Subject: Telecommunication Policy – Consultant’s Draft

Dear Team,

With reference to subject draft circulated by the MOIT, following are the points that need to be included in the Policy in order to make it a vibrant document that would benefit the economy and society and have long term positive effects in making telecom as most vibrant sector of country’s economy in coming years.

1. **Quantitative Targets and Action Plan**

   i. The draft Policy is a nicely written document but it does not contain any specific quantitative goals and targets and neither specifies any mechanism and process on how these targets would be measured. The Policy does not contain any action plan on how the policy would be implemented, who would provide funding and support and in what time frame. For instance, the broadband services goal should be to bring 80% of the current Internet users under broadband in next three years.

   ii. The Policy therefore should have quantitative and specific targets and action plan that would be implemented and measured on yearly basis so as to ascertain the progress on implementation of the Policy.

2. **Non-availability of reliable ICT indicators**

   i. The document is based on the data supplied by PTA which is based on the number of connections sold by telecom operators. Since broadband services would dominate the telecom landscape of the country for next couple of
decades, no reliable data exists that would depict the number of Internet users and their growth in the country. It has been generally believed that one home broadband connection is shared by 5-6 family members whereas one corporate/business broadband connection is shared by 10 to 20 persons. On basis of such estimates, total number of broadband users in the country has been estimated from time to time and by various organizations as per their imaginations. The only baseline survey that was ever conducted in Pakistan on the Internet usage was the one got conducted by MOIT in its early days, in 2001, and that was outsourced to a market research company, Gallup, based on actual sample sizes in major cities of Pakistan. No attempt was made afterwards to find out any change and growth in these numbers.

ii. Lack of reliable data on the broadband users and allied ICT indicators such as number of computers, number of trained IT professionals, employment opportunities related by ICT businesses for educated youth, and so on, has been the single largest reason that Pakistan has been ranked very low in all global reports of WSIS, ITU, World Bank, etc. ISPAK believes from the ground knowledge that Pakistan has been doing much better than frequently cited low ranking in these reports. Pakistan's global ranking can easily be improved if MOIT conducts baseline surveys every year to measure the growth in these sectors and publish the data in the form of authentic reports. This data would then be used by WSIS, ITU, World Bank, etc., in their reports and would greatly help in improving the image of Pakistan in global market.

iii. MOIT can also use the same data to measure the performance of its policy implementation on year to year basis.

3. Ensuring Level Playing Field

i. Provision of level playing field to the small and medium size operators has been a major pain point in the country in last seven years and this requires concrete steps to be taken as explained in following paragraphs.

ii. MOIT is the apex policy making body for all telecom sector. Its officers also represent on the Board of Directors of licensed telecom operators partially or wholly owned by the Government of Pakistan. The administrative and financial control of many operators also rest with the MOIT. It is a fact that MOIT's policy level decisions such as creation of International Clearing House
(ICH) and silently watching as spectator to the anti-competitive practices of large operators and let other operators dying, were biased in the favour of large operators simply due to the conflict of interest. The legislature has made it mandatory for the Members and Chairman of PTA not to have any direct or indirect financial interest in any company in providing telecom services within Pakistan or abroad. On the other hand, PTA is bound to implement Policy Directives issued by the Federal Government. The Federal Government is represented by the MOIT whose senior officers act as ex-officio directors on the Board of Directors of telecom operators and hence responsible for overall management and control of these operators. To make things worse, these high ranking public servants get hefty honorarium paid for attending board meetings and enjoy other perks from these operators.

iii. The Secretary MOIT, who is the Principal Accounting Officer and highest ranking officer of the Ministry, has been paid US$8,000 to attend one Board of Directors meeting of PTCL in his capacity and Chairman of the Board and these meetings are held almost every quarter. Buying of sympathies of MOIT officers have been a stumbling block in implementing fair and level playing field in telecom sector.

iv. It is therefore imperative that the financial and administrative control of licensed telecom operators be shifted to some other Ministry and officers of MOIT should not represent Federal Government on BOD of telecom operators in order to avoid the conflict of interest.

4. Universal Service Fund and ICT R&D Fund

i. MOIT has shifted these funds to Federal Consolidated Fund (FCF) in violation of the Pakistan Telecommunication (Re-organisation) Act, 1996 and also breached the trust of the contributors, i.e., licensees. FCF is a common pool of fund made up from tax revenues by the Federal Government and is utilized for all public sector expenses of the country. It is therefore very clear that funds exceeding Rs. 70 billion of USF and ICT R&D Fund contribution have been utilized by the Federal Government for other expenses in violation of the law. FCF is a lapsable fund whereas funds of USF and ICT R&D Fund were non-lapsable as they do not belong to tax revenues. It is therefore necessary that Government should restore the sanctity of USF and ICT R&D Fund by reinstating their separate bank accounts in order to implement rule of law and
gain the trust of the investors and operators. Also the track record of spending of USF and ICT R&D Fund has been dismal as only fraction of the funds have been utilized in last seven years mainly due to the interference by the MOIT and resultant inaction at the organizational level in USF and ICT R&D Fund Companies.

ii. The Policy should therefore state that every year, both USF and ICT R&D Fund Companies will utilize 80% of the funds collected for that year including collections of previous years. In case the utilization of funds remains below 80%, the contribution of the operators would be correspondingly reduced in the subsequent years.

