



PAKISTAN TELECOMMUNICATION AUTHORITY  
Headquarters, F-5/1, Islamabad  
<http://www.pta.gov.pk>

**Subject:** Decision of the Pakistan Telecommunication Authority on “Inter-Operator”

No: PTA/Finance/Finance/Mobile/Telenor6/2006/53.

Venue of Hearing: PTA HQs, Islamabad  
Date of Hearing: 18<sup>th</sup> December, 2020

**Panel of Hearing**

Maj. Gen. Amir Azeem Bajwa (R): Chairman  
Dr. Khawar Siddique Khokhar : Member (Compliance and Enforcement)  
Muhammad Naveed : Member (Finance)

Issue:

**“Non-deduction of amount paid to Foreign Operators”**

**1. Facts of the case:**

1.1 Precisely stated facts of the case are that Pakistan Telecommunication Authority (the “**Authority**”) in exercise of its powers conferred under section 5 read with section 20 of the Pakistan Telecommunication (Re-organization) Act, 1996 (the “**Act**”) granted licenses No. NGMS-02/WLL&M/PTA/2014 dated 21<sup>st</sup> May, 2014, No. NGMS-05/WLL&M/PTA/2016 dated 14<sup>th</sup> July, 2016 and No. MCT-04/WLL&M/PTA/2006 dated 26<sup>th</sup> June, 2006 (the “**license**”) to Telenor Pakistan (Private) Limited. By virtue of licenses, the licensee is authorized to provide license services in Pakistan and AJK & NA and to establish, maintain and operate telecommunication system subject to the terms and conditions of license.

1.2 As per license condition 3.1.3 of the license, the licensee is under obligation to comply with the all orders, determination, direction and decision of the Authority. The license further obliges the licensee to pay Annual Regulatory Dues (ARDs) as provided in Article 4 of the license. The license condition No. 4.1.2 of the license expressly provides that the parameters for calculation of ARDs. For ready reference the said license condition is reproduced below:

*“4.1.2 The licensee shall pay the following annual regulatory fees, contribution and charges to the Authority within 120 days of the close of the financial year of the licensee:*

*4.1.2.1 The licensee shall pay the annual license fee ALF to the Authority, an amount equivalent to 0.5% of the licensee’s annual gross revenue from licensed services minus inter operator payments and*

Dated: 8<sup>th</sup> April, 2022

*related PTA/FAB mandated payments in the case PTA/FAB mandated payments, this deduction will be allowed if these amounts have actually been paid and not on accrual basis. However, initial spectrum fee, initial license fee, leased line charges, late payment additional fee, penalties, collection charges, and other expenses imposed by PTA, if any, shall not be deducted from the gross revenue.*

4.1.2.2 .....

4.1.2.3 .....

1.3 In accordance with the terms and conditions of the license and regulation 23 of the Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006, all fees, contributions & charges are required to be paid by the licensee. For the purpose of calculation of dues, the licensee is also required to submit annual audited account in accordance with license condition No. 4.3.1 of the license which provides as under:

*“The licensee shall annually submit to the Authority audited financial statement in support of its calculations and annual fees, charges and contributions. The notes to the financial statements of the licensee should be drawn up in sufficient detail so as to disclose separately the Annual Gross Revenue between Licensed and Non-Licensed Services, and inter-connection and inter-operator payments that are allowable to determine the Adjusted Gross Revenue of the licensee as per clause 4.1.2 above for the purpose of calculation of Annual Fees, charges and contributions.”*

1.4 While examining the financial statements for the year 2019 as submitted by the licensee, it has been found that the licensee has deducted amounts paid on the account of International Roaming while calculating ARDs (ALF, USF & R&D) claiming therein or considering as “**inter-operator**” payment as provided in license condition 4.1.2 (a). The Authority is of the view the payment made to “**foreign carrier**” does not fall with the ambit of the term “**inter-operator**” on the premise that “**foreign carrier**” is not a licensee of the Authority. Therefore, the allowable deduction as calculated by the licensee while submitting financial statement is not in consonance with the license terms and conditions and directions of the Authority. As a result, thereof, the Authority issued provisional demand notes dated 22<sup>nd</sup> April, 2020, 6<sup>th</sup> May, 2020, 17<sup>th</sup> July, 2020 and 22<sup>nd</sup> July, 2020 requiring therein to pay annual regulatory dues for the year ended 31<sup>st</sup> December, 2019 and LPAF @ 2% calculated till 15<sup>th</sup> May, 2020. Detail of outstanding dues with breakup is give as under:

