

ICLG

The International Comparative Legal Guide to:

Telecoms, Media & Internet Laws & Regulations 2019

12th Edition

A practical cross-border insight into telecoms, media and internet laws and regulations

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Pakistan

Mustafa Munir Ahmed



RIAA Barker Gillette

Shahrukh Iftikhar



Note

This chapter will quote from and discuss the relevant laws and legislation in the context of each question.

1 Overview

1.1 Please describe the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction, in particular by reference to each sector's: (i) annual revenue; and (ii) 3–5 most significant market participants.

The Pakistan Telecommunication Authority (“PTA”) has the mandate to regulate the establishment, operation and maintenance of telecommunication systems and the provision of telecommunication services in Pakistan.

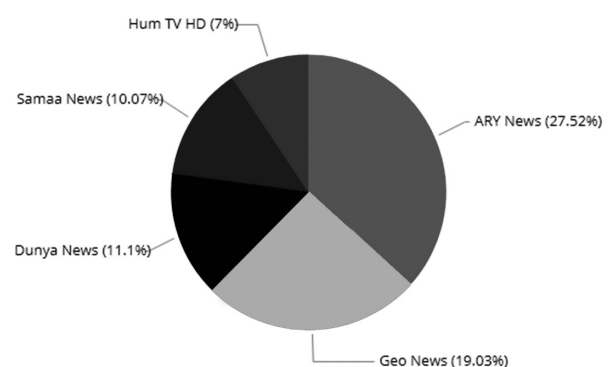
According to the figures available on the website of the PTA (updated as of May 2018), there are 150 million cellular subscribers (73.28% tele-density), 55 million 3G/LTE subscribers (27.04% penetration), 3 million basic telephony subscribers (1.30% tele-density), and 58 million broadband users.

Jazz Mobile (formerly “Mobilink”) has maintained its leading position with approx. 14.4 million 3G/4G LTE subscribers with the acquisition of Warid in January 2017. Even though Telenor had the second-highest number of subscribers since the launch of Next Generation Mobile Services (“NGMS”), it was surpassed by Zong in January 2017. Zong has the largest 4G subscriber base and is gaining market share. The 3G/4G market share of Zong was 30% for NGMS subscribers in August 2017. To remain competitive, Telenor had also acquired a 4G licence in June 2016, while its 3G/4G market share stood at 26% in August 2017. Unlike its peers, Ufone has experienced considerable attrition in market share.

TELECOM REVENUES		(Rs. million)			
Types of Service	2013–14 (R)	2014–15 (R)	2015–16 (R)	2016–17 (E)	
Cellular	322.683	317.016	345.537	369.118	
Local Loop	88.952	81.914	76.344	72.937	
Long-Distance International	43.901	40.890	32.554	23.083	
Class Value Added Services (E)	4.123	2.468	2.499	2.53	
Total	459.632	442.287	457.024	467.642	

Legend: (R) = Revised; (E) = Estimated.

Top 5 channels currently viewed



Tuesday 24 July 2018, 3.40pm

The information in relation to annual revenues of the entities mentioned in the pictorial representation above is unavailable.

1.2 List the most important legislation which applies to the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction.

(a) The most important laws which apply to the telecom sector are as follows:

1. Pakistan Telecommunication (Re-Organization) Act, 1996 (with 2006 amendments) (the “PTA Act”);
2. AJK Adaptation of the Pakistan Telecommunication (Re-Organization) Act, 2005;
3. Gilgit Baltistan Adaptation Order, 2006;
4. Pakistan Telecom Rules, 2000 (the “PTA Rules”);
5. Pakistan Electronic Media Regulatory Authority (Council of Complaints) Rules, 2010;
6. Access Promotion Contribution Rules, 2004 (the “Access Promotion Contribution Rules”);
7. USF Rules, 2006;
8. R & D Fund Rules, 2006;
9. Pakistan Telecommunication Authority (Functions & Power) Regulations, 2006;

10. Class Value Added Services Licensing and Registration Regulations, 2007;
 11. Type Approval Regulations, 2004;
 12. Fixed Line Tariff Regulations, 2004 (the “**Tariff Regulations**”);
 13. Interconnection Dispute Resolution Regulations, 2004 (the “**Interconnection Dispute Resolution Regulations**”);
 14. Mobile Number Portability Regulations, 2005 (the “**Mobile Number Portability Regulations**”);
 15. Number Allocation and Administration Regulations, 2005;
 16. Access Promotion Regulations, 2005;
 17. Accounting Separation Regulations;
 18. Monitoring and Reconciliation of International Telephony Traffic Regulations, 2008 (the “**Monitoring and Reconciliation of International Telephony Traffic Regulations**”);
 19. Protection from Health Related Effects of Radio Base Station Antenna Regulations, 2008;
 20. Telecom Consumer Protection Regulations, 2009;
 21. Protection from SPAM, Unsolicited Fraudulent and Obnoxious Communication Regulations, 2009;
 22. Monitoring and Reconciliation of Telephony Traffic Regulations, 2010;
 23. PRS/EDGE Service Quality of Service Standards Regulations, 2010;
 24. Subscribers Antecedents Verification Regulations, 2010 (the “**Subscriber Antecedents Verification Regulations**”);
 25. GPRS/EDGE Service Quality of Service Standards Regulation, 2010 (the “**GPRS / EDGE Service Quality of Service Standards Regulation**”);
 26. Cellular Mobile Quality of Service Regulations, 2011;
 27. Numbering Allocation and Administration Regulations, 2011;
 28. Mobile Virtual Network Operation (“**MVNO**”) Regulations, 2012;
 29. Subscribers Antecedents Verification (Amendment) Regulations, 2012;
 30. Telecommunication and Terminal Equipment Installer Regulations, 2012;
 31. Broadband Quality of Service Regulations, 2014;
 32. Regulations for Technical Implementation of Mobile Banking, 2016;
 33. Mobile Device Identification, Registration & Blocking Regulations, 2017;
 34. Type Approval Technical Standards Regulations, 2017;
 35. Subscribers Antecedents Verification Regulations, 2015;
 36. The Prevention of Electronic Crimes Act 2016 (Act No. XL of 2016) (the “**PECA**”);
 37. Electronic Transaction Ordinance, 2002;
 38. Telegraph Act, 1885;
 39. The Wireless Telegraphy Act, 1933; and
 40. The Telecommunications Systems Clock.
- (b) **The most important laws in the audio-visual media distribution sector are as follows:**
1. Pakistan Electronic Media Regulatory Authority Ordinance, 2002 (the “**PEMRA Ordinance**”);
 2. Pakistan Electronic Media Regulatory Authority Rules, 2009;

