

The Gazette  **of Pakistan**

**EXTRAORDINARY
PUBLISHED BY AUTHORITY**

ISLAMABAD, MONDAY, APRIL 6, 2009

PART II

Statutory Notifications (S. R. O.)

GOVERNMENT OF PAKISTAN

PAKISTAN TELECOMMUNICATION AUTHORITY

NOTIFICATION

Islamabad, the 31st March, 2009

S. R. O. 300(I)/2009.—In exercise of the powers conferred under clause (o) of sub-section (2) of section 5 read with clause (c) and (m) of sub-section (1) of section 4 of the Pakistan Telecommunication (Re-organization) Act, 1996 (Act XVII of 1996), the Authority is pleased to make the following regulations:

PART-I

Preliminary

1. Short title and commencement.—(1) These regulations shall be called the “Telecom Consumers Protection Regulations, 2009”.

(2) These Regulations shall be applicable from the date of gazette notification.

(1077)

Price : Rs. 10.50

[337(2009)/Ex. Gaz.]

2. **Scope and Applicability.**— These regulations shall apply to all Operators to promote and protect the rights and interests of the Consumers of telecommunication services in Pakistan.

3. **Definitions:**—(1) In these regulations unless the context or subject otherwise requires:—

- (i) **“Act”** means Pakistan Telecommunication (Re-organization) Act, 1996;
- (ii) **“Advertisement”** means and includes the following modes of marketing adopted by Operators to attract the Consumers:—
 - (a) by displaying of notices, banners, billboards, play cards etc;
 - (b) by means of catalogue, brochures, pamphlets etc;
 - (c) by exhibition on films or photographs; or
 - (d) by electronic or print media or through any other means;
- (iii) **“Authority”** means Pakistan Telecommunication Authority established under section 3 of the Act;
- (iv) **“Code of Commercial Practice”** means an agreement or set of rules, which defines the behavior of Operators who undertake to be bound by it in relation to one or more Commercial Practices;
- (v) **“Commercial Practice”** means any act, omission, course of conduct, representation or commercial communication (including advertising and marketing) by an Operator, which is directly connected with the promotion, sale or supply of a Service to Consumers, whether occurring before, during or after a commercial transaction in relation to a Service;
- (vi) **“Consumer”** means any natural or juristic person who is an actual or potential user of publicly available telecommunication Services from an Operator and not the reseller of such Services;
- (vii) **“Operator”** means a license holder authorized by the Authority to establish, operate and maintain the telecommunication systems and to provide Service(s);
- (viii) **“Professional diligence”** means the standard of special skill, care and conduct which an Operator may reasonably be expected to exercise towards Consumers commensurate with honest market practice or the general principle of good faith;

- (ix) **“Regulations”** means all or any regulations issued by Authority under provisions of the Act including these Regulations;
- (x) **“Rules”** means all or any rules issued by the Federal Government under Section 57 of the Act;
- (xi) **“Service”** means telecommunication service as defined in the Act; and
- (xii) **“Transactional decision”** means any decision taken by a Consumer, whether it is to act or to refrain from acting, concerning:
- (a) whether, how and on what terms to purchase, make payment in whole or in part for, retain or dispose of the Service; and
- (b) whether, how and on what terms to exercise a contractual right in relation to a Service.

(2) The words and expressions used herein but not defined shall have the same meanings as are respectively assigned to them in the Act and the Rules.

PART-II

Service Provisioning, Interruption and Disconnection

4. Service Provisioning:—(1) Consumers shall be able to select the Operator as well as the available Services as per their own choice.

(2) The Services shall be provided to Consumers in a fair, transparent, efficient and non-discriminatory manner.

5. Service Interruption:—(1) Consumers shall be entitled for uninterrupted Services at all times.

Provided that in case of planned network system enhancements, updates or upgrades, the Consumer shall be given thirty (30) days prior service interruption notice by the Operator.

Provided further that in the case of unforeseen technical interruptions/faults the Operator shall inform the reasons for the interruption and expected time of restoration of Services to the Consumer by any means listed in sub regulation (2) of regulation 7.

(2) Operators shall take all reasonable and necessary steps in providing Consumers with adequate arrangements/concessions in case of lengthy outages or Service interruption for which due notice was not served.

