



Registrar

# National Electric Power Regulatory Authority Islamic Republic of Pakistan

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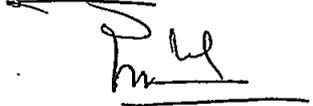
No. NEPRA/R/ADG(Trf)/TRF-577, TRF-581, TRF-582, TRF-584 & TRF-585/17543-17545  
September 16, 2022

Subject: **Decision of the Authority in the matter of Petitions filed by Pakistan Telecommunication Company Ltd. (PTCL), Telenor Pakistan (Pvt.) Ltd., Pak Telecom Mobile Ltd., Pakistan Mobile Communication Ltd. and Deodar Private Ltd. for Revision of Tariff from Commercial to Industrial Tariff (Case No. TRF-577, TRF-581, TRF-582, TRF-584 & TRF-585)**

Dear Sir,

Please find enclosed herewith the subject decision of the Authority (17 Pages) in the matter of Petitions filed by Pakistan Telecommunication Company Ltd. (PTCL), Telenor Pakistan (Pvt.) Ltd., Pak Telecom Mobile Ltd., Pakistan Mobile Communication Ltd. and Deodar Private Ltd. for Revision of Tariff from Commercial to Industrial Tariff in Case Nos. TRF-577, TRF-581, TRF-582, TRF-584 & TRF-585 respectively, for information, please.

Enclosure: As above

  
16 09 22  
( Syed Safer Hussain )

Secretary  
Ministry of Energy (Power Division)  
'A' Block, Pak Secretariat  
Islamabad

CC:

1. Secretary, Cabinet Division, Cabinet Secretariat, Islamabad.
2. Secretary, Ministry of Finance, 'Q' Block, Pak Secretariat, Islamabad.



**Decision of the Authority in the matter of Petitions filed by Pakistan Telecommunication Company Ltd. (PTCL), Telenor Pakistan (Private) Ltd., Pak Telecom Mobile Ltd, Pakistan Mobile Communications Ltd., and Deodar Private Ltd., for revision of Tariff from Commercial to Industrial Tariff**

1. Pakistan Telecommunication Company Ltd. (PTCL), Telenor Pakistan (Private) Ltd., Pak Telecom Mobile Ltd (PTML), Pakistan Mobile Communication Ltd. (PMCL), and Deodar Private Ltd., filed separate petitions, requesting the Authority to accord approvals for revision in tariff of telecom operators from Commercial to Industrial category, in light of the status afforded by the Government of Pakistan vide Notification No.1(11)/2004-Invlll, dated 20.04.2004 whereby the Telecom Sector, including Cellular Operators has been classified as an Industry.
2. All these Petitions were admitted by the Authority. In order to provide an opportunity of hearing to all the concerned and meet the ends of natural justice, the Authority decided to conduct hearings in the matter.

**Proceedings**

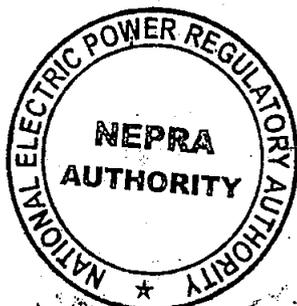
3. Hearing in the matter of Petition filed by PTCL was held on April 05, 2022. Similarly, hearing regarding Petitions of Telenor, and PTML was scheduled on May 30, 2022, however, the same was adjourned upon the request of the Petitioners to re-schedule the same along-with the petitions of PMCL and Deodar Pvt. Ltd., already filed before the Authority, being of similar nature.
4. Consequently, hearing for all these petitions i.e. Telenor, PTML, PMCL and Deodar Pvt. Ltd., was scheduled on July 05, 2022, for which Advertisement was published in the newspapers, and separate notices were sent to the stakeholders. Copies of advertisement and request of the Petitioners were also uploaded on NEPRA's website.
5. Hearing was attended by the Petitioners, Intervener M/s CM Pak (Zong), Ministry of Energy, K-Electric, CPPA-G and other relevant stakeholders.
6. A brief of the submissions made by Telecom Operators in their Petitions and during the hearing is as under;

**Submissions made by PTCL:**

7. PTCL while justifying its request submitted that is paying heavy amount of electricity bill for all regions as detailed below;

| No of PTCL Regions | No of Electricity Connections, | Consumption Kwh Units | Electricity Bill (Rupees) |
|--------------------|--------------------------------|-----------------------|---------------------------|
| 19                 | 7823                           | 17.0 Million          | 339.84.00 Million         |