3. Television Broadcast Station Operations Regulation, 2012;
4. Radio Broadcast Station Operations Regulations, 2012; and
5. Distribution Service Operations Regulations, 2012.

1.3 List the government ministries, regulators, other agencies and major industry self-regulatory bodies which have a role in the regulation of the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors in your jurisdiction.

The Government ministries, regulators, other agencies and major industry self-regulatory bodies which have a role in the regulation of telecom and/or audio-visual media distribution sectors are as follows:

1. the PTA;
2. PEMRA;
3. the Ministry of Information & Technology (“**MOIT**”);
4. the National Telecommunication Corporation (“**NTC**”);
5. the Information Technology & Telecom Division;
6. the Electronic Government Directorate;
7. the Trade Development Authority of Pakistan (“**TDAP**”);
8. the Privatisation Commission of Pakistan;
9. the Securities and Exchange Commission (“**SECP**”);
10. the Competition Commission of Pakistan (“**CCP**”);
11. the Pakistan Software Export Board (“**PSEB**”);
12. the Federal Board of Revenue; and
13. the Board of Investment.

1.4 In relation to the: (a) telecoms, including internet; and (b) audio-visual media distribution sectors: (i) have they been liberalised?; and (ii) are they open to foreign investment?

- (a) (i) Subject to the passing of the Telecommunication De-Regulation Policy for the Telecom Sector, 2003 (“**De-Regulation Policy**”), the Government’s core objective was to de-regulate and liberalise various sectors of the economy.
- (a) (ii) The Investment Policy, 2013, provides that all sectors and activities are open for foreign investment unless specifically prohibited or restricted for reasons of national security and public safety; there is no minimum requirement for the amount of foreign equity investment.
- (b) (i) The audio-visual media distribution sector is regulated by PEMRA, which is responsible for regulating the establishment and operation of all broadcast media and distribution services in Pakistan established for the purpose of international, national, provincial, district, local or special target audiences. The distribution sector was liberalised by the coming into force of the PEMRA Ordinance.
- (b) (ii) Subject to Section 25 of the PEMRA Ordinance, a licence shall not be granted to the following:
 - (i) a person who is not a citizen of or resident in Pakistan;
 - (ii) a foreign company organised under the laws of any foreign government;
 - (iii) a company, the majority of whose shares are owned or controlled by foreign nationals, or companies whose management or control is vested in foreign nationals or companies; or
 - (iv) any person funded or sponsored by a foreign government or organisation.

2 Telecoms

General

2.1 Is your jurisdiction a member of the World Trade Organisation? Has your jurisdiction made commitments under the GATS regarding telecommunications and has your jurisdiction adopted and implemented the telecoms reference paper?

Yes. Pakistan has been a member of the World Trade Organization (the "WTO") since 1 January, 1995 and member of GATT since 30 July, 1948. Further, Pakistan has adopted the WTO Basic Telecommunications Agreement and is in compliance with the obligations, which include the provision of normal voice telephone services, cellular mobile services, data transmission, satellite services and private-leased line devices, amongst others.

2.2 How is the provision of telecoms (or electronic communications) networks and services regulated?

The PTA is the regulatory body for the telecom sector in Pakistan and was established under the Pakistan Telecommunication (Re-organisation) Act, 1996.

No person, unless he has obtained a licence from the PTA, shall establish, maintain or operate any telecommunication system (i.e., any electrical, electro-magnetic, electronic, optical or optio-electronic system for the emission, conveyance, switching or reception of any intelligence (i.e., any speech, sound, data, signal, writing, image or video) 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 switches, equipment, wires, cables, apparatus, poles, structures, 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) or provide any telecommunication service (i.e., 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).

2.3 Who are the regulatory and competition law authorities in your jurisdiction? How are their roles differentiated? Are they independent from the government?

The PTA and Ministry of Information Technology and Telecommunication control and regulate telecoms and IT as well as the related ministries. As mentioned above, the PTA is responsible for ensuring fair competition in the telecommunication sector. The PTA promotes investment, encourages fair competition, protects consumer interest and ensures high quality ICT services.

Anti-competitive practices are also subject to general competition law. The Competition Commission of Pakistan is an independent regulatory, quasi-judicial body that helps to ensure healthy competition between undertakings for the benefit of the economy. The CCP prohibits the abuse of a dominant position in the market, certain types of anti-competitive agreements, and deceptive market practices. It also reviews mergers of undertakings that could result

in a significant lessening of competition, or which could have the effect of altering market conditions artificially.

2.4 Are decisions of the national regulatory authority able to be appealed? If so, to which court or body, and on what basis?

Yes, subject to Section 6 of the PTA Act, any person aggrieved by any decision or order of the PTA on the ground that it is contrary to the provisions of the PTA Act, may, within 30 days of the receipt of such decision or order, appeal to the High Court or to any other Tribunal established by the Federal Government for that purpose, in the manner prescribed by the High Court for filing the first appeal before that Court (or the Tribunal); the Court or the Tribunal shall decide such appeal within 90 days.

Please note that no Tribunal has of yet been established by the Federal Government for this purpose; hence, all appeals are made before the relevant High Court.