6. Withdrawal of Service—Operators may withdraw the provision of any Service to Consumers, provided such withdrawal is approved by the Authority and thirty (30) days prior notice is given to Consumers.

7. Suspension and Disconnection of Service:—(1) Subject to prior communication of suspension and disconnection policies to the Consumer, an Operator may suspend or disconnect a rendered Service in accordance with their policies.

(2) Without prejudice to the foregoing provisions of sub-regulation (1) above, Operators shall give fifteen (15) days prior notice to Consumers in case of suspension or disconnection of Services, not less than once by any of the following means:

- (i) personal service;
- (ii) registered/courier mail;
- (iii) telephone;
- (iv) fax transmission;
- (v) electronic mail;
- (vi) invoice/bill; and
- (vii) Short Messaging Service.

Provided that the Operator shall clearly communicate the reasons for suspension / disconnection to the Consumer along with the actions required on the part of that Consumer to avoid such suspension / disconnection.

(3) The Operator shall not suspend or disconnect a Service to a Consumer on account of which the Consumer has paid all the dues, even if the Consumer has defaulted in the payment to the Operator in relation to some other Service(s).

Provided that an Operator may suspend/ disconnect all connections of an individual Service to a Consumer, which are subscribed by that Consumer in his own name and the default is not cleared for any one of such connections.

(4) The Operator shall not deny access to emergency numbers to a Consumer, where the Service is suspended for any valid reason.

(5) The Operator shall restore Services to a Consumer within twenty four (24) hours from when the Consumer has taken all remedial steps, to the

satisfaction of the Operator, in order to rectify the matter resulting in such suspension or disconnection by the Operator.

PART -III

Commercial Practices

8. Commercial Practices:—(1) Operators shall not use unfair Commercial Practices when selling Services to Consumers.

(2) A Commercial Practice shall be regarded as unfair if:

- (i) it is contrary to the requirements of Professional Diligence;
- (ii) it is a misleading action under provisions of sub-regulation (3);
- (iii) it is a misleading omission under provisions of sub-regulation (4); or
- (iv) it is listed in sub-regulation (5).

(3) A Commercial Practice is a misleading action if:

- (i) it contains false information, and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average Consumer in relation to one or more of the matters listed below, and it causes or is likely to cause him to take a Transactional Decision that he would not have taken otherwise:
 - a. the existence or nature of the Service;
 - b. the main characteristics of the Service, such as its availability, validity, benefits, risks, after-sale consumer assistance, complaint handling, date and method of provision, delivery, fitness for purpose, usage, quantity, specification and results to be expected from its use;
 - c. the extent of Operator's commitments and motives of Commercial Practice;
 - d. the tariff or the manner in which tariff is calculated and the existence of a specified tariff advantage;

(4) A Commercial Practice is a misleading omission if, in its factual context, taking account of all its features and circumstances and the limitation of the communication medium, it omits, hides or provides in an unclear, unintelligible,

ambiguous or untimely manner such material information that the average Consumer needs, according to the context, to take an informed Transactional Decision and thereby causes or is likely to cause the average Consumer to take a Transactional Decision that he would not have taken otherwise.

(5) The following Commercial Practices shall be regarded as unfair in all circumstances:

- (i) Falsely claiming that a Service is able to facilitate winning in games of chance; and
- (ii) Requiring a Consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to pertinent correspondence, in order to dissuade a Consumer from exercising his contractual rights.

9. Code of Commercial Practice and Service Contracts—(1) The Operators, who are required to take approval of the Authority regarding Code of Commercial Practice and standard contract of service under their respective license, shall publish their Code of Commercial Practice and standard contract of service for the information of Consumers.

(2) The unfair terms used in the contract concluded with a Consumer by any Operator shall not be binding on the Consumer.