Sr. #	Description of amount	Amount in Rupees	ARDs Applicable including LPAF Calculated till 15 <sup>th</sup> May, 2020
1	Payment made to foreign carries (Roaming Charges)	839,397,000	21,302,880
2	Mobile Financial Services	598,028,000	14,655,013
	<b>Grand Total</b>	<b>1,437,425,000</b>	<b>35,957,893</b>



Dated: 8<sup>th</sup> April 2022

1.5 Being aggrieved from Provisional Demand Notes (PDNs) issued by the Authority, the licensee under article 199 of the Constitution filed W.P No. 2083 of 2020 and impugned the same before the Honorable Islamabad High Court. The Honorable Islamabad High Court vide order dated 04.11.2020 disposed of the matter in following terms:

*“For the reasons recorded in judgement of even passed in W.P No. 1474-2020, instant petition is also disposed of”.*

*For ready reference the reasons recorded in W.P No. 1474-2020 are as under;*

*“ 12. In light of above, instant petitions are also disposed of by referring the matter of the petitioners to Pakistan telecommunication authority to adjudicate upon the matter, as whether the foreign carriers fall within the term ‘inter-operator’ as provided in the license.”*

## **2. Hearing before the Authority:**

2.1 In respectful compliance of the court, the matter was fixed for hearing on 18<sup>th</sup> December, 2020. Mr. Haseeb Ahmed (Assistant Manager Finance), Mr. Jahanzeb Ali (Manager legal), Haider Latif Sandhu (Director legal), Sardar Ejaz Ishaq Khan (legal counsel) and MNA Rehan attended hearing on the said date before the Authority.

2.2 On behalf of the licensee, with regard to Impugned letters under the rubric of international roaming, the legal counsel submitted that it merely recovers the corresponding amounts from its subscribers and pay them onward to “foreign operators” on behalf of its subscribers, therefore, these amounts are liable to be netted off from the Annual Gross Revenue (AGR) before calculating ARDs. In order to substantiate the above submission legal counsel referred and relied upon the following grounds:

### **A. The impugned letters tantamount to modification of the license without consent and are ultra vires section 22 of the Act**

- i. Section 22 of the Act prohibits modification of the license without licensee’s consent. The purported amendment vide impugned letters is that the ARDs would also be payable on Non-licensed services revenue and that the allowable deduction of inter-operator payments will be confined to local operators. An implied amendatory clause in the license is no less an amendment than an express amendatory clause; what can be done directly, cannot be done indirectly.
- ii. Clause 4.1.2 of the license stipulates that the ARDs are payable only on revenues from “ licensed services”. Clause 4.3.1 goes on to state that the calculations of the ARDs shall be based on the audited financial statements of the licensee, that would “..... disclose separately the

Dated: 8<sup>th</sup> April 2022

Annual Gross Revenue between licensed and non-licensed services .... and.... inter-operator payments that are allowable to determine the adjusted gross revenue.”

- iii. The international roaming services are provided by the licensee as its licensed obligation under clause 2.9, which reads as follows:

“Licensee shall use its best efforts to enter into necessary arrangements with foreign operators in order to enable and provide international roaming to its subscribers”

The licensee therefore enters into interconnect agreements with international operators, enabling Pakistanis visiting abroad to connect to cellular network of host-country operators using Pakistani number and SIM instead of getting a new cell number in each host country. At the end of each billing period, the licensee pays the foreign interconnecting partner the charges attributable to the ‘roaming facility’ enable the foreign operators for the licensee’s Pakistani subscriber. The international roaming thus constitutes a liability owed by the licensee to foreign interconnecting operators, and is nothing but an ‘inter-Operator’ payment that is an allowable deduction under clause 4.1.2 of the license.

