



PAKISTAN TELECOMMUNICATION AUTHORITY
HEADQUARTERS, F-5/1 ISLAMABAD

Decision of the Authority pursuant to order dated 21st June, 2019 passed by the Hon'ble Islamabad High Court, Islamabad in Writ Petition No. 1751 of 2019 titled as "Telenor Pakistan (Pvt.) Ltd. Vs FoP and another"

File No. PTA/Licensing/CMO-Renewal/30/2018(Telenor)

Venue of Hearing: PTA HQs, Islamabad
Date of Hearing: 25-06-2019
04-07-2019

The Authority present:

Major General Amir Azeem Bajwa (R): Chairman
Muhammad Naveed: Member (Finance)
Dr. Khawar Siddique Khokhar: Member (Compliance & Enforcement)

Issue

"Renewal of Mobile Cellular License No.MCT-01/RBS/PTA/2004 dated 26-05-2004 of Telenor Pakistan (Pvt.) Ltd."

DECISION OF THE AUTHORITY

1. This order is being passed in respectful compliance of the court order dated 21-06-2019 passed by the Hon'ble Islamabad High Court, Islamabad in Writ Petition No. 1751 of 2019 titled as "*Telenor Pakistan (Pvt.) Ltd. Vs Federation of Pakistan & another*" whereby Pakistan Telecommunication Authority (hereinafter referred to as the "**Authority**") has been required to decide issue through a speaking order. Operative part of the Court order is reproduced herein below for ready reference:

"5. In view of the above consenting statements made by the learned Attorney General for Pakistan and the learned counsel for the petitioner Companies, these petitions are disposed of in the following terms:

a) The Authority will afford opportunity of hearing to the authorized representatives of the petitioner Companies on 25-06-2019. The

latter will ensure that their respective representatives appear before the Authority on the said date at 9:00 a.m.

- b) The Authority shall consider the grounds raised before it by the petitioner Companies and decide the grievances through a speaking order.*
- c) The proceedings shall be completed at the earliest but not later than 15-07-2019.*
- d) The petitioner Companies shall not seek adjournment so that adjudication is not delayed.*
- e) The Authority would be at liberty to further extend the time for renewal of the licenses till a speaking order has been passed in compliance with this consent order.”*

2. Relevant Facts of the case:

2.1 Precisely, the relevant facts for passing of this order are that Telenor Pakistan (Pvt.) Ltd. (hereinafter referred to as the “**Licensee**”) was granted a Mobile Cellular License bearing No. MCT-01/RBS/PTA/2004 on 26-05-2004 (hereinafter referred to as the “**License**”) by the Authority under section 21 of the Pakistan Telecommunication (Re-Organization) Act, 1996 (hereinafter referred to as the “**Act**”) to provide licensed services in Pakistan for a period of fifteen (15) years. The License was issued after an auction process held pursuant to the Mobile Cellular Policy, 2004 (hereinafter referred to as “**2004 Policy**”) of the Federal Government, as a result of which Licensee paid a license fee of US \$ 291 million and it was assigned the following radio frequencies:

- a. 2 x 4.8 MHz in 900 MHz
- b. 2 x 8.8 MHz in 1800 MHz

2.2 In accordance with condition No. 1.2.2 of the License, if the Licensee wishes to renew the same, it was required to submit to the Authority a written request for renewal at least thirty (30) months prior to the expiry of the current term of the License. The Licensee submitted its request vide letter dated 31-03-2016 to the Authority for renewal of its License as it’s the same was expiring on 25-05-2019.

