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PART II

Statutory Notifications (S. R. O.)

GOVERNMENT OF PAKISTAN

INTERCONNECTION DISPUTES RESOLUTION REGULATIONS, 2004

NOTIFICATION

Islamabad, the 9th July, 2004

S. R. O. 797(I)2004--In exercise of the powers conferred under Clause(O) of Sub-section (2) of Section 5 of the Pakistan Telecommunication (Re-organization) Act, 1996 (Act XVII of 1996), the Authority is pleased to make the following Regulations:

**PART-I
PRELIMINARY**

1. **Short title and commencement.** —(1) These regulations may be called the Interconnection Disputes Resolution Regulations, 2004.
(2) They shall come into force at once.
2. **Definitions.** — (1) In these regulations, unless contrary to the subject or context:-
 - (a) **“Act”** means the Pakistan Telecommunication (Re-Organization) Act, 1996 (XVII of 1996);
 - (b) **“Case Management Team”** means the team constituted under sub-regulation (7) of regulation 3;
 - (c) **“Claim”** means a written notification by the Claimant to the Authority claiming contravention by the Respondent of the provisions of the Act, the rules made there under or its license as a consequence of the inability of the Claimant and the Respondent to agree on:
 - (i) an interconnection arrangement; or
 - (ii) a dispute arising out of a subsisting interconnection agreement, and includes all evidence and materials annexed to the Claim;
 - (d) **“Claimant”** means the operator filing the Claim;
 - (e) **“Contumacy”** means any act or omission by a party to the proceedings designed to defeat or stall the prompt, equitable, transparent, effective and complete determination of the dispute notified in the Claim, and cognate expressions shall have the like meaning;
 - (f) **“Information”** includes matters within the knowledge of persons, documents, data, reports, accounts, pricing, books, maps, charts,

for interconnection between two or more operators and includes variation of a subsisting interconnection agreement;

- (i) **“Pleadings”** means the Claim and the Reply;
- (j) **“Presiding Officer”** means the member of the Authority nominated as the presiding officer under sub-regulation (8) of regulation 3;
- (k) **“Proceedings”** means the entire process of dispute resolution commencing from the date of filing of the Claim and ending on the date of the final decision, and includes any stage during the proceedings;
- (l) **“Reply”** means the written reply by the Respondent to the Claim, and includes all evidence and materials annexed to the Reply;
- (m) **“Respondent”** means the person against whom the Claim is filed;
- (n) **“Rules”** means the Pakistan Telecommunication Rules, 2000; and
- (o) **“Standing Case Officer”** means an officer designated by the Authority to act as the standing case officer.

(2) Words and expressions used but not defined herein shall bear the meaning given thereto in the Act or the Rules.

PART- II

DISPUTE NOTIFICATION AND FIRST HEARING

3. Notification and admission of dispute. –(1) an operator may file a Claim with the Authority in the format set out in the Annex to these regulations if that operator is unable to reach agreement with the Respondent,

- (a) on an interconnection arrangement; or
- (b) on a dispute arising out of a subsisting interconnection agreement,

and such failure to agree continues for sixty days after the request for interconnection arrangement was made or the dispute was raised; provided that, in relation to sub-paragraph (b), the Authority may entertain a Claim before the expiry of sixty days.

(2) A Claim shall be accompanied with an affidavit affirming the accuracy of all factual information to the knowledge of the Claimant. Where averments are made on the basis of information and belief of the Claimant, the affidavit shall disclose the source of such information and belief.

(3) The standing case officer shall within three days of filing place the Claim before the Authority along with a non-binding recommendation for admission if the following pre-conditions are satisfied:

- (a) the Claim is prepared in the format specified in the Annex and contains all information specified therein;
- (b) the Claim is accompanied with the administrative fee;
- (c) the Claim discloses a genuine attempt on the part of the Claimant to negotiate the dispute with the Respondent;
- (d) the Claim makes out a prima facie case of contravention by the Respondent of its express or implied obligation under the provisions of the Act, the Rules or Regulations made there under or its licence;
- (e) the parties are unable to reach agreement; and
- (f) where there is a subsisting interconnection agreement between the parties, the interconnection agreement does not provide for a reasonable, independent and legally binding alternative dispute resolution mechanism.

The standing case officer shall return the Claim if the above pre-conditions are not satisfied.

(4) The Authority shall admit the Claim for hearing upon being satisfied that the pre-conditions specified in sub-regulation (3) are met.

(5) The decision on admission of the Claim or the issuance of a direction under sub-regulation (1) of regulation (4), as the case may be, shall be taken within seven days of filing of the Claim.

(6) If admission of the Claim is declined, the Claimant may re-file the Claim after removing the deficiency. A re-filed Claim shall be regarded as a fresh Claim and all time limits specified in these regulations shall be reckoned afresh from the date of re-filing.