8. It also submitted that existing tariff of PTCL connections was industrial tariff, B-I, and B-2 up to Nov 2001, then the Ministry of Water and Power, GoP vide notification dated 08.08.2001



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- revised the tariff A-2 (a) up to 20 kW and A-2 (b) above 20 kW separately. The schedule of tariff was revised, and a new tariff A-2 (c) was approved by NEPRA w.e.f. 03-09-2007 which was applicable to all commercial connections exceeding 20 kW load (two-part tariff).
9. IT further stated that Telecommunication sector was declared as "Industry" by the Ministry of industries and Production, GoP vide Notification dated 20.04.2004, therefore, Telecom Operators are entitled to benefit all the concessions available to "Industry" including industrial tariff of electricity for its exchanges and other installations.
  10. It also submitted that through Finance bill 2021, an amendment is made in section 2(29C) of the Income Tax Ordinance, 2001 and new clause "c" has been inserted, which declares Telecom Sector as an industrial.
  11. PTCL also mentioned that due to the reduction of load limit of A-2 (b) tariff, the grievances of Telecom Operators substantially increased as the bills of exchanges and other connections have gone up by 40% and the major factor of increase of bills has been the impact of fixed charges and low power factor penalties.
  12. PTCL submitted that, there are 75% telephone exchanges installed in the rural areas of Pakistan with small switching arrangement as per villagers' demand. The sanctioned /connected load of these connections fall between 5 kW to 40 kW and the running load of these exchanges is a maximum of 10 kW. In many cases, the sanctioned loads of these connections do not even reflect the actual load of this small load, especially in winter season. Sometime MDI is recorded 3-4 times higher than the sanctioned load or deliberately wrong reading by the reading staff of DISCOs.
  13. It also stated that no inactive power is recorded as there is no motive load; therefore, range of power factor is already up to 1.0%. PFI equipment's have already been provided on each site. In comparison of revenue received, these exchanges are now facing great financial implications due to the increased electricity bills with the impact of fixed charges and LPF. Due to heavy loss in revenue, PTCL is forced to close approximately 10 exchanges every month.
  14. During hearing, Legal representative of PTCL submitted that their tariff should be converted from commercial to industrial, as the prime objective of declaring Telecom Sector as Industry was to incentivize the segment, therefore, telecom operator may be inserted under the industrial tariff definition of tariff terms & condition, to make available such benefits as per the notification of Ministry of Industry dated 20.04.2004 and subsequent amendment in Finance Act 2021. It also submitted that in the recent COVID situation, telecom sector played a major role by keeping the community connected by providing internet services.
  15. Upon inquiry form the Authority regarding passing on the benefit of change in tariff from Commercial to Industrial category, representative of PTCL submitted that in Peak hours, when they are paying huge bills for electricity, the telecom operator are offering different discounted packages to public. Similarly, in areas where frequent load shedding is observed, telecom operators continue their services by generating electricity on alternate fuel based sources to ensure uninterrupted signals. These are the reasons, the GoP has announced them as industrial



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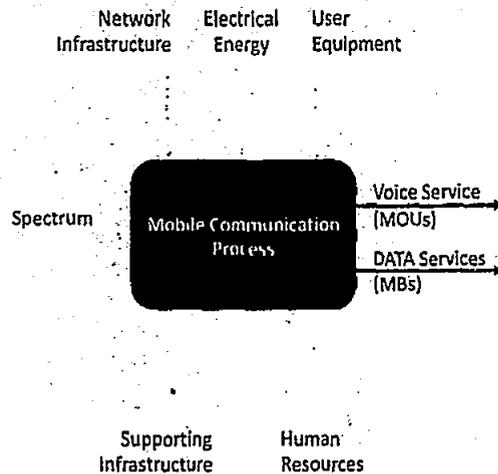
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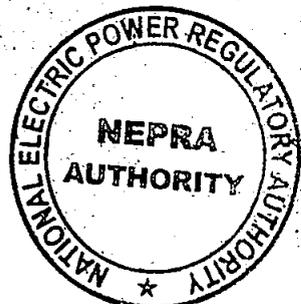
undertaking and any reduction in electricity prices will result in additional cash flows for the telecom sector, which would be utilized for future investments and providing telecom services in remote areas.