2.3 Upon the receipt of request for renewal, the Authority initiated its internal process for renewal by constituting a committee on the license renewal on 26-08-2016. Thereafter, one more request for renewal through letter dated 07-11-2016 was received by the Authority from another licensee namely Warid Telecom (Pvt.) Ltd. whose license was also expiring on the same date i.e. 25-05-2019 (*similar to the Licensee*). Accordingly, considering the requirements of the prevailing policy of the Federal Government, i.e. Telecom Policy, 2015 (hereinafter referred to as the "**2015 Policy**"), the Authority made its recommendations to the Federal Government in accordance with condition No. 1.2.3 (a) of the License read with clause 8.11.2 of 2015 Policy. For ready reference, condition No. 1.2.3 (a) of the License and clause 8.11.2 of 2015 Policy are reproduced herein below:

License condition:

"1.2.3 (a) renew the License on such terms and conditions as are consistent with the policy of the Federal Government at that time to come into effect at the conclusion of the initial term..."

Clause 8.11.2 of 2015 Policy:

"In case of renewal of licenses, PTA will make recommendations to Federal Government (MoIT) within the timelines stipulated in the respective licenses."

2.4 The Licensee, being aggrieved with delay in renewal of its License, filed W.P No. 1751 of 2019 titled as "Telenor Pakistan Vs FoP & another" before the Hon'ble Islamabad High Court, Islamabad with prayer seeking directions for the Authority and the Federal Government, *inter alia*, to renew its License for another term of fifteen (15) years. During pendency of the said writ petition, the Federal Government issued a Policy Directive dated 09-05-2019 (hereinafter referred to as the "**Policy Directive**") under section 8 (2) read with section 22(3) of the Act for renewal of Cellular Mobile Licenses. Upon the issuance of the said Policy Directive, the Licensee filed Civil Misc. No. 2319 of 2019 in W.P No. 1751 of 2019 for setting aside/suspension of the said Policy Directive and subsequently filed another Civil Misc. No. 2538 of 2019 in W.P No. 1751 of 2019 for amendment of pleadings seeking permission, *inter alia*, to include the relevant

contents and prayer for setting aside of the said Policy Directive. On 20-06-2019, after hearing the learned counsel for the Licensee at length, the Hon'ble Islamabad High Court, Islamabad suggested to the learned counsel for the Licensee and the learned Attorney General for Pakistan, representing the Federal Government, to refer the matter to the Authority for deciding the grievances independently and without being influenced by the Policy Directive dated 09-05-2019 issued by the Federal Government. The operative part of Court order dated 20-06-2019 is reproduced as under:

"The learned counsel for the petitioner Company has been heard at length. It was suggested to the learned counsel for the petitioner Company and the learned Attorney General to refer the matter to Pakistan Telecommunication Authority for deciding the grievances independently and without being influenced by the directives issued by the Federal Government. The learned Attorney General has stated that to this extent he does not oppose if the petitions are disposed of in such terms. The learned counsel for the petitioner Company has, however, sought a short adjournment in order to seek instructions.

2. Re-list for tomorrow i.e. 21.06.2019. The petitions will be taken up at 11:00.a.m."

2.5 In this back-drop, order dated 21-06-2019 was passed whereby W.P No. 1751 of 2019 was disposed of in terms of directions of the Hon'ble Court as reproduced in paragraph 1 above of this order.

3. Proceedings before the Authority

3.1 In respectful compliance with the Court order dated 21-06-2019 passed by the Honorable Islamabad High Court, Islamabad in the W.P No. 1751 of 2019, the matter was fixed for hearing on 25-06-2019 before the Authority. Mr. Kamal Ahmed, CCAO, Mr. Abdul Mobeen, Director, Mr. Shan ul Haq, Sr. Adviser, Mr. Jahanzeb Ali Chaudhry, Manager Legal Affair (Telenor Pvt. Ltd.), and Mr. MNA Rehan, Advocate attended the hearing on behalf of the Licensee on the said date. Mr. Jahanzeb Ali Chaudhry, filed

written submissions, *in the form of two volumes*, before the Authority, containing the following:

- i. *W.P No. 1751/2019 along with C.M No. 2319/2019, C.M No. 2538/2019,*
- ii. *Rejoinder on behalf of the Petitioner to the interim Report and Parawise Comments filed by the Authority,*
- iii. *Report by GSMA on best practice in spectrum license renewal-2014; and*
- iv. *note by World Bank on Mobile Licence-2005.*