Licences and Authorisations

2.5 What types of general and individual authorisations are used in your jurisdiction?

In accordance with applicable telecom laws, no licensee shall establish, maintain or operate any telecommunication system or provide any telecommunication service which is not authorised under the licence, and neither is any person permitted to connect terminal equipment to a telecommunication system other than a public switched network without type approval from the PTA.

2.6 Please summarise the main requirements of your jurisdiction's general authorisation.

The main requirements for general authorisations are:

- the financial and economic viability of the applicant;
- the applicant's experience in telecommunication and relevant past history;
- the technical competence and experience of the applicant's management and key members of staff and local participation in the business; and
- the nature of the services proposed and the viability of the applicant's business plan, including its contribution to the development of the telecommunication sector.

Please also note that no terminal equipment can be directly and/or indirectly connected to a public switched network, unless a type-approval for such equipment has been granted by the PTA.

2.7 In relation to individual authorisations, please identify their subject matter, duration and ability to be transferred or traded. Are there restrictions on the change of control of the licensee?

Subject to Section 21 of the PTA Act, every licence granted under the Act may, *inter alia*, contain:

- conditions requiring the licensee to adhere to the provisions of this Act and the rules and regulations made thereunder;
- conditions requiring the licensee to pay the fees for grant or renewal of the licence;
- conditions requiring the licensee to allow inspection by the PTA of any premises or telecommunication equipment,

wherever situated, and to furnish the PTA with such information as they may require;

- (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) the obligation to ensure that only terminal equipment which is approved for connection to the telecommunication system in question is so connected;
- (f) the obligation to monitor use of the licensed telecommunication service or telecommunication system and to disconnect the telecommunication service from any user who, after written notice, misuses it;
- (g) obligations to provide the telecommunication service to particular persons or areas to meet minimum standards for quality and grade of services requirements;
- (h) the 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 the protection of consumers' interests;
- (m) conditions requiring the licensee to contribute to the 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 licence, and the realisation of such security by the PTA.

Subject to Rule 8 of the PTA Rules, a licence shall be granted for an initial term of not less than 25 years. Subject to Sub-rule (2) and Rule 9, after the expiry of the initial term, the licence shall be renewed on terms and conditions consistent with the policy of the Federal Government at the relevant time.

Rule 11 of the PTA Rules states that a licence granted under the PTA Act and these rules shall be personal to the licensee and shall not be assigned, sub-licensed to, or held on trust for any person, without the prior written consent of the PTA.

Further, if a substantial ownership interest in, or control of, a licensee is proposed to be changed, the licensee shall give the PTA notice of such fact in writing. That written notice shall include all relevant details of the proposed change. If the PTA is of the opinion that change shall adversely affect the ability of the licensee to provide its licensed telecommunication services, it may impose such additional conditions in the licence as shall be reasonable and directly relevant to the proposed change.

For the purpose of understanding, the terms "control" and "substantial ownership interest" used in the response to this shall bear the following meanings:

- (i) "control" means the ability to direct the exercise, whether directly or indirectly and whether through one or more entities, of more than 50% of the voting rights exercisable at any general meeting of the shareholders of the licensee; and
- (ii) "substantial ownership interest" means more than 10% of the issued share capital of the licensee.

Additionally, telecom services cannot be resold without the prior written consent of the PTA. No distinction has been made *vis-à-vis* foreign or local companies in this regard.

Public and Private Works

2.8 Are there specific legal or administrative provisions dealing with access and/or securing or enforcing rights to public and private land in order to install telecommunications infrastructure?

The Telecommunication Infrastructure Provider ("TIP") licences are issued under Section 21 of the PTA Act, whereby the licensee has the non-exclusive licence to establish, maintain, lease, rent and/or sell telecom passive infrastructure facilities in Pakistan, subject to the terms and conditions contained in the licence. Such licensee shall not provide any telecommunication/broadcasting service.

All infrastructure/Telecommunication Tower Providers shall be responsible for the safety of public and Government property near or around the area in which its equipment may be installed. Infrastructure/Telecommunication Tower Providers shall enter into a formal lease/rental agreement covering all aspects of the transaction of lease, rent, etc.

Subject to Section 27A of the PTA Act, 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 Section 27A of the PTA Act and the policy directive issued by the Federal Government under Section 8 of the PTA Act, have the right to share any Public Right of Way or Private Right of Way.

In order to enjoy the rights granted by Section 27A of the PTA Act, 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 30 days, such request shall be deemed to have been granted. While granting such request, the owner of the Right of Way may impose conditions relating 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 under Section 27A of the PTA Act is exercised equitably, ensuring proper compensation to the owner of the Right of Way and the access to provide to the licensee will not adversely affect the owner of the Right of Way.

The licensee shall exercise the powers conferred 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 fees are 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.

The fee payable by a licensee to a Public Authority for the use of a Public Right of Way shall be a reasonable amount 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.

Access and Interconnection

2.9 How is wholesale interconnection and access mandated? How are wholesale interconnection or access disputes resolved?

In exercise of the powers conferred under Section 5(2) (h) of the PTA Act, the PTA has issued the Interconnection Guidelines, 2004 ("Interconnection Guidelines"). Pursuant thereto, all operators are obliged to provide interconnection to other operators desiring to

interconnect. Interconnection shall be permitted at any technically and economically feasible point. Where an operator submits its request for interconnection with another, the former is required to a response in writing. It may accept the request completely or partially. It can only deny the request in its entirety based on reasons which have been given fairly.

Further, the operator with Significant Market Power (“SMP”) is obliged to prepare and submit its Reference Interconnect Offer (“RIO”) to the PTA within one month of its determination as an SMP operator by the PTA. The SMP operator shall make the RIO publicly available within seven (7) days after approval by the PTA.

After the receipt of an interconnection request, both parties shall mutually negotiate interconnection terms and conditions, or adopt the RIO, as the case may be; the negotiations shall be completed as soon as possible but not later than 90 days from the date of the interconnection request.