16. Subsequently, PTCL vide letter dated 22.04.2022, while justifying the concept of value addition, submitted that;

a. Mobile Communication may be viewed as a process akin to any other industrial process with certain inputs and outputs as shown below;



- b. The Petitioner has submitted that following are the key inputs involved in this process.
- c. **Spectrum** — This is the raw/scarce resource that is used as a vehicle for transportation of VOICE and DATA. It refers to the invisible radio frequencies that wireless signals travel over. The spectrum used for cellular mobile communication are electromagnetic waves. Commonly referred to as 'frequencies' and airwaves', which are modulated by the network infrastructure to carry the user traffic (i.e., VOICE and DATA). The cellular mobile spectrum is a scarce resource, which makes it very costly. Its use is governed by strict laws and regulations. Ufone mobile network is making use of spectrum in 900 MHz, 1800 MHz. and 2100 MHz bands.
- d. **User Equipment**— This is the terminal, most commonly a mobile phone, that end user use to connect to the network. Its basic function is to map/modulate the user traffic (VOICE and DATA) onto the signal (spectrum) generated by the mobile network when the user has traffic to send. Likewise, when the user is receiving traffic, its function is to extract/demodulate the user information from the received modulated signal.
- e. **Primary Mobile Infrastructure**— This refers to the physical hardware nodes that constitute the mobile network. The most common and important network element is the Base Station (BS), whose function is to generate the wireless signals on which user traffic is carried. A typical mobile network has thousands of Base Transceiver Stations (BTS). These BTSs are connected by core networks elements which allow traffic from users connected to

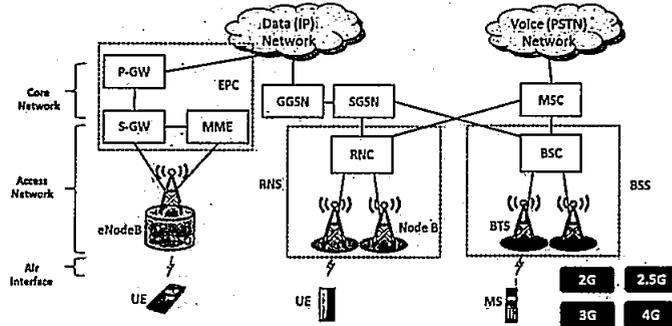


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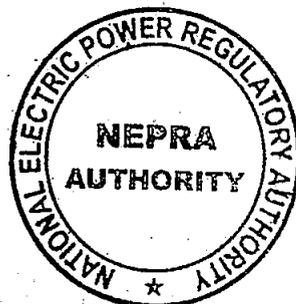
different BTSs to be switched to the correct destination. There are two types of core networks: a circuit switched core is responsible for switching VOICE traffic, while a packet core is responsible for switching DATA traffic. The typical architecture of a mobile network is shown below;

### 2G, 3G & 4G Network Architecture



**Notes:**

- i. 2G refers to the 2<sup>nd</sup> generation of mobile communication/networks, which were primarily designed for circuit-switched VOICE and elementary DATA services with data rates of a few hundreds of Kbps. GSM is the most common 2G network deployed around the world, including in the Ufone network. Ufone operates a GSM 900 MHz & 1800 MHz network.
- ii. 3G refers to the 3<sup>rd</sup> generation of mobile communication/networks, which aimed at addressing the shortcomings of 2G networks for DATA services, while still supporting circuit-switched VOICE services. 3G networks support data rates of several Mbps per user. The most widely deployed 3G technology around the world is WCDMA/HSPA. Ufone is operating 3G in 900 MHz and 2100 MHz spectrum.
- iii. 4G refers to the 4<sup>th</sup> generation of mobile communication/networks, which are optimized for delivery of DATA services only. Long Term Evolution (LTE) is the most prevalent technology around the world. 4G networks are ALL IP networks that do not support Circuit Switched VOICE. VOICE traffic of 4G users is either transported as IP DATA packets (VoLTE) or 4G users use 2G & 3G networks for VOICE Services (CS fallback). 4G networks support data rates of the order of several tens of Mbps per user. Ufone is operating 4G in an 1800 MHz spectrum.
- iv. Base Transceiver Station (BTS) is a term used for 2G Base Station.
- v. Node B is a term used for 3G Base Station.
- vi. eNode B is a term used for 4G Base Station.
- vii. Radio Network Controller (RNC) is node-specific to 3G networks. The RNC carries out radio (spectrum) resource management, some of the mobility management functions, and is the point where encryption is done before user data is sent to and from the mobile.