3.2 However, Mr. Jahanzeb Ali requested for adjournment for a date to be fixed on 10-07-2019 as the Licensee has engaged Barrister Sardar Ejaz Ishaq, Advocate Supreme Court (hereinafter referred to as the "**Legal Counsel**") to represent the Licensee before the Authority. Since the Legal Counsel is out of country, therefore, could not appear before the Authority on 25-06-2019. Accordingly, in the interest of justice and fair play, the Authority considered the request of the Licensee and with the consent of the Licensee re-fixed the matter for 04-07-2019 for final hearing.

3.3 Further submissions on Behalf of the Licensee on 04-07-2019

3.3.1 The Legal Counsel along with Mr. Irfan Wahab Khan, CEO, Mr. Kamal Ahmed, CCAO, Mr. Abdul Mobeen, Director, Mr. Shan ul Haq, Sr. Adviser, Mr. Jahanzeb Ali Chaudhry, Manager Legal Affair, Mr. Ali Raza, Haider Latif Saudhu, Director Legal and Mr. MNA Rehan, Advocate on behalf of the Licensee appeared before the Authority on 04-07-2019. In addition to the written submissions filed by the Licensee on 25-06-2019, the Legal Counsel, during hearing, also filed a copy of its written submissions along with note of Grievances (*Issues*) formulated as questions and application(s) for discovery of document, summoning of witnesses, production of evidence and expert testimony.

3.3.2 The crux of the submissions made by Legal Counsel are that Policy Directive dated 09-05-2019 is *ultra vires* to the Act on the ground that setting of fee for renewal of license is an exclusive mandate of the Authority under section 5(2)(a) of the Act, thus Policy Directive is not consistent with the provisions of the Act. He further submitted that the scope of section 8(1) & (2) of the Act, under which the Policy Directive has been

issued, is to give framework on the numbers of license(s) to be granted, terms of license and duration of license etc. The renewal of license and renewal fee is missing in these sections. Further submitted that though sub-section 3 of section 22 of the Act says about the policy directive “*if any*”, yet the same cannot be read in isolation and has to be read in conjunction with section 8 and section 5(2)(a) of the Act. The power to set the renewal fee cannot even impliedly vest with the Federal Government because it is an established cannon of statutory construction that no term can be implied into a statute which run counter to the express terms. He further pointed out that the word “pricing” is missing in clause 8.11.1 and 8.11.2 of the 2015 Policy whereas clause 8.11.3 find mention of the word “pricing” thus he concluded that the “pricing” could be dictated under a policy instrument in relation to other spectrum and not for those spectrum associated with license renewal.

3.3.3 While making further submissions, the Legal Counsel is of the view that the 2015 Policy cannot override the contractual obligation as the License equates with the contract and renewal right is a contractual right under license condition No. 1.2 and the same unambiguously conditioned a time bound action by the Authority. Thus, it has to be renewed within three (3) months of receipt of renewal request consistent with a policy directive if any prevailing on 30-06-2016 and not a policy directive issued after three (3) years in May, 2019. The purpose to grant twenty Seven (27) months time to the Licensee is to evaluate and decide whether the renewal proposal is economically viable for it and to do financial planning either to stay or exit. It is a valuable contractual and licensed right and the Licensee entered in the contract while relying on the pre-contractual representations made in 2004 Policy, the Information Memorandum and the License template.

3.3.4 In continuation of submissions, the Legal Counsel went on to submit that since the License granted to the Licensee is a contractual document and not a privilege, thus the Authority has an exclusive power to set renewal fee. Issuance of Policy Directive by setting renewal fee is not only inconsistent with the provision of the Act but also contrary to exclusive statutory obligations of the Authority as enshrined under the Act. He further

submitted that had the above breaches not occurred, the renewal price would have been approximately US \$291 million with payment profile over ten (10) years.