(3) Following is the indicative and non-exhaustive list of items, which may be regarded as unfair if it has the object or effect of:

- (i) inappropriately excluding or limiting the legal rights of the Consumer against the Operator in the event of total or partial non-performance or inadequate performance by the Operator of any provision of the Service contract;
- (ii) making an agreement binding on the Consumer whereas provision of Services by the Operator is subject to a condition whose realization depend on his own will alone;
- (iii) requiring any Consumer who fails to fulfill his obligation to pay a disproportionately high sum in compensation for restoration/ rectifying the breach;
- (iv) authorizing the Operator to dissolve the contract on a discretionary basis where the same right is not granted to the Consumer;

- (v) permitting the Operator to retain the sums paid for Services that are not yet supplied by him and where it is the Operator himself who dissolves the contract;
 - (vi) automatically extending a contract of fixed duration without the consent of the Consumer;
 - (vii) irrevocably binding the Consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract;
 - (viii) enabling the Operator to alter the terms of the contract unilaterally without a valid reason unless the Operator is required to inform the Consumer with reasonable notice and the Consumer is free to dissolve the contract;
 - (ix) providing the tariff of Services to be determined at the time of delivery, or allowing the Operator to increase the tariff without giving the Consumer the corresponding right to cancel the contract if the tariff is deemed too high by the Consumer;
 - (x) obliging the Consumer to fulfill all his obligations where the Operator does not perform his;
 - (xi) giving the Operator the possibility of transferring his rights and obligations under the contract where this may serve to reduce the guarantees for the Consumer without his agreement; and
 - (xii) excluding or hindering the Consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the Consumer to take disputes exclusively to arbitration which are not covered by legal provisions, unduly restricting the evidence available to him or imposing a burden of proof which according to the applicable law is not valid or should lie with another part to the contract.
- (4) The Authority may, on its own or on the request of Consumer(s) or Operator(s), review the terms and conditions of the Code of Commercial Practice and service contract.
- (5) Subject to the approval of the Authority, the Operators may also amend the terms of the Code of Commercial Practice and conditions of the service contract.

10. Tariff and Billing:—(1) The Operators shall ensure:

- (i) that no Advertisement shall be launched or tariff shall be charged for any Service to Consumers without approval of the Authority, if such approval is required.
- (ii) that Consumers know the exact costs for all Services prior to purchase, clearly expressed without any false or misleading information ; explicitly disclosing the tariff rates, unit of charging, applicable taxes etc. in their Advertisements;
- (iii) that the effective tariffs for all Services are in accordance with the tariffs as published in Advertisements;
- (iv) that in any event, not to pre-activate any tariff on Consumer, optional in nature, without the consent of that Consumer.

(2) All Operators shall provide detailed billing information to their Consumers in accordance with license terms and conditions, Regulations/Directives issued by the Authority, Code of Commercial Practice and service contract as approved by the Authority

PART- IV**Redressal of Consumer Grievances**

11. Nature of complaints—Notwithstanding anything contained in any procedures provided in any law for the time being in force, all Operators shall entertain complaints of Consumers in relation to any Service, including but not limited to the following issues:

- (i) Misuse of Service
- (ii) Quality of Service
- (iii) Illegal Practices
- (iv) Poor Services
- (v) Provision of Service
- (vi) Misleading Statements
- (vii) Non-Provision of Service
- (viii) Mobile Number Portability related complaints

12. Complaint Handling Mechanism—(1) All complaints, at the first instance, shall be filed with the Operator against whom the complainant has any grievance.

(2) For the purpose stated above, every Operator shall establish and maintain a Consumer complaint handling mechanism.

(3) The complaint handling mechanism shall be widely publicized and responsive to Consumer complaints in a comprehensive and effective manner.

13. Modes of filing of complaints with Operators—(1) Every Operator shall establish a round the clock Consumer care call center having a dedicated helpline number for lodging of Consumer complaints.

Provided that where a complainant chooses to lodge a complaint in writing through a facsimile, e-mail, internet webpage form or the post, guidance in this regard shall be extended by the Operator through the consumer manual.

(2) The charges for Consumers when accessing the helpline number shall not exceed the tariff determined by the Authority.

14. Procedure for handling of complaints:—(1) Upon receipt of every Consumer complaint, the Operator must register the said complaint through the allocation of a unique complaint number, to be communicated to the complainant along with the specific timeframe within which the Operator shall redress Consumer grievance as soon as possible but not later than three working days.

(2) An easy to access escalation path shall be set up by the Operator, if required by the Authority, to be followed by the complainant where the complainant is not satisfied with the redress of the complaint or where no response has been received from the Operator when such complaint is lodged at the first level with the Operator.