Subject to the Interconnection Disputes Resolution Regulations, an operator may file a claim with the PTA in the format set out in the Annex to these regulations, if that operator is unable to reach an 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 60 days after the request for the interconnection arrangement was made or the dispute was raised; provided that, in relation to sub-paragraph (b), the PTA may entertain a claim before the end of 60 days.

2.10 Which operators are required to publish their standard interconnection contracts and/or prices?

Subject to Article 14 of the Interconnection Guidelines, the PTA shall publish all interconnection agreements submitted to it in such a manner as it may deem appropriate. However, the operators may request the PTA to keep confidential any information or any section of an interconnection agreement, the disclosure of which would have the potential to seriously and prejudicially affect the operators. The decision to keep any such information confidential will be at the sole discretion of the PTA.

2.11 Looking at fixed, mobile and other services, are charges for interconnection (e.g. switched services) and/or network access (e.g. wholesale leased lines) subject to price or cost regulation and, if so, how?

The Interconnection Guidelines provide, *inter alia*, that the PTA shall approve the level and structure of interconnection charges. The structure of interconnection charges should be based on the nature of services and facilities provided by the operators and the operator shall charge these services accordingly. Subject to the foregoing, an operator is entitled to determine its rates for interconnection services provided that the same can be objectively justified on the basis of costs incurred in providing such services. Such tariff(s) are required to be approved by the PTA from time to time.

2.12 Are any operators subject to: (a) accounting separation; (b) functional separation; and/or (c) legal separation?

Yes, operators are subject to all of the aforementioned separations.

2.13 Describe the regulation applicable to high-speed broadband networks. On what terms are passive infrastructure (ducts and poles), copper networks, cable TV and/or fibre networks required to be made available? Are there any incentives or ‘regulatory holidays’?

The Government of Pakistan aims to increase broadband penetration in the country. The Broadband Policy, 2004 delineates a number of cost-cutting measures, which include, *inter alia*, a reduction in international IP and domestic bandwidth prices. Provision is also made for the reduction of the primary rate interface (“PRI”) charges, to a level where the gap created in the dial-up infrastructure usage by the dial-up users switching over to broadband services would not make the operational and capital expenditure in the PRI service a liability for the internet service providers.

With respect to acquiring a licence to establish, maintain, lease, rent and sell Telecom Infrastructure Facilities, if the PTA determines that a licensee possesses SMP in a relevant market, the licensee shall comply with orders of the PTA that are intended to promote competition in respect of that relevant market or markets ancillary thereto, including without limitation orders to provide access to its ducts, poles, towers, or other similar facilities for use by licensed telecom Infrastructure Facility Providers.

Please also refer to our response to question 2.8 above.

Price and Consumer Regulation

2.14 Are retail price controls imposed on any operator in relation to fixed, mobile, or other services?

The Tariff Regulations provide, *inter alia*, that non-SMP operators are free to set and revise their tariffs at any time and in any manner they like. Provided that they inform the PTA about their proposed tariffs thirty (30) days before the applicability of new tariffs. The PTA may make amendments to the tariffs of non-SMP operators where the tariffs are considered to be unfair and burdensome.

With respect to local loop and long-distance and international telephony operators which have been determined to have SMP status, they shall set a tariff subject to a formula provided for in the applicable telecom laws.

Further, the tariff for leased lines services is contingent on determination by calculations of costs.

2.15 Is the provision of electronic communications services to consumers subject to any special rules (such as universal service) and if so, in what principal respects?

Subject to Section 33A of the PTA Act, the Federal Government created a Universal Services fund, whereby person(s) who have been issued a licence to provide telecommunication services are required to pay a USF Charge limited to 1.5% of gross revenue, minus inter-operator and related PTA/FAB mandated payments as determined by the Government.

Further, the Federal Government also created a Research and Development Fund whereby person(s) who have been issued a licence to provide telecommunication services have to contribute 0.5% of gross revenue, minus inter-operator and related PTA/FAB mandated payments, to the Research and Development Fund.

Numbering

2.16 How are telephone numbers and network identifying codes allocated and by whom?

Licensees of the PTA are eligible to apply for allocation of number capacity, as per the Number Allocation And Administration Regulation, 2005.

Numbering is a finite national resource and therefore must be managed prudently to ensure that the numbering resource is adequate to support existing telecommunication services, and has enough capacity for the introduction of new networks and services as these become available.

Section 5 (2) (k) of the PTA Act mandates the PTA to develop and manage a national numbering plan for the provision of a wide range of efficient telecommunication services in Pakistan.

Under the plan, the leading digit defines the service/network for the use of a particular numbering range. The structure of the national numbering plan complies, as far as possible, with the ITU-T Recommendations E.164.

The plan defines number ranges and their assignment to various telecommunication services, including PSTN and Wireless Networks, international direct dialling, emergency and special services such as voicemail, carrier identification/selection codes, and Intelligent Network (IN)-based services.

Numbers beginning with the digit “0” are reserved for national and international services. Level “0” is used as an escape code for long-distance (national) dialling and for access to other networks, i.e., mobile, IP-based services, while “00” is assigned to international direct dialling for all telecommunication users in the country, irrespective of their service provider and as such shared by all service providers.

Numbers starting with the leading digit “1” are reserved for short codes and access to intelligent network-based services. Short codes for emergency services, customer services and carrier selection also start with the digit “1”. Some short codes are three digits long while others are four digits long, depending on their use.

The country is divided into two geographic areas, and the leading digits “02” and “04” are assigned to these geographic areas, where the second, third or fourth digit leads to the complete national destination code. The subscriber number consists of six, seven or eight digits. A National Significant Number is 10 digits long in all cases.

The leading digits “01” and “03” are assigned to cellular mobile operations with a two-digit network access code and eight-digit subscriber number. Twenty mobile operators can launch their services while each operator can hold a theoretical base of 100 million customers.