3.3.5 On the issue of recommendations of the Authority to Federal Government on renewal of license, the Legal Counsel is of the view that by virtue of license condition No. 1.2.3 of the License, the Authority has to take decision for renewal of the License within three (3) months after the receipt of renewal request in consonance with the prevailing policy, if any, as embodied in section 22(3) of the Act. Thus, soliciting of a new renewal policy by the Authority beyond 30-06-2016 is *ultra vires* in so far as it purports to set the renewal fee.

3.3.6 Legal Counsel also pointed out that while making recommendations dated 15-03-2019 to the Federal Government, the Authority has not taken into consideration the financial analysis of the Licensee's financial statements, its Average Revenue Per User ("ARPU"), retained earnings/adjustable fund, legal and commercial aspects. Thus, the recommendations cannot be considered valid, fair and complete. The Licensee was never given opportunity before the Federal Government/Committee of Ministers to address the Authority's recommendations. The Licensee's participation in the renewal consultation process cannot amount to acquiescence in the renewal fee and other terms of conditions.

3.4 Requests for production of record and other related documents

3.4.1 In addition *to the submissions as stated above*, the Legal Counsel also highlighted that the Frequency Allocation Board (hereinafter referred to as "**FAB**") objected to the formation of the "**Technical Committee**", constituted by the Prime Minister of Pakistan that is why an application for production of FAB's objections and production of other related documents has been moved.

3.4.2 He further contented that the consultant namely WRAP'S International (Pvt.) Ltd.'s ouster was result of manipulation to avoid internationally accepted spectrum pricing methodology; internationally total spectrum cost is not more than total revenue during the license term.

3.4.3 While setting renewal price, the benchmark of 850 MHz auction has erroneously been used for 900 MHz band. The two bands are fundamentally different. Ecosystem of two bands are also different. It is internationally established that one band cannot be used inter-changeably with another band for pricing purposes. Notwithstanding that the Licensee's 900 MHz band is clean, it cannot be benchmarked against 850MHz auction price. Thus, the Licensee seeks the Authority's leave to present international expert testimony on this issue under Article(s) 59, 62, 63 of Qanoon-e-Shahdat Ordinance, 1984 (hereinafter referred to as the "QSO"). In support of his application for discovery of documents and summoning of witnesses, the Legal Counsel also requested to bring on record the WRAP's reason for not delivering its report, communication between Authority and WRAP, WRAP initial recommendation/ preliminary report to the Authority, FAB's objection to WRAP and Authority's initial recommendations to the Federal Government in April, 2017. Accordingly, application has been moved to summon WRAP's representative and FAB's representative to appear as a court witness, *inter alia*, under section 30 of the Code of Civil Procedure, 1908 read with Article 108 of QSO and to allow the Licensee to examine and cross examine these witnesses.

4. Findings of the Authority:

Matter heard and record perused. After careful examination of record and hearing contentions / submissions of the Licensee at length in the light of order dated 21-06-2019 passed by the Hon'ble Islamabad High Court, Islamabad and the relevant provisions of law, findings of the Authority are as under:

4.1 At the very outset, the Authority would like to take up the request / application for discovery of documents, summoning of witnesses and production of evidence. The primary objective of the instant proceedings is to afford an opportunity of hearing to the Licensee to lay its case before the Authority for determining the renewal price of the License, issues of quality of service and roll out obligation etc. The Authority is a statutory body established under section 3 of the Act with the mandate to regulate operation, maintenance of telecommunication system and provision of

telecommunication services in Pakistan. For the performance of its function and exercise of the Authority, it is empowered to pass orders after providing an opportunity of hearing to licensees. As a matter of fact, the scope of these proceedings is not to find out the faults in the previous process initiated for renewal of license. The purpose and scope of the instant proceedings is to determine the fee for renewal of the License and other ancillary matters. Therefore, the Licensee's application for production of record, calling representative of FAB and WRAP is not relevant for passing the instant order. To decide the matter in accordance with timelines as per court order and to resolve the issue, there is need to focus on grievances on the issues directly related to renewal of licenses rather to re-open the case with the issue(s) which has no nexus with terms and condition of renewal of license. The application(s) filed on behalf of Licensee for discovery of document, summoning of witness etc., are alien to the instant proceedings and the same are, accordingly, declined.

