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No. P&R /TECH-007/PTA (Consumer Protection), Dated: 18th September 2006

Pakistan Telecommunication Authority,
PTA Headquarters, F-5/1, Islamabad
[Attention: Mr. Aasif Inam (Director Commercial)]

Subject: Consultation Paper On Bandwidth Tariffs Dated 04.09.2006.

Dear Sir

Ref: Consultation Paper issued by PTA vide No. 15-08/06(CA)/PTA dated 04th September 2006 on Bandwidth Tariffs as an extension to the Consultation Paper issued by the Authority on April 17, 2006.

Just to recap it is intimated that the Honorable Lahore High Court, Rawalpindi Bench, Rawalpindi, vide Order dated 07.08.2006 in FAO126/2006 had very graciously set aside the earlier Determination of the Authority dated 23.06.2006 on the subject at hand on the basis of procedural and legal lacunas. Hence, the previous Consultation Paper dated 17 April 2006 on the instant subject is no more valid since the entire process, including the Consultation Paper, which followed the Determination was declared null and void and without the backing of law, by the Honorable Court. The matter was remanded back to the Authority with a manifest direction to carry out the same in strict adherence to law.

2. The Consultation Paper issued by PTA vide No. 15-08/06(CA)/PTA dated 04th September 2006 on Bandwidth Tariffs primarily has no backing of Law. There can be no regulation of tariffs by PTA through such a Consultation Paper/ discussion. The term "Consultation Paper" does not figure either in the Act or in the Rules or in the Regulations drawn up by the Authority or any Policy issued by the Federal Government. Moreover, the Authority has outlined the purpose of the instant Consultation Paper in Para 10 of the same whereby it is **to identify, review and remove anomalies that exist in the tariff structure.** It is pertinent to mention that law does not validate any such purpose to be satisfied through any such Consultation Paper.

3. Sections 6(a) and 26(d) of Pakistan Telecommunication (Re-Organization) Act 1996 (the Act), requires protection of the rights of PTCL whereas to reduce PTCL bandwidth tariffs to a level which does not consider a reasonable rate of return on investment (RoI), since the same is not possible to be evaluated in the absence of cost calculations due to non provision of costing methodology by the Authority itself.

4. For the establishment of the tariff, Authority is statutorily bound to publish the criteria every three months before adopting it as per Section 26 of the Act. In the absence of this criterion, any consultation process in this regard suffers from a fundamental legal infirmity. Since the condition precedents for the exercise of jurisdiction do not exist, interference in the same has no sanction of the law.

5. The Consultation Paper also violates Section 5(2) (h) of the Act as terms of interconnection arrangements between Telecom Licensees can only be determined by the Authority where the parties to those arrangements are unable to agree upon such terms.

There is no such disagreement, and so the issuing of such Consultation Paper in order to finally vary the agreed bandwidth rates is not in conformity with the law.

6. The Consultation Paper is also interfering with agreed rates and charges under the duly executed and concluded Agreements between PTCL and other operators, whose basis (RIO) has been approved by the Authority itself.

ON MERITS AND SUBSTANCE.

7. The Authority under Para 27 and 28 of the Consultation Paper is cognizant of the fact that PTCL has been constantly and drastically reducing its Bandwidth Tariffs since 1998. PTCL reduced its bandwidth rates to 15%, 32%, 38%, 25%, 60%, 34% and 24% in July 1999, January 2000, May 2000, September 2000, June 2002, and August 2004. The last price cut was made in June 2006. The insistence of Authority to further cut down PTCL's recently revised Bandwidth tariffs is without justifications and without adhering to the procedural requirements mandatorily prescribed by law and is absolutely uncalled for.

8. The Authority is not entitled to compare PTCL bandwidth tariffs on the basis of the international benchmarks it has selected, for the following reasons:

a) The primary obligation on the Authority is to set tariffs which are cost-based. The Authority has not done so.
b) The Authority considers "the issue" to be that tariffs are not in line with those of other countries, which statement of the Authority is not supported by complete contextual analysis relating products types, supply and demand, total telephony demand, geography and GDP etc.
c) The Authority itself has not specified the basis of determining the costs, and has not provided the "costing methodology" to be adopted by PTCL despite request from PTCL, therefore, non-provision of cost does not arise at all. Had the Authority issued the criteria for costs as required, PTCL must have provided the requisite costs. Hence, it is pre mature to say that costs are not available.
d) In any event, the choice of the countries used for comparison is arbitrary and not supported by any reasoning. Rule 16(4) of the Pakistan Telecommunication Rules, 2000, requires these to be "similar services provided by telecommunication operators in other countries providing **comparable telecommunication services** to those of the SMP operator", and Regulation 11(1) of the Fixed Line Tariff Regulations, 2004, requires the international benchmarks to be from **"comparable countries"**. No justification or reasoning is given in the Consultation Paper to suggest that the Authority is benchmarking on this basis.
e) The Authority has adopted an approach of 'pick and choose' vis-à-vis the tariff rates, claimed to be prevalent in different countries.
f) The figures relied upon are not verified.

9. At the conclusion of this process, the reduction in PTCL Bandwidth Tariffs is going to cause discouragement of future investment as the drastic reduction in tariff eliminates incentive to investors which is against the basic premise of GOP objectives, policy and the parameters and principles laid down in the policy to facilitate development / expansion of existing and alternate infrastructure.

10. The international comparisons contained in the Consultation Paper are not 'apple to apple' because:

a) Fiscal policies, incentives, subsidies in the referred countries are not the same nor known to the Authority nor disclosed nor discussed by the Authority in the Consultation Paper.
b) PTCL tariffs are essentially distance less while these are distance-based tariffs. Their cost would increase with distance from the Landing Station inwards, which would be a logical result of the order, but the Authority seems oblivious to it.
c) The tariff represents the rate at the Landing Station only, while PTCL provide the same rate to IPLC at Karachi and at Chitral.
d) The comparison with China is highly misleading and inappropriate. The Chinese government subsidizes almost every commercial and industrial activity and the rates are fixed accordingly.
e) Malaysia has more IT usage. Malaysia has eight cables, while PTCL has only two. Malaysian tariffs are also not distance based.
f) The price multiples of Japan and South Korea are not correctly calculated. Neither the distance less element is included nor the subsidies by the South Korean government noted.
g) Moreover, Japan and South Korea are not comparable countries, within the meaning of Rule 16(4) of the Pakistan Telecommunication Rules, 2000, or Regulation 11(1) of the Fixed Line Tariff Regulations, 2004. They are highly developed markets, saturated societies and in the case of Japan, Major portion of the population is concentrated in just four cities (Tokyo, Yokohama, Osaka and Hiroshima), all located in a narrow eastern corridor within a few hundred kilometers.
h) There is also no internationally prevalent tariff level or structure with which PTCL tariffs could or should be rationalized.
i) Moreover, the countries mentioned cannot be lumped as regional countries; on any basis, it is not correct to count Argentina as a regional benchmark.
j) There is no international prevalent tariff or structure on the basis of which IP Tariffs of PTCL had to be or could be rationalized. These tariffs have consistently been dropping due to technological improvements, operational efficiency, business synergy, whereby, a further drop is anticipated requiring no interference by the Authority.
k) ISPs, DNOPs, Call center operators and software exporters can avail the same tariff structure for IP & IPLC tariffs at Karachi, Lahore & Islamabad. Within the same class of license regime PTCL does not discriminate among the operators.
l) PTCL in compliance with the GoP policies regarding promotion of ICT in the country has been offering subsidy on various elements of the ICT based services like:

    i. One local call, independent of duration and distance, for dial up internet access by user of internet services.
    ii. VSAT connectivity as standby at PTCL cost at much higher price to Call Centre operators.
    iii. IPLC, IP and DPLC bandwidth at highly subsidized rates.
    iv. The telecom deregulation policy and broadband policy also stresses no increase for ICT related services.

m) The above concessions have been extended to ISPs, Call centers & DNOPs for the last 4/5 years and are in the knowledge of the Authority. All of a sudden these same concessions are now being viewed as discriminatory which are against rational logic. LDI operators are operating under different license regime and they are not in competition with ISPs, Call centers & DNOPs. Their domain of operation is different depending on the type of service. As such their licensing requirements and licensing fees charged by PTA is also different. Within each licensing regime, PTCL's tariffs are same. Thus there is no discrimination as alleged.