5. Rights of Way

i. Rights of Way (ROW) and their costs has become a major issue for all telecom operators including cellular operators as many authorities particularly Defense Housing Authorities (DHAs), Cantonment Boards and National Highway authority (NHA) have started charging exorbitant amounts for ROW for optical fiber networks and permissions for installation of cellular towers (BTSs). MOIT and PTA have played no practical role in addressing this issue at national level.

ii. An amendment in Telecom Act therefore should be made which should state that ROW fee and charges for permission of cellular towers and other telecom infrastructure by local authorities and private housing societies and high rise buildings should not be more than the cost of maintaining the ROW and costs of the services provided by the authorities to the operators. It should also state that there should not be any monopolies in providing ROW and such permission.

6. Cartels Formation

It should be specifically stated in the Policy that no cartels would be formed for incoming and outgoing international calls and for any other telecom services under patronage of the Government.
7. **Cabling Standards for Buildings and Homes**

In order to improve the buildings of the country and bring them at par with international standards for providing high speed telecom infrastructure, standards and designs for optical fiber and copper (coaxial for cable TV and data/Ethernet) cabling should be formulated by PTA and circulated and disseminated in order to have standardized indoor optical fiber and copper cabling within the buildings, campuses and homes in line with the international standards so as to provide flawless high speed Internet and high definition TV services to the users.

8. **Reforms at Regulatory Level**

i. The industry has suffered greatly due to a weak regulator in last seven years. Many important cases including Determination of Significant Market Power (SMP), Determination on Account Separation of PTCL in Retail and Wholesale Broadband, Use of Illegal Wireless Spectrum by PTCL for its EVO Services, Violation of Limited Mobility by PTCL for its 3/4 G Services, etc., have been subject to litigation by the large operators who hire costly lawyers, get stay orders from the courts that run into years and hence delay the justice. PTA on the other hand, has been very weak on pursuing such cases in the courts primarily on the plea that it cannot pay higher fees to the good lawyers. This has resulted in weak legal representation by PTA in the superior courts and coupled with lack of follow-up resulted in non-implementation of PTA’s Determinations that themselves took years of adjudication and lengthy consultative process by PTA.

ii. For instance, PTA took more than two years in a consultative process on determination of SMP and then the determination was challenged by PTCL in the High Court and a stay order was obtained. It took another three years for the private operators to become party to the case and finally get PTCL’s appeal dismissed from the court. The total process took around five years. This time is sufficient for an SMP operator to drive the competition out of the business as re-establish a monopoly over the market. PTCL has effectively established its monopoly over broadband DSL by using anti-competitive and strong arm tactics and have driven all private operators out of the business.

iii. PTA’s legal wing therefore should be strengthened and performance of its Chairman and Members should be assessed on the basis of number of cases
decided from the courts within a specified time period. There should be no restriction on payment of market fees and hiring of good lawyers by PTA to fight such cases in the superior courts.

9. **Lawful Intercept**

i. Telecom operators are forced to pay millions of dollars for the equipment required for lawful intercept (LI) to be installed at the premises of law enforcement agencies (LEAs). According to Telecom Act and License Conditions, operators are only required to provide system and switching interfaces for enabling lawful intercept and making their systems and switches LI compliant in line with ITU guidelines. But operators are forced to pay for the complete system which is entire responsibility of LEAs. The LEAs cite non-availability of funds for procurement of such systems.

ii. The Policy should therefore state that either MOIT or PTA should provide budgetary support to LEAs for procurement, operations and maintenance of LI systems or this funding would be made available from ICT R&D Fund as most of the systems are locally developed within Pakistan by renowned research organizations and companies.

10. **Internet Blocking in Garb of Grey Traffic**

i. Country’s Internet has been subject to uninformed and intrusive blocking by the Government for last two years under garb of ICH and curbing of grey traffic. This had counterproductive effects on the businesses and ICT industry and damaged country’s reputation internationally. It has also been stated in some Policy Directives that ICH was an instrument of national security whereas it is very clear that LI being an essential element of national security, is a separate subject and had nothing to do with grey traffic.

ii. It should be clearly stated in the Policy that, there will no blocking of Internet and VPNs, except for blasphemous and pornographic Internet sites that are exclusively prohibited under relevant sections of Pakistan Penal Code.

iii. It should also be clearly defined in the Policy that LI has no relevance to “grey traffic” so that LI cannot be misused by anyone to exploit specific gains.
We hope that above recommendations would be given due consideration and made part of policy in best national interest.

With kind regards.

Yours sincerely,

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Convener