4.2 Turning towards the issue of *vires* of the Policy Directive dated 09-05-2019 and other ancillary matter(s) relating to the interpretation of different provisions of sections 5(2)(a), 8(1) & (2) and 22(3) of the Act raised by the Legal Counsel. For ready reference the said sections are reproduced below:

"Section 5(2) (a)._ grant and renew licenses for any telecommunication system and any telecommunication services on payment of such fee as it may, from time to time specify"

Section 8 (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."

Section 8(2)._ "The matters on which the Federal Government may issue policy directives shall be __

a. the numbers 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 scarce 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 the 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.

Section 22 (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.”*

It is suffice to say that firstly, the Authority is not the competent forum to adjudicate upon the matter related to *vires* of Policy Directive dated 09-05-2019 and ancillary matter thereto. Secondly, in the light of order of Hon’ble Islamabad High Court, Islamabad, the Authority has to decide the grievances of the Licensee without being influenced by the said Policy Directive. Therefore, all the grievances relating to the Policy Directive dated 09-05-2019 are not being touched upon by the Authority.

4.3 The Licensee's contention with regard to wrong interpretation of condition No. 1.2.3 of the License on the part of Authority is result of *misreading and non-reading* of the said license conditions and provisions of the Act. It is worthy to note that the said clause obligates the Authority that in case of renewal it has to be initiated on such terms and conditions as are consistent with the policy of the Federal Government at that time. For the purpose of clarity sub-section 3 of section 22 of the Act, condition No. 1.2.3 of the License and clause 8.11.2 of the 2015 Policy are reproduced below:

Section 22 (3) of the Act “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.”

License condition

"1.2.3. Within three months after the receipt of the Licensee's request pursuant to Condition 1.2., the Authority shall either:

(a) renew the License on such terms and conditions as are consistent with the policy of the Federal Government at that time to come into effect at the conclusion of the initial term, or

(b).....”.

Clause 8.11.2 of 2015 Policy states that “in case of renewal of licenses, PTA will make recommendations to Federal Government within the timelines stipulated in the respective licenses”.

4.4 The afore-referred relevant section, license condition and provision of 2015 Policy clearly suggest that on receipt of request for renewal of License linked/associated with spectrum. The obligations of the Authority flow from two sources, (i) terms of the License, (ii) from 2015 Policy and relevant provisions of the Act. Since at the relevant time, the 2015 Policy was in place and clause 8.11.2 of the said Policy specifically requires the Authority to make recommendations to the Federal Government in case of renewal of License associated with spectrum. In the light of statutory provision(s) and mandate of Federal Government as provided in section 8 read with section 22 (3) of the Act, the Federal Government reserves the right to give a policy on renewal of the License upon the recommendations of the Authority. Accordingly, in compliance with the regulatory regime and in terms of License, recommendations were made to the Federal Government. The use of the word “policy” in License condition No. 1.2.3 (a) of the License, referred to a policy specifically dealing with the renewal of licenses.

4.5 The assertion of the Legal Counsel regarding overriding effect of the Policy over the contractual (license) obligation is based on misconception on the ground that in the instant case, condition 1.2.3(a) of the License provides procedure for renewal of license

which expressly specifies that renewal to be made consistent with the policy of the Federal Government at that time. It may not be out of place to mention here that the License itself pointed out the need of issuance of policy directive on issue of renewal of License. In this respect reference is made to the Licensee letter No. TPRA/MOIT/LIC2004/924 dated 30-10-2018 addressed to Member Telecom, Ministry of Information Technology & Telecommunication wherein it has clearly been stated that *“As per Telecom Policy 2015 section 8.11, Renewal framework is to be issued by MoIT on the recommendations of PTA and to start the negotiations well in time with operators having Licenses under renewal. We are now only few months away from the expiry of our License without any clarity on the renewal process. Given that Mobile network investments are capital intensive and long term and that the renewal of licenses can potentially impact the industry structure, there needs to be clarity on the renewal terms well before license expiry. We therefore, urge the Ministry of Information Technology and Telecommunication that the consultation process may be expedited and issue the renewal framework.”*