The leading digits “05” and “06” are reserved for future services. The leading digit “07” is reserved for IP-based services, while the leading digit “08” is assigned to freephone and new non-geographic services. The leading digit “09” is assigned to premium rate services and new non-geographic services.

A local loop licensee may request geographic and non-geographic numbers from the PTA, as well as short codes, in accordance with the national numbering plan developed by the PTA, for use in the provision of licensed services in the areas concerned.

The licensee can allocate individual numbers to customers from the blocks allocated to it by the PTA, and shall maintain suitable records of its utilisation of numbering capacity, subject to the following conditions:

- (a) the blocks of numbers and short codes allocated to the licensee, and the individual numbers allocated by the licensee to its customers, are a national resource; and
- (b) the allocation of a number does not confer ownership of the number to the customer.

However, an allocation conveys an ongoing right of use and an expectation of at least a three-month notice period, should it be necessary to withdraw or change allocated numbers.

2.17 Are there any special rules which govern the use of telephone numbers?

Please refer to our response to question 2.16 above.

2.18 Are there any obligations requiring number portability?

Subject to Regulation 3 of the Mobile Number Portability Regulations, all operators shall make Mobile Number Portability available to their subscribers as per these Regulations.

However, the local loop licensee shall not be required to make available number portability to its customers or other operators unless the PTA so requires.

3 Radio Spectrum

3.1 What authority regulates spectrum use?

The Frequency Allocation Board (“FAB”) was established under Section 42 of the PTA Act, and has 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.

Every application for allocation and assignment of radio frequency spectrum has to be made to the PTA. The PTA is required to refer the application to the FAB within 30 days from the receipt of such application.

On receipt of the application, the FAB classifies the telecommunication services and may allocate or assign the specific frequencies to the applicant. The FAB is required to notify the applicant of the status of the application within three months.

3.2 How is the use of radio spectrum authorised in your jurisdiction? What procedures are used to allocate spectrum between candidates – i.e. spectrum auctions, comparative ‘beauty parades’, etc.?

Subject to Section 43 (5) of the PTA Act, every application for allocation and assignment of radio frequency spectrum shall, in the first instance, be made to the PTA, which shall, after such inquiry as it may deem appropriate, refer the application to the FAB within 30 days from receipt of such application.

On receipt of application under Section 43 (5) of the PTA Act, the FAB shall classify the telecommunication services and may allocate or assign specific frequencies to the applicant.

It may also be noted that the FAB auctions spectrum/frequency for use by cellular/mobile network operators. Please also refer to our response to question 3.4 below.

3.3 Can the use of spectrum be made licence-exempt? If so, under what conditions?

The Pakistan Table of Frequency Allocations is the broadest technical document showing the allocation of bands to various types of services. The Pakistan Table of Frequency Allocations is drawn from, and kept current with, the ITU Radio Regulations, which are revised every few years at the World Radio Communication Conferences.

3.4 If licence or other authorisation fees are payable for the use of radio frequency spectrum, how are these applied and calculated?

Subject to Article 4.4 of the Mobile Cellular Policy, 2004 (the “**Mobile Cellular Policy**”) for Mobile Cellular Licences, where the assignment of spectrum is linked to a set of licence conditions, the associated fees will consist of two parts:

Cellular Spectrum Price

The Spectrum Price for national mobile cellular licences will be determined through auction.

The Spectrum Price resulting from the auction will also be used as a benchmark to determine price per MHz *per annum* for the existing operators, once they come under the purview of this policy.

The mobile licensees will pay the PTA, in addition to the Spectrum Administration fee and the Spectrum Price, an annual licence Administration fee (“**Regulatory fee**”), to reasonably cover the cost of regulation. The annual Regulatory fee shall not exceed 0.5% of last year’s gross revenue, minus inter-operator and related PTA/FAB mandated payments.

Administrative fees for radio spectrum will be set to recover the cost of administration of that spectrum. The total income generated from administrative fees for the whole spectrum should recover the reasonable operational costs by the FAB incurred whilst managing, licensing and policing that spectrum.

Spectrum price for line of site links will be limited to the Administration fees. Please also refer to our responses to questions 3.1 and 3.2 above.

3.5 What happens to spectrum licences if there is a change of control of the licensee?

Subject to Rule 11 (5) of the PTA Rules, if a substantial ownership interest in, or control of, a licensee is proposed to be changed, the licensee shall give the PTA notice of such fact in writing. That written notice shall include all relevant details of the proposed change. If the PTA is of the opinion that the change shall adversely affect the ability of the licensee to provide its licensed telecommunication services, it may impose such additional conditions in the licence as shall be reasonable and directly relevant to the proposed change.

For the purpose of understanding, the terms “control” and “substantial ownership interest” used in the response shall bear the following meanings:

- (i) “**control**” means the ability to direct the exercise, whether directly or indirectly and whether through one or more entities, of more than 50% of the voting rights exercisable at any general meeting of the shareholders of the licensee; and
- (ii) “**substantial ownership interest**” means more than 10% of the issued share capital of the licensee.

Please also refer to our response to question 2.7 above.

3.6 Are spectrum licences able to be assigned, traded or sub-licensed and, if so, on what conditions?

A licence granted under the PTA Act and the PTA Rules shall be personal to the licensee and shall not be assigned, sub-licensed to, or held on trust for any person, without the prior written consent of the PTA.

A framework for spectrum trading is also in place, but is not yet in force.

Please also refer to our response to question 2.7 above.

4 Cyber-security, Interception, Encryption and Data Retention

4.1 Describe the legal framework for cybersecurity.

The current legal framework for cybersecurity is governed by the PECA. The purpose of the PECA is to control the increasing “cybercrimes in Pakistan” and to control the offences related to information systems. It provides mechanisms for the investigation, prosecution and trial of electronic crimes. There are many clauses in this legislation which are considered as restrictions on the freedom of people, especially freedom of expression and freedom of speech.