- viii. Base Station Controller (BSC) is a 2G network element that controls and monitors several base stations and provides the interface between the cell sites and the mobile switching center (MSC).
  - ix. Mobile Switch Centers (MSC) & Media Gateways (MGW) constitute the circuit-switched core for switching VOICE traffic in 2G & 3G networks.
  - x. Serving GPRS Support Node (SGSN) and Gateway GPRS Support Node (GGSN) constitute the packet core, which is used for switching DATA traffic in 2G & 3G networks.
  - xi. Serving Gateway (S-GW), Packet Gateway (P-GW), and Mobility Management Entity (MME) form the Packet Core of 4G networks, collectively known as Evolved Packet Core (EPC), for switch DATA traffic of 4G users.
    - a. In Ufone Network, SGSN and MME are hosted on the same hardware node, while GGSN and S-GW / P-GW are also hosted on a common hardware node.
  - xii. All elements in a Mobile Network are connected via transmission links. These are comprised of several complex processing technologies such as Microwave, MPLS, DWDM, PTN, SDH, ROADM, etc.
- f. The number of major network nodes in Ufone Network are as under;

| Network | 2G BS  | 3G BS | 4G BS | BSCs | RNCs | MSCs | MGW | SGSN | GGSNs |
|---------|--------|-------|-------|------|------|------|-----|------|-------|
| Ufone   | 10,180 | 8,688 | 6,976 | 108  | 17   | 9    | 50  | 4    | 4     |

- g. **Secondary Mobile Infrastructure**— This includes all other infrastructure owned by a mobile operator to support and operate the network. For example, all the office buildings and the associated systems such as IT systems, power equipment like generators, Transformers, UPSs, etc. Heating & cooling systems, and so on. This infrastructure is not directly required in the transmission of mobile communication signals, but it is needed to support the network infrastructure and its operation for the delivery of VOICE and DATA.
- h. **Electrical Energy** —Next to spectrum, Electrical energy is the most important resource needed to energize and operationalize the hardware that constitutes a mobile network. Electrical energy is used in the base station to power up the hardware and to generate the radio frequency signal (spectrum), which is then used by the user equipment for communication. The RF signal is modulated & demodulated by the user equipment to send and receive VOICE & DATA traffic respectively. Likewise, circuit-switched core and packet-switched core network elements use electrical energy to power up and switch user traffic to the correct destinations.
- i. Below table shows the typical power consumption of the major nodes in the Ufone network. The values shown in the table are only intended for comparing the magnitude of typical power consumption relative to each other. The exact power consumption of



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specific nodes however, can be different from these typical values depending on several factors including, but not limited to, node configuration, traffic loading, seasonality, geographic location etc.

| Metric                            | 2G+3G+4G BS | BSC   | RNC    | MSC   | MGW   | SGSN   | GGSN  |
|-----------------------------------|-------------|-------|--------|-------|-------|--------|-------|
| Typical Power Consumption (Watts) | 2,370       | 8,700 | 10,100 | 7,000 | 7,800 | 10,800 | 9,500 |

- j. The Petitioner submitted that given the significantly larger number of base stations compared to other network elements, the energy consumption of base stations represents the biggest share of the electrical power consumption in the mobile network. It is also important to note that other than the core mobile network, the secondary infrastructure also consumes a significant amount of electrical energy. Electrical energy expense, thus, represents one of the biggest heads of operational expense for a mobile operator and an important area where operators are constantly striving to optimize.

| Year         | Electrical Power Consumption in Ufone Network (KWHRs) | Electrical Power Consumption in Ufone Offices (KWHRs) |
|--------------|---|---|
| 2015         | 276,551,606   | 9,131,643   |
| 2016         | 273,964,715   | 7,729,783   |
| 2017         | 230,011,118   | 7,540,097   |
| 2018         | 209,619,886   | 6,008,342   |
| 2019         | 208,113,737   | 5,511,034   |
| 2020         | 221,625,811   | 4,431,403   |
| 2021         | 221,664,298   | 6,398,462   |
| <b>TOTAL</b> | <b>1,641,551,171</b>                                  | <b>46,750,764</b>                                     |