4.6 The submission of the Legal Counsel for non-considering the commercial and legal aspects by the Authority in its recommendations / working paper dated 15-03-2019 made/submitted to the Federal Government/Committee of Ministers is against the factual position. As a matter of fact and record, the point of view and reservations of the Licensee were duly analyzed by the Authority and gist thereof was included in the recommendations made to the Federal Government. The Licensee was kept abreast in all steps of renewal process and it also participated in several meetings. As a matter of fact, the Licensee attended various meetings with PTA, MoIT, Committee of Ministers and was involved in the consultation process on renewal on different occasions starting from 2017 onward till 02-05-2019. It may not be out of place to mention here that had the delay been so detrimental to the Licensee as portrayed, it could have approached Court of Law for redressal of its grievance after expiry of stipulated time as mentioned in condition No. 1.2.3 of the License. The record shows that the Licensee, despite being aware of every stage of renewal process, did not feel the need to seek remedy from any Court of Law rather remained associated with the process and the Licensee only choose

to approach the Court just three days ahead of issuance of the said Policy Directive dated 09-05-2019.

4.7 As for as the financial analysis of the Licensee is concerned, the examination and analysis of audited accounts submitted by the Licensee, its subscriber penetrations, broadband coverage and its commercial activities being a license holder reveals that the Licensee is financially viable to support the renewal of their license and associated spectrum.

4.8 The arguments of the Legal Counsel for the Licensee that benchmark for 850 MHz auction has erroneously been used for 900 MHz are completely misconceived. It is clarified that 850 MHz and 900 MHz band exhibit similar channels, characteristics in the mobile propagation environment. More so, to clarify the importance of radio frequency spectrum there is a need to highlight technical issues involve therein as internationally various bands are allocated for cellular mobile communication. These bands may be divided into the following two groups:

i. Coverage Bands: These are sub-Giga (below 1000 MHz) frequency bands e.g. 700, 800, 850 and 900 MHz. Due to low frequency these electromagnetic waves can travel to a greater distance hence provide extended coverage. Often such bands are used to provide coverage in rural/far flung areas.

ii. Capacity Bands: These include 1800, 2100, 3500, etc. which do not cover a large area but can carry greater amount of data hence such bands are usually used where high data rates are required in a densely populated area.

As far as 850 MHz and 900 MHz bands are concerned, they have very similar characteristics such as coverage patterns, link budget, propagation loss and signal to noise ratio. Therefore, in most of the international technical reports there would not be any differentiation between these two bands at all. In addition, analysis of past four years' type approval data shows that there is increased availability of terminal devices in 850 MHz band, however cell phones supporting 900 MHz band still have a definite higher number.

4.9 The most important issue in whole exercise is to address the issue of renewal of license fee. Before addressing the issue of renewal of license fee in light of prevailing regulatory regime, the Authority feels it appropriate to analyze international practice(s) for determining renewal fee by various jurisdictions in telecom markets. The international best practices show that the renewal process should be fair, transparent and participatory to promote regulatory certainty.

Countries set license fee according to their own perspective / markets, for example, in India, Thailand and Singapore, the regulators determined the license renewal process by auction. Australia and New Zealand re-issued licenses to the same licensees on market-based spectrum price and if licensees fail to accept the renewal offer on market based price expectations then the spectrum is auctioned.