(7) Simultaneously with the admission of the Claim for hearing, the

Authority shall from amongst its officers and consultants designate a case management team comprising of not less than two members. The case management team shall manage and progress the proceedings and shall in this regard, *inter alia*:

- (a) receive pleadings, evidence and applications by the parties;
 - (b) receive applications and communications from persons other than the parties to the proceedings;
 - (c) issue information directions;
 - (d) correspond with the parties;
 - (e) hold conferences with the parties;
 - (f) seek rulings from the Authority on procedural or other matters on written applications by the parties or on their own initiative; and
 - (g) hold internal conferences with the Authority for advice and decisions by the Authority.
- (8) Upon admission of the Claim, the Authority shall nominate one of its members to be the presiding officer for the first hearing and the final hearing.

4. Pre-admission negotiation directions. –(1) If the Authority considers that negotiations may enable the parties to reach agreement, the Authority may, instead of admitting the Claim for hearing, direct the parties to enter into negotiations. Additionally, the Authority may direct a party which in the opinion of the Authority has avoided negotiations to:

- (a) provide specified information to the other party;
 - (b) obtain specified information where such information is not readily available;
 - (c) attend negotiations at the time and place specified through representatives duly authorized to take decisions binding on that party; or
 - (d) take such measures as may be specified to improve the quality, transparency and effectiveness of the negotiations.
- (2) A direction under sub-regulation (1) shall specify the timeframe, not exceeding fifteen (15) days, within which the negotiations shall be carried out and completed.

(3) The Authority may require that one or more stages of negotiations be conducted in the presence of one or more members of the case management team.

(4) If the parties remain unable to reach agreement after negotiations as afore-said, the Claim shall, subject to satisfaction of the pre-conditions specified in sub-regulation (3) of regulation 3, stand admitted for hearing.

5. Directions following admission of Claim.—Forthwith upon admission of a Claim for hearing:

- (a) a copy of the Claim shall be served by the case management team on the Respondent with a direction to submit a Reply within fifteen days;
- (b) a date, being not later than thirty days after the admission of the Claim for hearing, shall be notified by the case management team to the parties for the first hearing; and
- (c) the parties shall file, at least three days before the date of the first hearing:
 - (i) a statement of objections to admissibility of evidence relied on by the other party; and
 - (ii) a statement of the understanding reached between the parties, if any, by that date.

6. Reply.—(1) The Reply shall address serially each paragraph of the Claim. In case of denial or non-admission of an averment in the Claim, the stance of the Respondent shall be specifically stated failing which the averment in the Claim shall be deemed to have been admitted.

(2) The Respondent shall deliver a copy of the Reply complete in all respects to the Claimant forthwith but in any event not later than the day next following the filing of the Reply with the Authority.

(3) The Reply may state additional or other grounds, identified as such in a separate section of the Reply, for the inability of the parties to reach agreement.

(4) Where the Claim consists of a claim for damages or compensation, the Reply may contain a counter-claim or set-off along with relevant evidence.

(5) The Reply shall be accompanied with an affidavit affirming the accuracy of all factual information to the knowledge of the Respondent. Where averments are made on the basis of information and belief of the Respondent, the affidavit shall disclose the source of such information and belief.

7. First hearing.—(1) At the first hearing, the presiding officer shall invite the parties to refer to the then current version of the guidelines made by the Authority under clause (h) of sub-section (2) of section 5 of the Act.

(2) The presiding officer may indicate the likely views of the Authority on particular matters arising out of the pleadings, provided that, such views shall not be binding on the Authority nor shall the Authority be precluded from confirming, modifying or abandoning such views in its final decision.

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

Explanation: Nothing contained in this section shall preclude the Authority from passing any decision at the conclusion of the first hearing.

PART -III

FINAL HEARING

8. Application.— (1) Unless a final decision is passed earlier, the provisions of Part III shall apply if the parties are unable to reach agreement by the fourteenth day after the date of first hearing, excluding the day of first hearing.

(2) All time limits specified in this Part III shall be reckoned and calculated as if the first day were the day next after the fourteen day time period stated in sub-regulation (1).

9. Pre-final hearing measures.—(1) The case management team shall notify the parties of a date, hereinafter referred to as the 'final hearing date', for final hearing to be held not later than the thirtieth day.

(2) The final hearing date shall be notified to the parties by the seventh day.

(3) The notification of final hearing date shall be accompanied with:

(a) information directions, if any;

- (b) a list of issues, hereinafter referred to as the 'scope of dispute', which in the opinion of the Authority is central to the inability of the parties to reach agreement and which is likely to be addressed in the final decision; and
 - (c) identification of all items of evidence objected to, in whole or in part, by the other party as being inadmissible along with the reasons for such objections.
- (4) A party may, not later than the fourteenth day, object in writing to one or more issues or propose additional issues for inclusion in the scope of dispute.
- (5) The Authority shall, after considering the comments of the parties on the scope of dispute, settle and circulate the final version of the scope of dispute to the parties not later than the twenty-first day.

