - (ii) loans obtained from the Federal Government;
 - (iii) sale proceeds of bonds issued under the authority of the Federal Government;
 - (iv) loans obtained with the special or general sanction of the Federal Government; and
 - (v) all other sums received and charges collected by the National Telecommunication Corporation.
- (12) The accounts of the National Telecommunication Corporation shall be maintained in such form and manners as the Federal Government may determine in consultation with the Auditor-General of Pakistan who shall be responsible for audits of the accounts of national Telecommunication Corporation.

- (13) For the purpose of audit, the National Telecommunication Corporation shall produce such accounts and books and connected documents and furnish such explanations and information, as the Auditor-General, or any officer authorized by him on this behalf may require.
- (14) Copies of the audit report shall be sent to the National Telecommunication Corporation and to the Federal Government and shall also be available for public inspection.
- (15) The National Telecommunication Corporation shall comply with any directive issued by the Federal Government or the Public Accounts Committee of the National Assembly for the rectification of an audit objection.
- (16) The National Telecommunication Corporation may, in addition to the audit by the Auditor-General, cause its accounts to be audited by internal or other external auditors.
- (17) The National Telecommunication Corporation may, with the approval of the Federal Government, by notification in the official Gazette, make regulations for the management and operation of its business and activities.
- (18) Notwithstanding anything contained in any other law for the time being in force, the National Telecommunication Corporation shall not, for a period of three years from the date of its establishment, be liable to pay any tax on its income, assets, turnover and sales under the Income Tax Ordinance, 1979 (XXX of 1979), the Wealth Tax Act, 1963 (XV of 1963) and the Sales Tax Act, 1990 and shall, for a similar period be entitled to such exemptions from custom-duties as the Corporation was entitled immediately before the establishment of National Telecommunication Corporation.

CHAPTER VI

FREQUENCY ALLOCATION BOARD

42. Frequency Allocation Board.- (1) The Federal Government shall, by a notification in the official Gazette, establish a Frequency Allocation Board to take over the functions performed by the Pakistan Wireless Board which shall, from the date of such notification, stand dissolved.

- (2) The Board shall be funded by funds provided by the Authority in the prescribed manner.
- (3) The Board shall make regulations, with the approval of the Federal Government, government the manner in which the Board may function and exercise its powers.

43. Powers and functions of the Board.-(1) The Board shall have exclusive authority to allocate and assign portions of the radio frequency spectrum to the government, providers of telecommunication services and telecommunication systems, radio and television broadcasting operations, public and private wireless operators and others.

- (2) The Board shall consist of-
 - (i) **Chairman who shall be appointed by the Federal Government**
 - (ii) One Executive Director appointed by the Federal Government, who shall be its Vice-Chairman;
 - (iii) the Chairman of the Authority; and
 - (iv) a nominee each of the Ministry of Defence (Corps of Signals), Ministry of Information and Broadcasting and Ministry of Interior, **Information Technology and Telecommunication Division and Pakistan Electronic**

Media Regulatory Authority Provided that the Federal Government may increase the number of members of the Board and may prescribe their qualifications and mode of appointment

- (3) The Vice-Chairman shall be an employee of the Board who shall devote his full time to the business of the Board and shall not hold any other office or position during his tenure as such Vice-Chairman.
- (4) In exercise of its powers under sub-section (1), the Board shall be guided by the applicable recommendations of the International Telecommunication Union or any of its standing committees or organizations, including the International Consultative Committee on Telecommunication, International Consultative Committee on Radio, the International Frequency Registration Board and other similar international organizations.
- (5) Every application for allocation and assignment of radio frequency spectrum shall, in the first instance, be made to the Authority which shall, after such inquiry as it may deem appropriate, refer the application to the Board within thirty days from receipt of such application.
- (6) On receipt of application under sub-section (5), the Board shall classify the telecommunication services and may allocate or assign specific frequencies to the applicant:
- (7) Provided that the Board shall intimate the applicant status of the application within three months.
- (8) The Board may, with the approval of the Federal Government, make regulations, for exercising its powers and performance of its business.