However, it is increasingly recognized by policy makers and regulators that whatever method used, the upfront payment needs to reflect the economic value of the spectrum and to ensure its efficient use. Accordingly, in Pakistan the market determined price based on market forces has been suggested for the renewals of cellular mobile licenses i.e. recent auction prices of 850 MHz and 1800 MHz spectrum in 2016 and 2017 respectively.

4.10 Now, after having gone through the international perspective, it would be appropriate to examine what strategy/course of action is to be adopted to determine the fee for renewal of mobile cellular license in the prevailing regulatory regime of Pakistan. It is to be understood that the License in question is not merely a simple license granting permission to provide cellular mobile services rather this License is associated with the right to use spectrum which is a "scarce resource" owned by the State as a trustee of people of Pakistan. Under section 8 (2) (aa) of the Act, the Federal Government is empowered to issue policy directive with regard to framework for telecommunication sector development and scarce resources. The decision of the State to grant access to scarce resources, which belong to the people, must ensure that people are adequately compensated. The spectrum has a high economic value in the light of the demand for it on account of the rapid growth in the telecom sector. For purposes of renewal of License associated with spectrum, different model/methods are used internationally for renewal of

such License, such as Auction, Administrative Re-assignment and Hybrid, etc. Considering the various factors in the telecom market in Pakistan, two rationale methods were available with the Authority for determining the fee for renewal of the License associated with spectrum; (i) by engaging a consultant to recommend a renewal framework and suggestive spectrum price (not a binding on the Authority) or (ii) to use the recently determined price through an auction for use of spectrum in the similar bands as a benchmark for renewal of License.

4.11 The Authority in consultation with the Federal Government decided to hire a consultant for the aforesaid purpose, however, the process could not be concluded in a timely manner. Therefore, to complete the renewal process in a timely manner, the Authority decided to opt for the second mechanism i.e. determination of spectrum price through an auction already conducted fairly and impartially close to the time of renewal of the License. It is very pertinent to mention here that in the auctions conducted in years 2016 and 2017 (close to the time of renewal of License), the existing telecom operators including the Licensee participated in the auction and the market price of the spectrum in the similar bands was set by the telecom operators including the Licensee themselves. It may not be out of place to mention here that auction based price for a license associated with spectrum is an established principle based on past practices as the Licensee was originally granted the License through an auction process and even all subsequent cellular mobile licenses associated with spectrum have been granted through process of auction and even renewal of cellular mobile licenses have been made from 2004 onward on the basis of price determined in the auction. Accordingly, the Authority, after thorough deliberations and analyzing number of various other factors i.e. increasing trends of cellular mobile subscribers, growth in mobile broadband, growth in 3G and 4G technologies enabled services, earlier trends and spectrum prices etc., recommended to the Federal Government that for the purpose of renewal of the License linked/associated with the spectrum, benchmark recently determined through auctions in the respective band may be used. Given these circumstances as well as considering the dynamics and overall prospectus of the telecom market, the Authority is of the view that the benchmark

for the spectrum fixed through the aforesaid auctions still fairly holds good for renewal of the License associated with the similar spectrum.

4.12 There is no cavil to the preposition that it is prerogative of the Authority under section 5(2)(a) of the Act to renew the License for any telecommunication system and any telecommunication service on payment of such fee as it may from time to time specify. The use of the phrase “from time to time specify” in section 5(2)(a) of the Act explicitly convey that it is the mandate and power of the Authority to determine and specify fee for grant and renewal of license. Accordingly, the Authority in exercise of such power is well within its mandate to specify the renewal fee of a license other than the fee fixed/determined at the time of grant of the said license. However, an upper limit for levying such fee and other charges has been envisaged under section 5(2)(p) of the Act inasmuch as that the Authority should not exceed the limit as specified by the Committee of the Cabinet if any.