- k. **Human Resources** — Human Resources are the final component that brings together all the input resources that are needed to transform the raw spectrum into invaluable communication services. Human resources bring in the skillsets such as engineering, sales, marketing, logistics, finance, procurement, information technology, etc. that are crucial for extracting value from these raw input resources and converting them to our desired output communication services.
- l. The Petitioner also submitted that by supporting the industry by imposing an industrial tariff, we aim to improve network availability in sub-urban and far-flung areas of Pakistan by investing in more than four thousand LTE sites to cater to the needs of the growing population — service availability through network expansion, improved Quality of Service (QoS) through the introduction of latest technologies, and more choices for users. For example more than 60% of PTML planned sites would be in rural areas of Pakistan. Following is the province segregation with regards to rural area coverage:





| Province    | Rollout in rural areas |
|-------------|------------------------|
| Punjab      | 1300                   |
| Sindh       | 300                    |
| KPK         | 600                    |
| Baluchistan | 500                    |
| AJK & ICT   | 50                     |

m. The Petitioner also provided Nationwide Technical/Operation sites electricity consumptions as under;

| Nationwide Technical / Operational sites Electricity Units consumption |             |             |                         |
|--|-------------|-------------|-------------------------|
| MONTH  | No of Sites | KWHRs       | Bill Amount Without GST |
| JAN  | 6.8 K       | 14,346,285  | 323,852,540             |
| FEB  | 6.8 K       | 12,623,537  | 289,782,945             |
| MAR  | 6.8 K       | 12,924,526  | 306,408,733             |
| APR  | 6.8 K       | 13,864,274  | 338,326,535             |
| MAY  | 6.7 K       | 13,699,121  | 316,712,834             |
| JUN  | 6.8 K       | 15,550,924  | 360,091,339             |
| JUL  | 6.8 K       | 15,368,563  | 357,612,962             |
| AUG  | 6.8 K       | 17,240,392  | 394,260,829             |
| SEP  | 6.8 K       | 16,706,585  | 401,821,990             |
| OCT  | 6.8 K       | 15,278,514  | 385,497,686             |
| NOV  | 6.8 K       | 14,057,436  | 360,213,156             |
| DEC  | 6.8 K       | 12,394,594  | 349,866,384             |
| TOTAL  | 81.7 K      | 174,054,751 | 4,372,114,675           |

| Nationwide Offices & Other premises - Units consumption |               |           |                         |
|---|---------------|-----------|-------------------------|
| MONTH   | No of Offices | KWHRs     | Bill Amount Without GST |
| JAN   | 153           | 207,386   | 5,376,595               |
| FEB   | 150           | 212,266   | 5,237,389               |
| MAR   | 151           | 198,457   | 5,355,741               |
| APR   | 154           | 212,885   | 5,405,570               |
| MAY   | 160           | 249,523   | 5,946,038               |
| JUN   | 155           | 320,121   | 8,520,821               |
| JUL   | 156           | 421,850   | 9,439,934               |
| AUG   | 157           | 463,608   | 10,883,618              |
| SEP   | 158           | 413,863   | 9,307,414               |
| OCT   | 164           | 356,710   | 9,449,987               |
| NOV   | 157           | 300,941   | 7,811,312               |
| DEC   | 161           | 192,959   | 5,606,295               |
| TOTAL   | 1,876         | 3,380,490 | 88,340,713              |

Expected Savings 2.82 490,834,396.95

PTCL historic Power Consumption data

| Nationwide Technical / Operational sites Electricity Units consumption |             |               |                      |
|--|-------------|---------------|----------------------|
| Month  | No of Sites | KWHRs         | Amount Without Taxes |
| 2015   | 6.8 K       | 293,098,863   | 2,894,720,000        |
| 2016   | 6.8 K       | 261,964,774   | 3,020,248,000        |
| 2017   | 6.9 K       | 213,000,000   | 3,192,417,000        |
| 2018   | 7.1 K       | 185,291,452   | 3,164,778,000        |
| 2019   | 7.2 K       | 188,787,114   | 4,040,044,234        |
| 2020   | 6.9 K       | 181,988,648   | 3,987,330,304        |
| 2021   | 6.8 K       | 177,008,691   | 4,372,114,675        |
| Total  |             | 1,501,139,542 | 24,671,652,213       |

| Nationwide Offices & Other premises - Units consumption |               |            |                      |
|---|---------------|------------|----------------------|
| Month   | No of Offices | KWHRs      | Amount Without Taxes |
| 2015  | 158           | 13,927,461 | 134,780,000          |
| 2016  | 156           | 12,433,920 | 142,635,000          |
| 2017  | 156           | 11,280,787 | 328,831,000          |
| 2018  | 160           | 11,222,073 | 191,673,000          |
| 2019  | 171           | 12,252,117 | 262,195,303          |
| 2020  | 162           | 6,892,490  | 151,361,121          |
| 2021  | 156           | 9,075,028  | 224,153,197          |
| TOTAL   |               | 77,083,876 | 1,435,628,621        |

17. PTCL also provided its numbers of connection installed on BTS and exchanges vide the aforementioned letter dated 22.04.2022.