CHAPTER VII

PAKISTAN TELECOMMUNICATION EMPLOYEES TRUST

44. Establishment of the Pakistan Telecommunication Employees Trust.-(1) As soon as may be, after the commencement of this Act, the Federal Government shall, by notification in the official Gazette, establish a trust to be called the Pakistan Telecommunication Employees Trust.

- (2) The Trust shall be a body corporate, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire and hold property, both moveable and immovable, and shall sue and be sued by its name.
- (3) The Trust shall be managed by a Board of Trustees consisting of six trustees, three to be appointed by the Federal Government and three by the Company, for a period of three years, unless earlier removed by the appointing authority.
- (4) The trustees shall be eligible for re-appointment for a similar term or terms specified in sub-section(3).
- (5) The trustees may appoint-
 1. Chairman of the Board of Trustees from amongst themselves;
 2. The Manager of the Trust;
 3. An Actuary:

Provided that the first Chairman of the Board of Trustees shall be selected from amongst the trustees appointed by the Federal Government and shall, unless removed on the charges of physical or mental infirmity or misconduct, including corruption and dishonesty, remain in the office of Chairman for the first twelve months of his tenure as a trustee.

- (6) A Trustee may resign from his office by writing in his hand addressed to the Board of Trustees.

- (7) In case of a vacancy being created due to the death, resignation or removal of a trustee, the appointing authority referred to in sub—section (3) may appoint another person in his place as trustee for the un-expired term.
- (8) The Manager and Actuary of the Trust shall be entitled to such remuneration and perquisites as the Board of Trustees may determine.
- (9) The Board of Trustees may, with the approval of the Federal Government and by notification in the official Gazette, make rules for the management and conduct of business of the Trust.

45. Pension Fund.-(1)The Federal Government shall, by notification in the official Gazette, order that from the effective date, all assets of the Pakistan Telecommunication Corporation Employees Pension Fund as created by a Trust Deed dated the 2nd April 1994, hereinafter referred to as the "Pension Fund", and such liabilities as are specified in the notification, shall vest in and shall become the assets and liabilities of the Trust:

Provided that pro rata of the accrued liability determined on the 30th June, 1995, specified in such notification shall be paid to the Federal Government in twelve monthly instalments in respect of telecommunication employees or Transferred Employees transferred to the Pakistan Telecommunication Authority, Frequency Allocation Board, National Telecommunication Corporation and Federal Government.

- (2) The Company shall contribute to the Pension Fund the amount determined by the Actuary representing the unfunded proportion of the accrued pension liabilities which shall be assumed by the Company from the effective date specified in the order made under section 35.
- (3) The Pension Fund shall consist of-
 - (a) amounts received from the Pakistan Telecommunication Corporation Employees Pension Fund referred to in sub-section(1);
 - (b) contribution to be paid by the Company under sub-section(2);
 - (c) annual contribution to be paid by the Company at the commencement of each financial year;
 - (d) investments and the profits, gains and other returns accrued on such investments; and
 - (e) donations and other contributions by individuals or any aid-giving agencies.

46. Functions and powers of the Trust.-(1) For carrying out the purposes of the Trust, the Board of Trustees shall-

- (a) take over and assume the liability of the Pension Fund, including contributions of the Company to the Pension Fund;
 - (b) obtain payment from the Company of the amount determined by Actuary as representing the unfunded proportion of the accrued pension liabilities to be discharged by the Company;
 - (c) determine, at the commencement of each financial year, the amount to be contributed to the Pension Fund by the Company; and
 - (d) make provision for the payment of pension to telecommunication employees to the extent of their entitlement.
- (2) In performance of its functions, the Board of Trustees shall-
- (a) have the exclusive right to determine the amounts, if any, payable in respect of pension benefits to the telecommunication employees;
 - (b) administer and operate the Pension Fund;
 - (c) specify and certify the requirements to be fulfilled for payments of the pensions to be made from the Pension Fund;

- (d) appoint, promote, remove and exercise discipline and control over its employees;
- (e) enter into contracts;
- (f) acquire, lease, encumber, dispose of, exchange, invest or otherwise deal with any moveable or immovable property or any interest therein; and
- (g) exercise all such powers as may be necessary or incidental to the performance of any of its functions or the exercise of any of its powers.