4.13 While renewing the License, the Authority in exercise of its vested right, telecom consumers’ interest as envisaged under section 4(1) (m) of the Act and for the proper conduct of telecommunication services, has decided to enhance the quality of service and roll out targets in order to meet the parameters of quality of service so as to bring it in harmony with the international best practices. Further, the License is technology neutral, therefore, the Licensee is entitled to deploy any latest technology for provision of the Licensed services. Accordingly, the necessary changes in the terms of License has been incorporated as shared with the Licensee. Such changes in quality of service and roll out obligations shall certainly improve the key performance indicators (“KPI”) of the Licensee. However, the Licensee has raised various concerns on the terms and conditions dealing with enhanced quality of service and roll out obligations. In this respect, the Licensee’s persistent stance, *inter alia*, has been that the issue of quality of service and roll out obligations is dependent on the quantum of renewal fee of the License. Even in the recent meeting held on 16-07-2019 on this issue, the Licensee reiterated its earlier stance that without first determination of renewal fee, the terms and conditions pertaining to quality of service and roll out obligations cannot be finalized. The Authority is of the view that though linking the issue of quality of service and roll out obligations with the

renewal fee is not a rational approach, yet to avoid any deadlock and to give fair treatment on this issue, the Licensee's concerns on terms and conditions regarding enhanced quality of service and roll out obligations are still under consideration with the Authority and the same shall be finalized in consultation with the Licensee.

5. Conclusion:

5.1 On the basis of what has been discussed above, it is concluded as under:

- i. There is no dispute on renewal of the License. Both the Authority and Licensee are agreed and intended to proceed for renewal of License;
- ii. The main issue in the instant matter relates to determination of the renewal price in the light of various factors and approaches/models;
- iii. Various jurisdictions have adopted different approaches; i.e. through auction or market-based price, for renewal of license associated with spectrum;
- iv. In Pakistan, spectrum price is being determined through auctions. The latest spectrum price in similar bands was determined through auctions held in years 2016 and 2017. The said spectrum price can fairly be considered as a benchmark for renewal of the License associated with similar spectrum as market-based price;
- v. Quality of Service and roll out obligations required to be enhanced in consonance with 2015 Policy and with the best regulatory practices. However, the Licensee's concerns on terms and conditions regarding enhanced quality of service and roll out obligations are being evaluated and require further consultation with Licensee. Thus, the same shall be finalized after consultation with the Licensee.

6. Decision:

6.1 In view of the foregoing discussions, the Authority passes the following order:

- a) Fee for renewal of License shall be US \$ 39.5 million per MHz for frequency spectrum of 900 MHz and US \$ 29.5 million per MHz for frequency spectrum of 1800 MHz;

- b) License No.MCT-01/RBS/PTA/2004 dated 26th May, 2004 will be renewed with effect from 26th May, 2019 for a period of further fifteen (15) years, on technology neutral basis, subject to payment of renewal fee to be calculated in accordance with per MHz price as provided at para 6.1 (a) above;
- c) The payment terms for the renewal fee shall be 100% upfront or 50% upfront with remaining 50% in five (5) equal annual installments on LIBOR plus 3%. The payment shall be made in US \$ or with the option to pay in equivalent Pak Rupees calculated at the market exchange rate at the time of payment;
- d) The upfront payment as given in para 6.1(c) above shall be paid on or before 21-08-2019; In case of non-payment of upfront fee as required, the License shall stand expired;
- e) All fees and other charges as provided in Part 4 of the License shall apply in similar manners to the renewed License from its effective date i.e. 26th May 2019;
- f) The terms and conditions relating to enhanced quality of service and coverage of network shall be finalized in line with applicable regulatory practice and 2015 Policy after consultation with the Licensee on or before 21-08-2019;
- g) In case, the Licensee opts for non-renewal of its License, it shall pay fee on pro rata basis of the renewal fee as mentioned in para 6.1 (a) along with all other applicable fee and other charges as provided in Part 4 of the License commencing from 26-05-2019 till the date of withdrawal/vacation of radio frequency spectrum

Chairman

Member (Finance)

Member (Compliance & Enforcement)

Signed on 22nd day of July, 2019 and comprises (18) pages only.