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

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

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

(4) The final hearing if not concluded on the same day shall stand adjourned for the next day and shall continue on a day-to-day basis, provided that, no hearing shall continue for more than three days.

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

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

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

(3) A party failing to comply with the final decision within the time limit specified therein may be proceeded against under section 23 of the Act if the non-compliance amounts to contravention of the provisions of the Act, the rules made there under or any term or condition of such party's licence. The final decision may identify the relevant provisions of the Act, the rules or the licence, which in the opinion of the Authority would stand contravened on failure of a party to comply with the final decision.

PART- IV

COMMON PROVISIONS

12. Application of Part IV.—The provisions of this Part - IV shall apply to all stages of the proceedings before the final decision on the Claim is announced.

13. Pleadings.—(1) Pleadings shall be concise, relevant and non-repetitive.

(2) Pleadings considered prolix, repetitive or irrelevant may be returned for redrawing to conform to the requirements of sub-regulation (1).

(3) Failure of a party to redraw returned pleadings within the time specified shall not prevent the running of time for the conduct and conclusion of proceedings within the time limits specified in these regulations.

14. Evidence.—(1) Oral evidence in support of the Claim, the Reply or an application shall be given by affidavit attached with the Claim, the Reply or the application, as the case may be, provided that, the witness shall be made available at the final hearing for cross-examination if so requested by the other party.

(2) Documentary evidence shall be filed in legible copy. Illegible or incomplete copies shall be excluded from consideration if a party fails to replace such copies within the time limit specified by the case management team. A party shall not be required to produce the originals unless the other party for good cause shown requires such production.

15. Recordings and transcripts of hearings and conferences.—
(1) All hearings and conferences shall be audio recorded.

(2) The case management team shall prepare written transcripts of all hearings and conferences.

(3) A written transcript shall be circulated to the parties within seven days after the hearing or the conference.

(4) Conversations, argumentative discussions and oral or written evidence copies whereof have been provided to the parties shall not be recorded in the written transcripts and a summary shall be recorded instead. In case of disagreement, the audio recording shall be used.

(5) Errors in written transcripts, if any, shall be pointed out by the parties no later than seven days after receipt, failing which they shall be deemed to have been waived.

(6) Copies of audio recordings shall be provided to parties on payment of reasonable charges.

16. Conference.—(1) The case management team may hold conferences with the parties at any stage of the proceedings either of its own motion or on request of parties.

(2) A conference shall not be held in the absence of any party to the proceedings; provided that, a conference may be held *ex parte* if a party fails to attend despite notice.

17. Rulings.—(1) Either party may at any time up to the conclusion of the final hearing by application in writing seek a ruling of the Authority on a procedural or other matter in relation to the proceedings.

(2) A copy of such application shall be served simultaneously on the other party by the party seeking the ruling. Failure to serve a copy on the other party as afore-said shall nullify the application for ruling.

(3) The other party to the proceedings shall file its written comments on the application for the ruling within three days of service.

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

18. Information directions.—(1) An information direction may be issued:

- (a) of its own motion by the case management team, the presiding officer or the Authority, at any stage of the proceedings; or
- (b) on application of a party, not later than ten days before the final hearing date.

(2) The party receiving an information direction shall furnish the information specified therein to the case management team within ten days of the information direction.

(3) A party may for due cause express its inability to furnish the information specified in the information direction at all or within the time allowed.

Explanation: ‘Due cause’ may include the non-availability of the information sought, claims for confidentiality, or the need to collate information from diverse sources requiring more time.

(4) Where disclosure of information is resisted on grounds of confidentiality, the reasons how disclosure is likely to damage the commercial interests of the disclosing party must be communicated in writing.

Explanation: A mere claim of likely damage to the commercial interests is not sufficient to assert confidentiality. The party claiming confidentiality must show how the information could be used by the other party and the damage it would cause to the disclosing party.

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

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

(7) Where a party to the proceedings,

- (a) fails to respond to an information direction within the time specified; or
 - (b) states reasons for its inability to provide the information within the time limit specified, or at all, and the Authority considers such reasons to be contumacious,
- the Authority may, without prejudice to any other action it may take, give the benefit of such failure or contumacy to the other party.

19. Excision of confidential information.—The Authority may accede to a request by a party to withhold confidential information provided to the Authority by such party, provided that, the Authority may make its decision on such request after seeking comment from the other party by referring to the nature of the information, but not the contents thereof, sought to be excised.