15. Complaints filed with the Authority.—(1) In the event that the complainant is not satisfied with the redressal of the complaint provided by the Operator, including but not limited to instances where the Operator fails to respond under sub-regulation (2) of regulation 14 to the complaint within three working days, the complainant shall then file the complaint with the Authority as specified in sub-regulation (2)

(2) All complaints under these Regulations shall be registered with the Consumer Protection Directorate, Pakistan Telecommunication Authority Headquarters, Islamabad or its Zonal offices where applicable by the Consumers

personally or through their representative(s) by post, courier, online or email at complaint@pta.gov.pk in the manner specified in sub-regulation (3).

(3) Complaints to be filed under sub-regulation (2) of regulation 15 of these Regulations must include, at minimum, the followings:

- (i) the name and address of the complainant;
- (ii) the name and address of the Operator against whom the Consumer has grievances;
- (iii) the nature of complaint and a brief statement of facts;
- (iv) a copy of service contract or agreement pertaining to the complaint, if available;
- (v) proof of previous correspondence/complaints filed with the Operator ; and
- (vi) specific relief or remedy sought.

(4) Upon receipt of every Consumer complaint, the Consumer Protection Directorate or respective Zonal office will acknowledge the said complaint as soon as possible but not later than three (3) working days through the allocation of a unique complaint number to be communicated to the complainant.

(5) Upon admission of the complaint, the same shall be forwarded by the Consumer Protection Directorate or the concerned Zonal office to the Operator for resolution of the same or for reply in writing, as the case may be.

(6) The Operator shall communicate the redressal status report of the complaint, as directed by the Authority, simultaneously to the concerned Consumer and the Authority within the time limit as specified by the Authority.

(7) Where the Operator is required to submit its reply on a given complaint, the Consumer Protection Directorate or the concerned Zonal office, as the case may be, shall examine the Operator's reply and dispose off the complaint with issuing appropriate order.

(8) If no reply is received from the Operator within the given deadline, the Consumer Protection Directorate or concerned Zonal office, as the case may be, may call the Operator and/or the Consumer for a hearing and shall pass an order accordingly, which shall be binding on both the parties.

(9) In the event that a complaint filed under sub-regulation (2) of Regulation 15 reveals general deficiency or systemic inadequacy in the provision of Services adopted by the Operator, the Operator shall take remedial steps in respect of all Consumers and intimate the same to the Authority.

(10) Without prejudice to the foregoing the Authority may on its own, initiate appropriate action against the Operator, for any activity or activities directly or indirectly, adversely affecting the interests of the Consumers.

PART- V

General Conditions

16. Confidentiality of Information.—All Operators or employees of Operators shall maintain confidentiality of information about Consumers and shall ensure that no information about Consumers use of network or Service is made available to any third person other than what is printed and published in services directories, agreed by the Consumer or required by any applicable law.

17. Publication of Consumer's manual:—(1) All Operators shall publish a consumer's manual and shall advertise the same, through print or electronic media, within ninety (90) days of the notification of these Regulations, which shall contain the following details:

- (i) customer services helpline;
- (ii) pre-requisite for new connection;
- (iii) applicable tariff and charges;
- (iv) quality of services standards; and
- (v) procedure for resolution of complaints.

Provided that all Operators commencing Services after the notification of these Regulations shall implement the conditions of sub-regulation (1) within 90 days of commencement of Services.

(2) The manual under sub-regulation (1) of regulation 17 shall be available at all outlets of the Operators and accessible to Consumers on the Operator's website which shall be updated from time to time.

(3) Operators shall after the notification of these Regulations include the consumer manual with every sale of their Service.

18. Directions of the Authority.— All directives, guidelines and orders etc. issued by the Authority in pursuance of these Regulations shall be binding on the Operator and the Consumers.

19. Force Majeure.—In an event or circumstance which is beyond the reasonable control of the Operator including, without limitation, acts of God, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of government, or of any competent authority, industrial disputes of any kind, fire, lightning, explosion, flood, weather of exceptional severity, acts or omissions of person for whom the Operator is not responsible, strikes, lock outs the Operator shall not be accountable for that period to a Consumer with respect to any Service.

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Deputy Director (Law & Regulations).