- iv. However, with a slight that begs good faith, the 2<sup>nd</sup> impugned letter dated 6.5.2020 contumaciously writes “inter-Operator” payment, using a capital “O” instead of small “o” used in clause 4.1.2, and goes on to build the specious argument that the “Operator” is defined in clause 13.2 as operators licensed by the authority, and as the foreign operators were not licensed by the authority, payments made to them could not be deducted. The substitution of the small “o” with the capital “O” in the 2<sup>nd</sup> impugned letter with reference to clause 4.1.2 of the license is a visible and direct purported amendment to the license, and is void with licensee’s consent. Further, it is settled principle of interpretation that capitalized terms only carry the restricted meaning given thereto, while the same term when used without the capital letters carries the ordinary and broader meaning. The sudden departure forms the interpretation of clause 4.1.2 settled for almost two decades and ever since the licenses were issued is mala fide. The payments to foreign operators as roaming charges have always been treated as inter-operator payments by the authority itself ever since the licenses were issued, acquired the settled departmental interpretation, which is binding on the department per numerous precedents of the superior Courts. Thus, the expression phraseology of the license, coupled with the authority’s own conduct ever since the licenses were issued, constitutes the correct construction



Dated: 8<sup>th</sup> April 2022

of the licenses, and a sudden departure therefrom is tantamount to an amendment of the license with licensee's consent.

- v. It is rather obtuse on the part of Authority to fasten the licensee with a licensed obligation under clause 2.9 to provide international roaming services entailing interconnection arrangement with the foreign operators, and then disallow the deduction of the charges payable to them on the pretext of the foreign operators not being licensees of the Authority, while allowing deductions of payments to local interconnecting operators. It defies reason as to how the latter are inter operator payments if the former is not.
- vi. Further, clause 4.3 of the license stipulates the ARDs to be derived from the annual audited financial statements of the licensee, which are definitive for revenue classification between licensed and non-licensed services. The licensee's application to Authority referred to note 43 of the audited financial statement whereby the revenue from non-mobile communication services was categorized as "other income". The impugned orders tantamount to reading into clause 4.3.1 a non-existent qualification to the effect that the Authority can the revenue conclusions without giving reasons.

**B. The impugned letters are expropriatory and in restraint of freedom of business and violates Article 18, 23 and 24 of the Constitution;**

The impugned letters result in the licensee being deprived of its property by coercion and under threat of penalties to part with its funds in an amount greater than that stipulated in its license granted under statute. Further, the impugned letters also constitute a fetter on the freedom of the licensee to engage in business activities that are beyond the scope of regulation by the Authority under the Act. The impugned letters violate the fundamental rights of the licensee under Article 18, 23 and 24 of the constitution.

**C. The impugned letters are sans *audi alteram partem* and deprive the licensee of its dues process rights under section 6 (d) of the Act and Article 10-A of the constitution**

- i. The 4<sup>th</sup> impugned letter dated 22.7.2020 disclosed that the decision to issue the provisional demand notes qua the 1<sup>st</sup> impugned letters dated 22.4.2020 was the approval of the Authority.
- ii. That is to say, the Authority had already pre-judged the matter before issuing the 1<sup>st</sup> impugned letters. Later, the licensee's application dated 22.7.2020 without hearing. In either instance, no hearing was given to the licensee by the Authority in flagrant breach of section 6 (d) of the Act.

Dated: 8<sup>th</sup> April, 2022

**D. The 4<sup>th</sup> impugned letter is a non-speaking order violating section 24-A of the General Clauses Act.**

- i. The licensee's application dated 4.6.2020 contained detailed submission and evidence in support thereof. After a delay of 2 months, the Authority rejected the application with a non-speaking order without responding to single submission and without giving any reasons therefor.

**E. The impugned letters fail the statutory tests of "consistency" and transparency under section 6(b) of the Act.**

- i. Section 6(b) of the Act reads;  
6. Responsibilities of the Authority; In exercising its function and powers under the act, the Authority shall ensure that; (b) all of its decision and determinations are made in a consistent and transparent manner
- ii. Consistency and transparency in regulatory decision making is as critical as it for judicial precedent. It enables regulated commercial enterprises to order their affairs with certainty and predictability. This regulatory principle got statutory recognition in section 6(b) of the Act, but was flagrantly violated in the impugned letters by a sudden departure from the construction and interpretation consistently placed on "inter operator" payment under clause 4.1.2 of the license for over a decade to include roaming charges paid to international operators.
- iii. The fact that the reason to abandon the principle of consistency was not disclosed in any impugned letters, despite annexation of evidence of consistency for the past 5 years with licensee's application dated 4.6.2020, makes the reason non-transparent.
- iv. The impugned letters therefore constitute an inconsistent and non-transparent outcome by excluding international roaming charges from the category of inter operator payments.