**Submissions made by Telenor Pakistan (Private) Ltd**

18. The Petitioner submitted that in line with the Telecom Policy of 2004, the Federal Government was pleased to declare Telecom sector including Cellular Operators as an "Industry" with immediate effect vide notification dated 20.04.2004. In line with the decision of the Federal Government and endorsed by numerous Ministries, all telecommunication companies operating under the license of Pakistan Telecommunication Authority (PTA) have been specifically included in the definition of an "industrial undertaking" by addition of clause (c) to Section 2(29)(C) of the income Tax Ordinance through the Finance Act, 2021.



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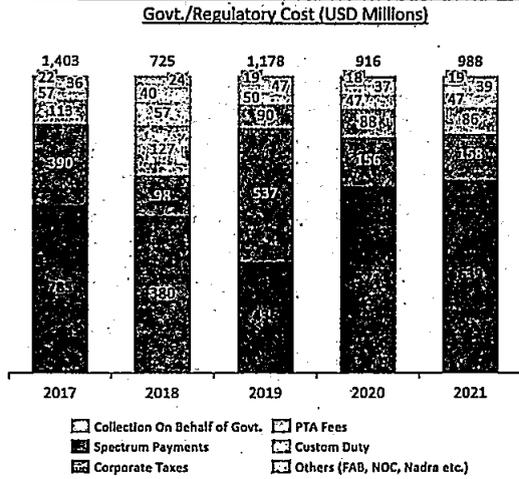


19. It was also stated that Telecom Sector has become one of the biggest consumers of WAPDA and the Telecom Industry is expanding at a rapid pace and so is its infrastructure, which has further resulted in an increase in its operating costs due to use of higher electricity load being charged at Commercial tariff.
20. It was further submitted that it is in the interests of justice and fairness that the plea of the Telecom Sector for applicability of industrial tariff instead of Commercial Tariff be accepted. The consistent policy of the Federal Government to grant the status of 'Industry' and 'Industrial undertaking' to the Telecom Sector is being reiterated, inter alia, on the following:
- ✓ The Federal Government has consistently given its policy decision regarding grant of 'Industry' status to the Telecom Sector as perceived in the Telecom Policies issued on behalf of the Federal Government by the Ministry of Information Technology and Telecommunication in 2004 (amended in 2013) and the Telecom Policy of 2015.
  - ✓ The superior courts of Pakistan have also considered the policy of the Federal Government and have interpreted that telecommunication Companies are covered under the definition of "Industrial Undertaking". Reliance is placed upon cases reported as 2017 PTD 1181 and judgment dated 10.04.2009 in Writ Petition No.42/2009 titled PTCL Vs. Govt. of Pakistan etc. in which PTCL was declared as an "Industrial Unit" for the sake of assessing properly under the Excise Tax regime.
  - ✓ In case of any Policy of the Government, even the Superior courts exercise "Judicial Restraint" except where fundamental rights are violated. In its constitutional Jurisdiction under Article 199 of the Constitution, even a High Court cannot sit as a court of appeal over the policy decisions and substitute its own decision with the decision of the Government. Reliance is placed on cases reported as PLD 2021 Balochistan 84, 2022 CLC 532, PLD 2014 SC 1 and 2014 SCMR 220.
21. During the hearing, Telenor in its presentation submitted the following Value Additions to National Economy by I.T Sector;
- Foreign direct investment in Country
  - Thousands of indirect/direct Job creations
  - Supporting GOP to fulfill governments vision of Digital Pakistan
  - Achieved exports target of US\$ 2 Billion
  - 2022/2023 Target fixed at US\$ 3.5 Billion
  - Huge potential for I.T Exports estimated at US\$ 20 Billion by 2030
22. Telenor during the hearing also highlighted contribution of Telecom sector to National Exchequer as under;





Decision of the Authority in the matter of Petitions filed by Telecom Operators for revision in tariff from Commercial to Industrial Category tariff



23. Telenor also submitted that it plans to further invest in the infrastructure development of Telecommunication in Pakistan to facilitate masses. Explore further areas of collaboration in the I.T sector with Ministry of Information Technology & Telecommunications, Pakistan Telecom Authority and other stakeholders. Creating job opportunities for the under privileged by further training and education through mobile apps and better connectivity. Play a vital role in terms of social development, skill development and technology sharing to achieve Government of Pakistan's goal of Digital Pakistan
24. In view thereof, the Petitioner requested the Authority that DISCOs throughout Pakistan be directed to charge "Industrial Tariff" instead of the existing "Commercial Tariff" from the Petitioner (including the Telecom Sector) in line with the policy of the Federal Government.