Activities such as sending text messages without the receiver’s consent or criticising Government actions on social media are subject to penalty with heavy fines and imprisonment in jail. Similarly, online criticism of religion, country, courts of Pakistan, armed forces of Pakistan and other institutions of Pakistan are also punishable with fines and imprisonment.

The PECA has also come under fire for including data retention provisions that make it mandatory for service providers to hold traffic data for a minimum 90-day period or as “authorised officers” see fit. The PECA does not, however, explicitly list any provisions for data privacy or protection, outside of conditions that officers of the law must provide anyone “with a legal right to the data” a list of said data, and copies of said data, although this can be refused by an “investigating officer” if there are “reasonable grounds”.

Subject to certain provisions of the PECA, “**International Cooperation**” can be tendered whereby the Federal Government may, upon receipt of a request, through the designated agency under the PECA, extend such cooperation to any foreign government, 24 × 7 network, any foreign agency or any international organisation or agency, for the purposes of investigations or proceedings concerning offences related to information systems, electronic communication or data or for the collection of evidence in electronic form relating to an offence, or obtaining expeditious preservation and disclosure of data by means of an information system, or real-time collection of data associated with specified communications or interception of data under the PECA.

The provisions of the PECA are not only specific to the licensees (including MNOs) of the PTA; the scope of the PECA extends to every citizen of Pakistan, wherever he may be, and also to every other person for the time being in Pakistan. The same also applies to any act committed outside Pakistan by any person if the act constitutes an offence under the PECA and affects a (i) person, (ii) property, (iii) information system (“*electronic system for creating, generating, sending, receiving, storing, reproducing, displaying, recording or processing any information*”), or (iv) data (“*any representation of fact, information or concept for processing in an information system including source code or a program suitable to cause an electronic system for creating, generating, sending,*

receiving, storing, reproducing, displaying, recording or processing any text, message, data, voice, sound, database, video, signals, software, computer programs, any forms of speech, sound, data, signal, writing, image or video, to perform a function or data relating to a communication indicating its origin, destination, route, time, size, duration or type of service”).

The PECA also provides that the unauthorised access or the unauthorised copying or transmission of data or an information system with the intent of injury, wrongful gain or wrongful loss or harm to any person shall be treated as a punishable offence.

Further, the PECA provides that, a service provider shall, within its existing or required technical capability, retain its specified traffic data (data relating to a communication indicating its origin, destination, route, time, size, duration or type of service) for a minimum period of one year or such period as the PTA may notify from time to time and, subject to the production of a warrant issued by the court, provide that data to the investigation agency or the authorised officer whenever so required.

For the purpose hereof, a “service provider” means to include a person who:

- (a) acts as a service provider in relation to sending, receiving, storing, processing or distributing any electronic communication, or the provision of other services in relation to electronic communication through an information system;
- (b) owns, possesses, operates, manages or controls a public switched network or provides telecommunication services; or
- (c) processes or stores data on behalf of such electronic communication service or users of such service.

Service providers are required to retain traffic data by fulfilling all requirements of data retention and its originality, as per the provisions of the PECA.

4.2 Describe the legal framework (including listing relevant legislation) which governs the ability of the state (police, security services, etc.) to obtain access to private communications.

Section 54 of the PTA Act provides that notwithstanding anything contained in any law currently 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. The PTA Act also includes other provisions that restrict the ability of users to be able to communicate privately, or to use systems to access the internet and other ICT services without interference and surveillance.

Section 32 of the PTA Act gives courts the power to authorise searches for “unapproved crypto apparatus” or other “unapproved terminal equipment”.

Further, Article 6.13 of the Mobile Cellular Policy states that licensees shall meet the requirements of authorised security agencies for legal interception of calls and messages. Further, the Government of Pakistan has the right to either suspend the service or cancel any licence to safeguard national security.

With respect to the Investigation for Fair Trial Act, 2013, the High Court may issue a warrant of surveillance or interception to allow the lawful doing of any or all of the following acts, namely:

- (a) interception and recording of telephonic communication of the suspect with any person;
- (b) video recording of any person(s), premises, event, situation, etc.;

- (c) interception or recording or obtaining of any electronic transaction including, but not limited to, emails, SMS, etc.;
- (d) interception and taking over of any equipment used in the communication in respect of which the warrant is issued, including, but not limited to, telephones, cell phones, mobile SIM cards, electronic databases; demonstrating the linking of electronic communication with the database belonging to the person in respect of whom the warrant has been issued, provided that the judge authorises take-over of equipment only where the material or statement of the authorised officer discloses a substantial threat or possibility of an attempt to commit a scheduled offence;
- (e) collection of evidence through any modern devices in addition to the ones mentioned above;
- (f) use of human intelligence;
- (g) covert surveillance and property interference;
- (h) access to any information or data in any form related to a transaction, communication or its content; and
- (i) any other form of surveillance or interception that the Federal Government may notify from in this behalf.

4.3 Summarise the rules which require market participants to maintain call interception (wire-tap) capabilities. Does this cover: (i) traditional telephone calls; (ii) VoIP calls; (iii) emails; and (iv) any other forms of communications?

In addition to the response to question 4.2 above, Regulation 4 of the Monitoring and Reconciliation of Telephony Traffic Regulations states that each LDI licensee and Access Provider shall establish the system at its own cost in accordance with these regulations, as determined and required by the PTA from time to time at the PTA designated premises.

Any monitoring system or other system developed under Regulation 4 of the Monitoring and Reconciliation of Telephony Traffic Regulations shall comprise the mandatory features of monitoring links and controlling grey traffic with the minimum of the following features, and shall ensure compatibility to provide such information as required by the PTA, where applicable:

- (a) capability to monitor, control, measure and record traffic in real time;
- (b) capability for a complete signalling record, including but not limited to billing;
- (c) capability to accurately measure the quality of service;
- (d) a complete list of Pakistani customers and their details; and
- (e) complete details of capacity leased by the licensee(s) to their customers.