Further Observations on the Merit of the substance in the Paper

11. The following factual errors in the text of the paper are pointed out.

a) The high and low multiples given in table 6 do not correspond to the text given in para 40 of the paper as well as the multiples given for various countries in table 4. For example in table 4, the multiple for Bangladesh is given as 1:12:30 whereas in table 6, the high multiples are given as 1:7:17 for E1:DS-3:STM-1.
b) In table 4, it is stated that IPLC tariff for E1 in Malaysia is US $ 1408 per month which is the lowest of the eight countries listed in the table including Japan & South Korea. However, in para 40 of the paper, it is stated that Malaysia is considered least competitive market by Gartner which appears to contradict table 4.

12. The Authority is requested to provide all the reports and material referenced in the paper since many of the reports and tariffs are not publicly accessible. This is required to ensure **open and transparent proceedings as per Telecom Act 1996** (amended in 2006).

13. PTCL's tariffs for IPLCs are distance independent i.e, the tariff for a 2 Mbps IPLC from London (UK) to Karachi is the same for London – Lahore or London – Islamabad whereas in countries like India & Malaysia, IPLC tariffs are upto Cable landing stations and the domestic portion is charged separately. Thus for IPLC's it is not an apple-to-apple comparison. Moreover the products types like half circuit, full circuit, restorable and non-restorable etc have not been specified. Rates quoted in Table 4 are up to cable stations and does not include domestic leg, whereas PTCL's rates include both international as well as domestic leg. If PTCL is allowed to quote rates up to Karachi PTCL rates will be lower than many countries in the Table. UK is not a comparable country with Pakistan.

Answers to specific questions:

14. (Para 38): Do you think that the list of countries should be further expanded for benchmarking purposes? The stakeholders can also send tariffs of other countries that are authentic and verifiable.

Yes list of countries should be expanded to include countries comparable to Pakistan.

14.1 The Gartner Report is old. According to Telegeography's research of April 2006, "bandwidth glut is over after several rough years and now there is price stability in bandwidth market."

14.2 As stated in the para 9 of the PTA paper, the fixed tariff regulation 2004 vide Section 11(1) states that "*.... the Authority may take into account the international bench marks of **comparable countries** while setting / approving tariffs of leased lines.*" Of the countries mentioned in the PTA paper (Table 4), Japan, Hong Kong, Singapore and South Korea are developed countries with high access to ICT services and can not serve as benchmark for a developing country like Pakistan.

14.3 With reference to "**comparable countries**" there is no single indicator which allows us to define them. To overcome this difficulty ITU has devised a new index called Digital Access Index (DAI) which measures the overall ability of individuals in a country to access and use new Information & Communication Technologies (ICT). It is composed of a few considered variables in order to include the widest number of countries and enhance transparency.

14.4 The Digital Access Index (DAI) is built around four fundamental factors that impact a country's ability to access ICTs: infrastructure, affordability, knowledge and quality. A fifth factor, actual usage of ICTs is important for matching the theory of index with the reality in a country. Eight indicators are used to represent the five factors, as listed below.

> "Fixed telephone density, Mobile telephone density, Adult literacy, Overall school enrolment, Internet Access price as a % of per capita income, Broadband density, International internet bandwidth per capita, Internet users per 100 inhabitants".

14.5 The Digital Access Index (DAI) has been calculated for 178 countries in 2002. They are classified according to high, upper, medium and low ICT access. The DAI allows countries to see how they compare to peers. It also provides a transparent and globally measurable way of tracking progress towards improving access of ICTs.

14.6 From the above perspective the international benchmarking should be based on an average of few countries having DAI slightly higher than Pakistan and few countries having DAI slightly lower than Pakistan.

14.7 Majority of the international carriers do not publicize their IPLC, IP & DPLC tariff which makes comparison more challenging and hard to verify and thus the reliance on "Cost based tariff" becomes more logical instead of making subjective hasty decisions.

15. (Para 40): Should IPLC be priced up to the landing stations in Pakistan? And DPLC charges for local access should be separated from IPLC tariffs?

Yes, IPLC be priced up to the landing stations in Pakistan.

15.1 PTCL has been providing a distance less tariff for IPLC for Data operators in line with GoP's policy to proliferate ICT access throughout the country on an equitable basis. In this regard, it may be noted that existing distance less IPLC tariff incorporates a discount for locations beyond the landing station. In the competitive market DPLC charges for local access can be separated from IPLC tariffs and IPLC tariffs can be priced up to the landing stations; however this would result in higher tariffs for cities much farther away than the landing point. Our landing point is in Karachi while cities as far as Peshawar are more than 1500 km away, this would discourage ICT and broadband in northern areas of the country. This distinction would make ISP services more expensive in the northern areas than South. In this regard, consultation by the Authority with GoP would be more meaningful than unilateral removal of tariff differentials by downward matching non-ICT tariff with ICT tariff, squeezing any element of cross-subsidy.