Submissions made by Pak Telecom Mobile Ltd.

25. The Petitioner submitted that in line with the Telecom Policy of 2004, the Federal Government was pleased to declare Telecom sector including Cellular Operators as an "Industry" with immediate effect vide notification dated 20.04.2004. In line with the decision of the Federal Government and endorsed by numerous Ministries, all telecommunication companies operating under the license of Pakistan Telecommunication Authority (PTA) have been specifically included in the definition of an "industrial undertaking" by addition of clause (c) to Section 2(29)(C) of the income Tax Ordinance through the Finance Act, 2021.
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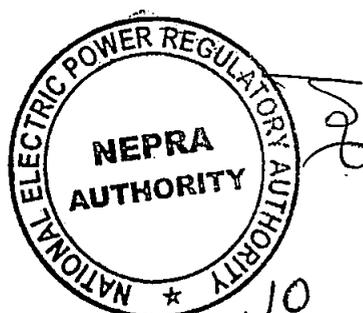
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- ✓ The Federal Government has consistently given its policy decision regarding grant of 'Industry' status to the Telecom Sector as perceived in the Telecom Policies issued on behalf of the Federal Government by the Ministry of Information Technology and Telecommunication in 2004 (amended in 2013) and the Telecom Policy of 2015.
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**Submissions made by Pakistan Mobile Communication Ltd. and Deodar Pvt. Ltd.**

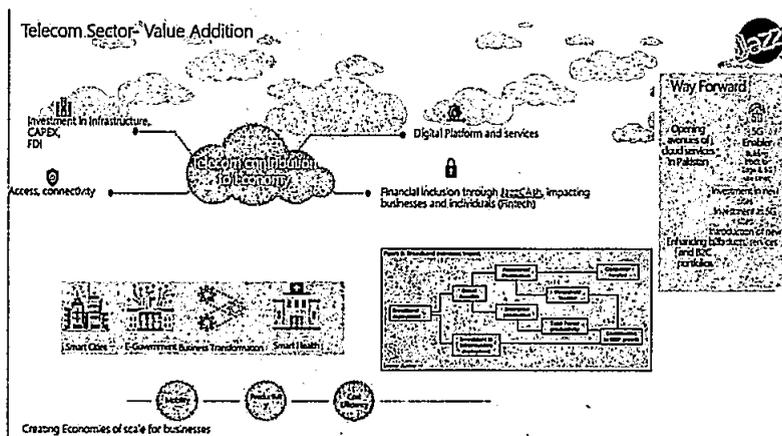
29. The Petitioner submitted that the telecom sector as a whole was declared as an 'industry' vide the Policy which was duly issued by the Federal Government. The intent of doing so was to provide incentives to existing market players and new entrants to invest in the telecom sector of Pakistan and to introduce innovation to the telecom sector in general.
30. It also submitted that the declaration of the telecom sector as an 'industry' galvanized the present market operators such as the Petitioner Company to invest in and to develop a modernized and state of the art telecom network across Pakistan which could match any developed country. This resulted in an exponential growth of the telecom sector as a whole and had a positive impact on the economy in general. It stated that the telecom sector in Pakistan is a significant source of revenue generation for the national exchequer. As per the Annual Report of PTA (2020-2021), the sector attracted US\$ 202 million in the shape of Foreign Direct Investment (FDI) and contributed PKR 226 billion to the national exchequer. With successful spectrum auctions and license renewals in Pakistan and Azad Jammu and Kashmir (AJ&K) and Gilgit-Baltistan (GB) during the period, an amount of US\$ 486 million (FY 2021-till date) has been generated for the Exchequer. Similarly, under the digital financial inclusion telecom sector has contributed to digitalization whereby the m-banking network has expanded to over 534,460 m-banking agents and 75 million wallet accounts. This network has enabled more than 2 billion annual transactions worth over PKR 8 trillion. According to the State Bank of Pakistan (SBP), the e-commerce market in 2020 is estimated to have expanded to PKR 235 billion, up by 56% from the previous year, in which telecom digital services play a pivotal role.