Further, Regulation 8 states that LDI licensees shall ensure full accounting of international traffic on all Access Providers’ networks. The monitoring system(s) and other system(s) should be capable of identifying, analysing and reconciling all data and voice-signalling information in a clear and transparent manner for identification of the total traffic, irrespective of the path taken in such format and with such features as required by the PTA.

For the purposes of the Monitoring and Reconciliation of Telephony Traffic Regulations, the term “system(s)” has been defined as a system which includes but is not limited to hardware, software, firmware, peripherals, cables, connectors and internal and external interfaces to be installed and deployed for the monitoring, aggregating, measuring and reconciling of traffic, monitoring and controlling of grey traffic, removal of asymmetry, billing and quality of the licensed service.

4.4 How does the state intercept communications for a particular individual?

Subject to Section 54 of the PTA Act, in the interest of national security or in the apprehension of any offence, the Federal Government may authorise any person(s) to intercept calls and messages or to trace calls through any telecommunication system.

During a war, a period of hostility towards Pakistan by any foreign power, internal aggression, or for the defence or security of Pakistan, the Federal Government shall have preference and priority in telecommunication systems over any licensee.

Please also refer to our responses to questions 4.2 and 4.3 above.

4.5 Describe the rules governing the use of encryption and the circumstances when encryption keys need to be provided to the state.

As part of the obligations placed on a licensee under the Monitoring and Reconciliation of Telephony Traffic Regulations, the licensee(s) and Access Providers shall ensure that signalling information is uncompressed, unencrypted, and not formatted in a manner which the installed monitoring system is unable to decipher using installed capacities.

Further, the licensee(s) and Access Provider(s) shall provide access to the authorised representatives of the PTA for obtaining information directly through the system of any traffic routed through their network, as and when required by the PTA.

4.6 What data are telecoms or internet infrastructure operators obliged to retain and for how long?

Pursuant to the Electronic Transactions Ordinance, 2002 (“ETO”), the requirement under any law for any document, record, information, communication or transaction to be in written form shall be deemed satisfied where the document, record, information, communication or transaction is in electronic form, if the same is accessible so as to be usable for subsequent reference.

However, in light of Section 16 of the ETO, documents are required to be retained pursuant to specific laws (as discussed herein) and preserved in hard form if the original document was produced in hard form, e.g., instruments which require stamping, registration and/or signatures as in terms of the Stamp Act, 1899, and the Registration Act, 1908, and/or as may be required by the competent authority in accordance with its respective laws. Therefore, in order to appropriately use and rely upon documents/instruments (originally produced in hard form) which may need to be presented as evidence, in terms of Chapter V of the Qanun-e-Shahadat Order, 1984, must be retained in hard form irrespective of the electronic form *supra*.

PTA Rules

Every licensee is required each month, or at such intervals as designated, to furnish the results of quality tests and surveys to the PTA. The licensee is required to keep a record of the said quality tests and surveys for three years, and such record shall at all times be open to inspection and audit by the PTA.

The Access Promotion Contribution Rules

Every licensee shall keep all books and accounts pertaining to payments made or received pursuant to the Access Promotion Contribution Rules, and the telecommunication services to which such payments relate, including call detail records and itemised billing data, for a period of at least three years.

Subscriber Antecedents Verification Regulations

All operators shall ensure the maintenance of updated record of all SIM(s) to subscribers, and every operator shall ensure the confidentiality of all the information disclosed by the subscriber under the provisions of these Regulations.

All operators shall ensure the cleaning of old data for verification of all subscribers’ data as and when required by the PTA. Although there is no specific time period provided for the PTA to call for such subscriber data verification, it is clear that such data can be retained in electronic form as per Section 6 of the ETO.

Mobile Number Portability Regulations

Every recipient operator shall keep and maintain records of the application forms of those subscribers who have requested porting for at least six months, for inquiry by concerned donor operators or examination by the PTA.

The operators are required to maintain usage records including, where available, called and calling numbers, date, duration, time and the called number cell, with regards to usage made on its central databases for a rolling 12 months, for scrutiny by, or as directed by, the PTA, or as required by any law enforcement or intelligence agency.

GPRS/EDGE Service Quality of Service Standards Regulation

Every licensee is required to carry out “Quality of Service” on different factors, and retain and maintain the record of the same in its own safe custody for a period of three years.

The PECA

A service provider is required to retain its specified traffic data for a minimum period of one year, or such period as the PTA may specify from time to time.

Further, if an authorised officer is satisfied that:

- (a) specific data stored in any information system or by means of an information system is reasonably required for the purposes of a criminal investigation; and
- (b) there is a risk or vulnerability that the data may be modified, lost, destroyed or rendered inaccessible,

the authorised officer may, by written notice given to the person in control of the information system, require that person to provide the data or to ensure that the data specified in the notice be preserved, and for the integrity thereof to be maintained for a period not exceeding 90 days, as specified in the notice.

5 Distribution of Audio-Visual Media

5.1 How is the distribution of audio-visual media regulated in your jurisdiction?

PEMRA, created pursuant to the PEMRA Ordinance, is the relevant regulator which, *inter alia*, issues licences to establish and operate a broadcast station and/or distribute programmes through cable or television networks.

Any person desirous of operating broadcast media (such media which originate and propagate broadcast and pre-recorded signals by terrestrial means, or through satellite for radio or television, and include teleporting, provision of access to broadcast signals by channel providers and such other forms of broadcast media as PEMRA may state, with the approval of the Federal Government, by notification in the official gazette) or a distribution service (a service which receives broadcast and pre-recorded signals from different channels and distributes them to subscribers through cable, wireless or satellite options, and includes cable TV, LMDS, MMDS, DTH and such other similar technologies), shall be required to procure a licence from PEMRA.