- (3) The Manager of the Board of Trustees shall be responsible for administrative control of the employees of the Trust and day to day working of the Trust as may be assigned to him by the Board of Trustees.

47. Decision of the Trust, etc.-(1)The decision of the Board of Trustees shall be taken by majority of the votes of the trustees present in a meeting to be called by the Chairman of the Trust.

Provided that such majority votes shall include at least one trustee appointed by the Federal Government and one trustee appointed by the Company.

- (2) All meetings of the Board of Trustees shall be presided over by its Chairman or, in his absence, by another trustee selected by the trustees amongst themselves. The quorum of the meeting of the Board of Trustees shall be four trustees out of which two shall represent the Federal Government and the other two by the Company:

Provided that the Chairman of the Board of Trustees shall have no casting vote.

- (3) No act of proceeding of the Trust shall be invalid by reason only of the existence of a vacancy in, or a defect in, the constitution of the Board of Trustees.
- (4) The Board of Trustees shall, by resolution, determine the procedure for appointment, promotion and termination and other terms of employment of the employees of the Trust.

48. Delegation of Powers.-The Board of Trustees may, by a resolution, delegate to any officer of the Trust any of its powers of functions under this Act, subject to such conditions as it may deem fit to impose.

49. Budget.-(1) The Board of Trustees shall, in respect of each financial year, prepare its own budget specifying the estimated receipts and the sums which are likely to be required by the Trust for the payments to be made in the relevant financial year.

- (2) Any surplus of receipts over the amount specified in the budget in a financial year shall be credited to the Pension Fund and any deficit from the estimated amount specified in the annual budget shall be made up from the Pension Fund.

50. Audit.(1)The accounts of the Trust shall be audited at the close of each financial year by independent auditors.

- (2) The Trust shall produce such accounts, books and documents and furnish explanations and information as the auditors may require for the purpose of audit.
- (3) Copies of the auditor's report on the accounts shall be furnished to the Federal Government, Company and the Trust.

51. Exemption from Taxes.-Notwithstanding anything contained in any other law for the time being in force, the Trust shall not be liable to pay, and shall be exempt from the payment of, all kinds of taxes, duties, levies, charges, and fees payable under or pursuant to any Federal or provincial law, on its investments, income, assets or wealth.

52. Application of Trusts Act, 1882.-(1) The provisions of Chapters III, IV, V, VI (other than section 60 thereof, insofar as it provides that a person domiciled abroad is not a proper person for the purposes of that section) and VII of the Trusts Act, 1882(II of 1882), to the extent not inconsistent with the provisions of this Act, shall apply to the Trust and the Board of Trustees to the same extent that they apply to a "trust" and "trustees" as defined in section 3 of the said Act.

- (2) For the purposes of the Trust Act, 1882, the "author of the trust" shall be the Federal Government and Company, the "trustees" shall be the trustees appointed under section 45, "beneficiaries" shall be the telecommunication employees, the "trust property" or "trust money" shall be the Pension Fund, "beneficial interest" shall be the right of the telecommunication employees specified in the rules made under this Chapter and the "instrument of trust" shall be this Act and such rules.
- (3) The accounts of the Trust shall be kept and maintained with the National Bank of Pakistan or such other bank as the Board of Trustees may determine.

53. Winding-up of the Trust.-(1)The Trust shall be wound up by the Federal Government on the recommendation of the Board of Trustees and the certification by the Actuary that no pension payment is required to be made from the Pension Fund.

- (2) The balance of the Pension Fund shall, on the winding up of the Trust, be paid to the Federal Government and the Company pro-rata of the assets of the Pakistan Telecommunication Corporation employees Fund and contributions made from time to time by the Company.

CHAPTER VIII

MISCELLANEOUS

54. National Security.-(1)Notwithstanding anything contained in any law for the time being in force, in the interest of national security or in the apprehension of any offence, the Federal Government may authorise any person or persons to intercept calls and messages or to trace calls through any telecommunication system.