16. (Para 40): Do you agree with the level of tariffs in terms of E-1 capacity as well as price multiplies for higher capacities?

16.2 The tariffs for E1 for LDI voice service should not be clubbed with data service tariff since the IPLC voice tariff is part of RIO which is a separate contractual agreement. As the RIO is in process of revision, therefore IPLC voice tariff should be dealt with as part of the RIO.

16.3 With regard to IPLC data tariff for ISPs and Call centers, the existing tariff is lower on a regional basis keeping in mind the fact that it is distance less. To further facilitate the growth of call centers and BPOs, bandwidth charges may be split in IPLC and DPLC parts and the DPLC part may be absorbed by GoP through R&D fund / USF, so that the end price for them may remains lower.

17. (Para 41): Should IPLC tariffs for voice and data services be charged separately? Can different tariffs for IPLC be objectively justified on the basis of costs incurred in providing IPLC for voice and data services?

PTCL IPLC tariff for ISP and data services were fixed in accordance with in accordance with GoP policy to encourage IT enabled services. Thus PTCL is providing these services on subsidized rates. IPLC Tariff for Voice/ Data is recommended to be the same. However Tariff for Restorable & Non- Restorable connectivity should not be the same.

Tariff for voice and data should be kept separate till the cost based prices are introduced.

18. (Para 45): Should Price Multiple be kept at the same level as they were before the issuance of Broadband Policy?

18.1 First of all majority of international carriers do not publicize their IPLC, IP and DPLC rates making comparison more difficult. Before looking at price multiples we should also look at quantum of base price. Base price of E1 in Pakistan is lower than all countries except Malaysia. Also prices for DS-3 and STM-01 in Pakistan are lower than that of Bangladesh and prices of STM-1 compared against India are only $3,444 higher, so the ratios should only be compared if the base line is the same.

18.2 Multiples in use in different countries / markets are the result of tariffs based on costs of different bandwidth capacities and varying the distances involved which in turn are dictated by demand, supply, input costs, geography total basic telephony demand ect. To use such multiples without taking into account these factors and work back tariffs would lead to unrealistic and distorted conclusion. In the paper no normalized benchmarks are given for tariffs and multiples for higher bandwidths (DS3, STM-1).

PTCL never offered STM 1 capacity for IP prior to July 1, 2006. Prices quoted table 8 are those of Flag Telecom and not PTCL.

19. (Para 49): Whether PTCL should offer same tariffs for Voice and Data Services? Can different tariffs for IP services be objectively justified on the basis of costs incurred in providing IP for voice and data services?

As already stated prices for ISPs and Data services are subsidized by PTCL in accordance with GoP policy. In Pakistan especially to promote ICT and broadband/Internet connectivity data circuit rates were discounted to current levels. In Western countries and even in India the ICT is developed to an extent that same rate can be offered to both data as well as switched circuits.

Tariff for voice and data should be kept separate till the cost based prices are introduced.

20. (Para 50): Should PTCL offer IP bandwidth on shared basis as offered in other countries such as India?

- The distance less CIR bandwidth cost for IP in Pakistan is comparable with the shared IP bandwidth price in India.
- ISPs & DNOPs use CIR bandwidth at the backend since they resell bandwidth at the front end. Similarly, LDIs require CIR bandwidth to ensure quality of voice service.

PTCL has no hesitation in providing IP bandwidth on sharing bases. In fact PTCL offered such services in the past but discontinued the same due to lack of demand.

21. (Para 55): Should DPLC tariffs for voice and data services be charged separately? Can different tariffs for DPLC be objectively justified on the basis of costs incurred in providing DPLC for voice and data services?

The tariffs for DPLC voice should not be the clubbed with data service tariff, as the DPLC voice tariff is part of RIO which is a separate contractual agreement. As the RIO is in process of revision, therefore DPLC voice tariff should be dealt with as part of the RIO. Once the cost basis is finalized for RIO, the same may be used for determining the price for voice as well as data DPLC.

As already stated, the same tariff for voice and data services should be based on cost.

Best regards.

(Gul Ahmad)
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