5.2 Is content regulation (including advertising, as well as editorial) different for content broadcast via traditional distribution platforms as opposed to content delivered over the internet or other platforms? Please describe the main differences.

PEMRA regulates the traditional distribution platforms, whereas the PTA, in addition to PEMRA, jointly regulates internet-based platforms.

It is also to be noted that the PTA, as the country's telecom regulator, will implement policies to block websites with blasphemous, un-Islamic, offensive, objectionable, unethical, and immoral material. In this regard, the PTA, as and when directed by the Federal Government, directs/requires its licensees to implement IP/URL blocking/filtering protocols.

5.3 Describe the different types of licences for the distribution of audio-visual media and their key obligations.

Subject to Section 18 of the PEMRA Ordinance, PEMRA shall issue licences for broadcast media and distribution services in the following categories, namely:

- (a) international and national scale stations;
- (b) provincial-scale broadcasts;
- (c) local area or community-based radio and TV broadcasts;
- (d) specific and specialised subjects;
- (e) distribution services; and
- (f) up-linking facilities, including teleporting and DSNG.

Further, PEMRA may sub-categorise the categories specified in any of the aforementioned sub-sections.

A person who is issued a licence under the PEMRA Ordinance shall:

- (a) ensure the preservation of the sovereignty, security and integrity of the Islamic Republic of Pakistan;
- (b) ensure the preservation of the national, cultural, social and religious values and the principles of public policy as enshrined in the Constitution of the Islamic Republic of Pakistan;
- (c) ensure that all programmes and advertisements do not contain or encourage violence, terrorism, racial, ethnic or religious discrimination, sectarianism, extremism, militancy, hatred, pornography, obscenity, vulgarity or other material offensive to commonly accepted standards of decency;
- (d) comply with rules made under the PEMRA Ordinance;
- (e) broadcast, if permissible under the terms of its licence, programmes in the public interest specified by the Federal Government or PEMRA in the manner indicated by the Government, or, as the case may be, PEMRA, provided that the duration of such mandatory programmes does not exceed 10% of the total duration of the broadcast or operation by a station in 24 hours, except if, by its own volition, a station chooses to broadcast such content for a longer duration;
- (f) comply with the codes of programmes and advertisements approved by PEMRA and appoint an in-house monitoring committee, under intimation to PEMRA, to ensure compliance with the Code;
- (g) not broadcast or distribute any programme or advertisement in violation of copyright or any other property right;
- (h) obtain NOC from PEMRA before the import of any transmitting apparatus for broadcasting, distribution or teleporting operation⁴⁶; and
- (i) not sell, transfer or assign any of the rights conferred by the licence without prior written permission of PEMRA.

Pursuant to Section 19 of the PEMRA Ordinance, PEMRA shall have the exclusive right to issue licences for the establishment and operation of all broadcast media and distribution services, provided that this exclusive right shall be used by PEMRA in conformity with the principles of fairness and equity applied to all potential applicants for licences, whose eligibility shall be based on prescribed criteria notified in advance. In case of radio, television and MMDS broadcast station licences, this shall be done through an open, transparent bidding process if the number of applications exceeds the number of licences to be issued by PEMRA. No person or entity can engage in broadcasting or CTV operation except after procuring a licence issued by PEMRA.

5.4 Are licences assignable? If not, what rules apply? Are there restrictions on change of control of the licensee?

Subject to the terms and conditions of the licence granted by PEMRA, a licensee shall not sell, transfer or assign any of the rights conferred by the licence without prior written permission of PEMRA.

6 Internet Infrastructure

6.1 How have the courts interpreted and applied any defences (e.g. 'mere conduit' or 'common carrier') available to protect telecommunications operators and/or internet service providers from liability for content carried over their networks?

Section 21 of the PTA Act places an obligation on licensee(s) to monitor use of the licensed telecommunication service or telecommunication system, and to disconnect the telecommunication service from any user who, after written notice, misuses it.

Therefore, if any of the terms and conditions of the licence are breached, the PTA can cancel the licence of the relevant operator.

6.2 Are telecommunications operators and/or internet service providers under any obligations (i.e. to provide information, inform customers, disconnect customers) to assist content owners whose rights may be infringed by means of file-sharing or other activities?

If any content owner is of the opinion that his right(s) have been infringed, such content owner may approach the relevant judicial forum for remedy.

6.3 Are there any 'net neutrality' requirements? Are telecommunications operators and/or internet service providers able to differentially charge and/or block different types of traffic over their networks?

Currently there are no specific laws relating to "net neutrality" in Pakistan.

6.4 Are telecommunications operators and/or internet service providers under any obligations to block access to certain sites or content? Are consumer VPN services regulated or blocked?

It is to be noted that the PTA, being the country's telecom regulator, will implement policies to block websites with blasphemous, un-

Islamic, offensive, objectionable, unethical, and immoral material. In this regard, the PTA, as and when directed by the Federal Government, directs/requires its licensees to implement IP/URL blocking/filtering protocols.

With regards to consumer Virtual Private Networks (VPN) services, please note that transmission of encrypted data on the network as traffic is not permitted under the applicable laws. Non-standard protocols of communication, including encryption, cannot be undertaken without the prior approval of the PTA. Operators are required to obtain prior approval of the PTA if they use a non-standard mode of communication, including VPN and non-standard protocols, which include encrypted messages.

Further, the use of any non-standard of communication, including all mechanisms by means of which communications become hidden or modified to the extent that they cannot be monitored, is a violation of the PTA Rules.

While it is mandatory for such service providers to provide local enforcement agencies with decryption and interception abilities for such encrypted services, we note that messaging and VoIP regulation is highly topical. Platforms offering end-to-end encryption, similar to WhatsApp, are not currently regulated. However, we cannot confirm whether the same will be brought in the ambit of the regulatory regime.

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The authors would like to thank Miss Saira Khalid for her assistance in the writing of this chapter.

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