**F. It is inequitable and an abuse of power for the Authority to claim late payment charges when the cause for delay is the Authority's failure to observe its statutory responsibility of prompt and expeditious action.**

- i. The Authority sat on the straight forward application of the licensee for circa 2 months, knowing full well that under the license the licensee becomes liable to pay late payment charges on daily basis at the extortionate and usurious rate of 2 % per month (36% per annum) beyond the due date. The 4<sup>th</sup> impugned letter reiterated that the late payment charges will be levied, despite the Authority itself being in breach of its statutory obligation to dispose the licensee's application equitably, promptly and expeditiously.



**G. It is inequitable and an abuse of power for the Authority to decline credit for prior-year's arrears since paid.**

The licensee has received the disputed dues for ARDs for the year 2018, with the evidence of payment attached to the licensee application. The Authority refused to credit the same towards the amount claimed from the licensee for the year 2019, without giving any reason therefor in the 4<sup>th</sup> impugned letter. This fact alone shows the utter non-application of mind, non-transparency and abuse of power underpinning the impugned letters

2.3 Legal counsel further argued the term "**Operator**" has been defined in the license which means a license holder. The term "**Operator**" with capital "O" indicates the specific purpose of the term "Operator" used in the license will referred the licensee. Whereas, the term "**operator**" used with word "**inter**" cannot be equated with the term "**Operator**" on the ground the word "**operator**" when used or referred would be for any operator either licensee or non-licensee. Preferably would refer to any company dealing with the business of telecommunication services. Since the mandate of the licensee is to provide NGMS service which requires agreement with foreign carries therefore, the term inter-operator in general parlance has been used so as to include all kind of telecom operators either local or foreign in hominization of telecom regulatory regime.

**3 Findings of the Authority:**

3.1 Matter heard, after hearing arguments advanced by legal counsel and careful perusal of record, the moot point of discussion is to adjudicate as to whether the foreign carrier falls within the term "inter-operator" as provided in the license condition i.e., 4.1.2 of the license and any cost sustained by the licensee in this regard has to be considered as an allowable deduction.

3.2 At the very outset with regard to determination of issue MFS is concerned, it is clarified that PTA has initiated consultation process on the issue of MFS therefore, the same will be finalized subject to conclusion of the consultation process with all stakeholders including the licensee.

3.3 While examining the terms and condition of the licensee, it has been observed that license condition No. 13.2 of the license provides that the words and expression used herein but not defined shall have the same meaning as are respectively assigned to them in the Act, the Rules and Regulations and licenses issued therein under unless the context otherwise requires, the terms used in the license shall have the meaning defined in the license.

3.4 The term Operator has been defined in the license which states that any person authorized by a license issued by the Authority to establish, maintain and operate a Telecommunication System or to provide Telecommunication Services. Meaning thereby the word "**operator**" wherever used in this license would intents and means a "**license holder**" with reference to the context and in the manner as it has been used.

Dated: 8<sup>th</sup> April, 2022

3.5 Most importantly, it is also relevant to point out that the word “operator” with a small “o” has also been defined in the Pakistan Telecommunication Rules, 2000 which means any person authorized by a license to run a connectable system. The holistic overview of the term “operator” as provided in the license either with capital “O” or small “o” will be considered and treated as a licensee by all means. Thus careful reading of the term “inter-operator” as provided in the license condition No.4.1.2 of the license excludes foreign carrier or foreign operator. As a result thereof, any cost sustained by the licensee in this regard cannot be considered as an allowable deduction for the purpose of calculation of Annual Regulatory Dues as provided in the license terms and conditions.

#### 4 Order:

4.1. What has been discussed above read with para 3.2 of the findings of the Authority, it is concluded that the term “operator” has been defined in the license which means any person authorized by a license issued by the Authority to provide telecommunication services and to establish, maintain and operate a telecommunication system. Thus, careful perusal of the definition of the term “inter-operator” postulates that it only relates to the payment made to other licensees and not otherwise. Since, PTA has not issued license to foreign carriers therefore any payment made to foreign operators / carrier cannot be considered or treated as “inter-operator” payment.

**Maj. Gen. Amir Azeem Bajwa (R)**  
Chairman

**Muhammad Naveed**  
Member (Finance)

**Dr. Khawar Siddique/Khokhar**  
Member (Compliance & Enforcement)

Signed on 8<sup>th</sup> day of April, 2022 and comprised (08) pages only.