- (2) During a war or hostilities against Pakistan by any foreign power or internal aggression or for the defence or security of Pakistan, the Federal Government shall have preference and priority in telecommunication system over any licensee.
- (3) Upon proclamation of emergency by the President, the Federal Government may suspend or modify all or any order or licences made or issued under this Act or cause suspension of operation, functions or services of any licensee for such time as it may deem necessary.

Provided that the Federal Government may compensate any licensee whose facilities or services are affected by any action under this sub-section.

55. Liability of the Federal Government.-The Federal Government shall not be responsible for any loss or damage which may occur as a consequence of any act or omission of a licensee.

56. Tax Exemption of the Corporation.-Notwithstanding any other law for the time being in force, from the date of its establishment and until it is dissolved under this Act, the Corporation shall enjoy total exemption from the payment of any tax under the Income Tax Ordinance, 1979, the Wealth Tax Act, 1963, and the Sales Tax Act, 1990.

57. Power to make rules.-(1)For carrying out the purposes of this Act, the Federal Government may, from time to time, by notification in the official Gazette, make rules not inconsistent with this Act.

- (2) without prejudice to the foregoing powers, the Federal Government may make rules-
- (a) extending the categories of telecommunication systems or telecommunication services for which a licence is not required under section 20;
 - “(ab) the manner in which the USF and Research and Development funds may be administered:
 - (ac) the criteria base on which sums may be released from USF and Research and Development Funds.
 - (ad) preventing, prohibiting, and remedying the effects of, anticompetitive conduct by licensees.
 - (ae) regulating agreements or arrangements by licensees in respect of international telephony service;
 - (af) requiring licensees that handle international telephony service to make payments (i) to prescribed categories of licensees that terminate international telephony service calls in Pakistan in form of APC and (ii) to the USF in respect of international telephony service calls that prescribed categories of licensees terminate in Pakistan;
 - (ag) enforcing national security measures in telecommunication sector; and
 - (ah) regarding lawful interception.”
- (b) regulating the use of encryption apparatus or software by requiring use of approved apparatus or software or such appropriate apparatus or software be lodged with the Authority free of cost; and
- (c) restricting or prohibiting the use of any public switched network for signalling purposes in circumstances in which charges otherwise payable may be avoided or reduced, or the advertising of means or services for such use.

58. Ordinance to override other laws.-The provisions of this Act shall have effect notwithstanding anything contained in the Telegraph Act, 1885(XIII of 1885), the Wireless Telegraphy Act, 1933(XVII of 1933), or any other law containing any provision inconsistent to this Act.

59. Repeal and Savings.-(1)the Pakistan Telecommunication Corporations Act, 1991(XVIII of 1991), The Pakistan Telecommunication (Re-Organization) Ordinance, 1996(LXXVII of 1996), and the Ministry of Communications, Government of Pakistan, Notifications numbering 5(4)/95-PTC, dated the 7th August, 1995, are hereby repealed.

- (2) Notwithstanding anything contained hereinbefore, all orders made, actions taken, vesting orders or notifications issued, property, assets and liabilities of the Corporation vested or transferred and the employees of the Corporation transferred to the Pakistan Telecommunication Authority, Frequency Allocation Board, Pakistan Telecommunication Company Limited, National Telecommunication Corporation or Pakistan Telecommunication Employees Trust, under any of the powers conferred or vested under the Pakistan Telecommunication(Re-Organization)Ordinance, 1995(CXV of 1995), the Pakistan Telecommunication(Re-Organization)Ordinance, 1996 (XXX of 1996), the Pakistan Telecommunication(Re-Organization) Ordinance, 1996(LXXVII of

1996) shall be deemed always to have been lawfully and validly made, taken, issued, vested or transferred under the provisions of this Act and shall continue to be in force unless amended, varied, withdrawn, rescinded or annulled by a person or authority competent to do so under this Act.

ABDUL RAUF KHAN LUGHMANI, (Secretary)

Sajjad Latif Awan
Director Licensing
November 24, 1998