20. Private nature of proceedings. —(1) Except to the extent a matter is considered and declared to be of sufficient public interest, the proceedings and all information pertaining to the proceedings, except the final decision, shall be regarded private and confidential.

(2) All information received by any person in the course of the proceedings shall be held confidential by such person and shall not be used or disclosed except:

- (a) where such information is already in the public domain;
- (b) disclosure is necessary for the purposes of the proceedings;
- (c) is required under law; or
- (d) is permitted in writing by the Authority.

Explanation: The onus of proving the existence of any exception to the prohibition against unauthorized disclosure shall be on the person claiming the exception.

21. Authority to decide on best information available.—Where any information considered relevant by the Authority in relation to the proceedings is not available to the Authority within a reasonable time before the final decision, the Authority shall render the final decision on the basis of best information available to the Authority at such time.

22. Proceedings to continue.—(1) Where the case management team, the presiding officer or the Authority, as the case may be, is of the view that the conduct of a party is contumacious in respect of any matter or circumstance and the contumacy continues for three days after a warning in this regard is given, a note to that effect shall be made and the proceedings shall continue unaffected.

(2) A party shall not be allowed to claim any prejudice to its interests where a contumacy note was made in respect of the matter or circumstance claimed to be prejudicial.

23. Other directions. – The Authority may:

- (a) issue interim orders for implementation pending the final decision directing a party to the proceedings to do or refrain from doing any act or thing;
- (b) direct any person in control or possession of any information considered relevant to the proceedings to furnish the information at the time and place stated in the direction;
- (c) direct that a person obstructing the proceedings be proceeded against under section 186 of the Pakistan Penal Code (Act XLV of 1860);
- (d) give an oral or written direction to the parties or any person not to divulge or communicate, without written permission of the Authority, to anyone specified information that was given to or received by the party or person in the course of the proceedings;
- (e) direct that any evidence proposed to be given at a hearing or conference be taken under oath administered by the presiding officer or a member of the case management team;
- (f) review, modify, amend or supplement any directions previously given; and
- (g) generally give all such directions and do all such things as are necessary or expedient for the prompt, equitable, non-discriminatory, consistent and transparent conduct of the proceedings.

24. Referral to Expert.—The parties may be required to refer one or more issues in the proceedings to one or more experts for a report thereon. The

expert rendering a report shall be available for cross-examination by the other party at the final hearing.

25. Record of proceedings. – (1) The Authority shall cause to be maintained record of the proceedings which shall include adequate particulars of each proceeding, the Claim, the Reply to the Claim, the orders or directions and the decision relating to the Claim.

(2) The record of the proceedings shall be accessible during the office hours.

(3) Any person may on payment of reasonable copying charges obtain certified copies of the whole or part of the record of the proceedings.

26. Public comment.—The Authority may invite public comment on any matters of sufficient public importance arising in any proceedings and may, subject to an opportunity to the parties to review and comment, make use of public comments in its decisions.

27. Administrative Fees.—(1) Each Claim shall be accompanied with an administration fee of Pak Rupees five thousand to cover the administrative costs of the proceedings.

(2) In case the Respondent decides to contest the Claim, the Respondent shall pay a fee of Pak Rupees five thousand to cover the additional administrative costs of the proceedings.

28. Overriding effect.—The provisions of these regulations, in relation to interconnection disputes, shall prevail in case of any inconsistency between these regulations and any other regulations made by the Authority.

ANNEX

FORM OF CLAIM ¹

(regulation 3(1) of Resolution of Interconnection Disputes Regulations, 2004)——

BEFORE THE
PAKISTAN TELECOMMUNICATION AUTHORITY

CLAIM NO. _____²

[Name of Claimant, address]
...Claimant(s)

Versus

[Name of respondent, address]
...Respondent(s)

CLAIM **under the Resolution of Interconnection Disputes Regulations for resolution of dispute relating to [proposed interconnection arrangement / a subsisting interconnection agreement³]**

Authorized Representative for the Claimant:
Address for service:

[Give details]
[preferably the address of
the Authorized
Representative]

Date on which the request for negotiation was first made:

SECTION A

SUMMARY OF DISPUTE⁴

SECTION B

THE DISPUTE

- Chronological summary of events up to the date of the Claim

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

SECTION C

GROUND AND RELIEF

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

SECTION D

DESCRIPTION OF NEGOTIATIONS

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

SECTION E

OPTIONAL

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

¹ On A4 size paper. Font Times New Roman. Font size 12. Line spacing 1.5. Top and bottom margins 1.5. Right and Left margins 1.5.

² Number to be assigned by the case management team.

³ Delete as appropriate.

⁴ To be limited to two A4 size pages.

Sd/-
NIAZ H. BROHI,
Director Regulations.