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- 31. The Petitioner further stated that out of the collective consumer base of telecom operators, it holds 38% of the market share which translates into 75 million customers. To ensure premium service to the end consumer, it is imperative that all the facilities and technical apparatus are fully powered at all times to provide uninterrupted services to its customers. In view of the aforesaid, provision of power/electricity, in this case, is of critical importance and over the years despite of being declared as an 'industry', the Petitioner Company and other operators are being subjected to commercial tariff of category A-2, which is a major cost overhead.
- 32. It also submitted that further to the Policy, the Federal Government vide SRO dated April 20, 2004, re-affirmed the status of the telecom sector as an 'industry', however, despite of the same no benefits which are generally extended to industries which fall under Category B were afforded to the telecom sector and in particular to the Petitioner and other market operators.
- 33. The Petitioner explained that with the 'industry' status given to the telecom companies under the Policy, the SRO and recently vide the amendment to Section 2(29C) vide the Finance Act, 2021, it has become indispensable for NEPRA to reflect the intent of Federal Government and the legislature in its tariff determinations and to treat the Petitioner, and other licensed operators, as part of the telecom industry.
- 34. The Petitioner also submitted that it has 14,558 towers and other machinery including BTS sites, B2S and OMO partnered, being operated by the Petitioner Company's in collaboration with its subsidiary i.e., Deodar (Private) Limited. These sites rely primarily on the power supplied by the DISCOs and the Petitioner is compelled to pay the electricity costs for the same at the higher rates of category A-2. These costs have an egregiously overbearing financial impact on the Petitioner.
- 35. In view of the foregoing, the Petitioner requested the Authority to recognize the telecom sector's status as 'industry', extend all such benefits which are applicable in terms of tariff as provided under category B and afford such requisite approval as may be required for revision of tariff from commercial to industrial rates in light of the status afforded to the telecom sector vide the Policy and the amendment to the ITO.
- 36. The Petitioner during the hearing presented the following value additions due to Telecom Operators;



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37. During the hearing, Telecom Operators submitted that change of tariff from Commercial to Industrial would result in savings up to Rs.7 billion rupees.
38. Intervention Request (IR) was filed by CM Pak (Zong) and written comments were also received from K-Electric.
39. CM Pak in its IR, inter alia, submitted that;
- As per NEPRA Act 1997, the power to determine consumer categories rests with the Federal Government. In this context, it is submitted that in the case of telecom operators, the Federal Government has already determined that telecom falls under the industrial category.
  - The honorable Islamabad High Court has also given conclusive findings that telecom operators should be interpreted as industrial undertakings.
  - The Parliament has also declared telecom operators as industrial undertaking. Reference is made to the recent Finance Act, 2021 through which section 2(29C) of the Income Tax Ordinance 2001 has been amended.
  - As per the eligibility criteria established through the Authority's own tariff determinations, any business or establishment which is undertaking value-adding activities or processing is eligible for an industrial tariff.
  - Each operator has been assigned radio waves by Federal Government (called spectrum), to use and provide their services. Operators set up towers, antennas, circuits, cables, and other equipment all across the country, through which they convert/switch basic radio waves into useable services (e.g. data, voice calls, SMS).
  - The operators effectively use basic radio/microwaves, add value to these waves through their equipment, and provide these value-added (and useful) final services/products/goods to customers across the country. Radio/microwaves themselves are of no use unless an operator has processed and/or value-added to them. Further, in this digital age, the telecom sector has evolved into data processing, sourcing and management which is globally recognized as an industry. This value addition aspect is also corroborated by the honorable High Court's description of telecom services in the court order Telenor Pakistan v Appellate Tribunal Inland Revenue and 3 others 2017 PTD 1181.
  - Owing to the value-adding nature of telecom operations, telecom operators already fall within the definition of "Industry" as determined by the Authority in its distribution/supplier tariffs.
  - The tariff for industrial consumers is much lower as compared to commercial consumers. Further through a recent decision given by NEPRA dated 1.12.2020 (upon a request of the Federal Government), further incentives have been given to the industrial consumers.
  - Under Article 25 of the Constitution of Pakistan, all citizens are equal before Law and are entitled to equal protection of the law. It cannot be considered as an industry only for the purposes of paying tax rather is also entitled for the corresponding benefits as well. Thus it cannot be discriminated in so far as on the one hand, for the purposes of paying tax, it is to be treated as "industry", but for the purposes of tariff, it is to be treated otherwise. The intervener is entitled for equal treatment of burden as well as benefits of the status of "industry".





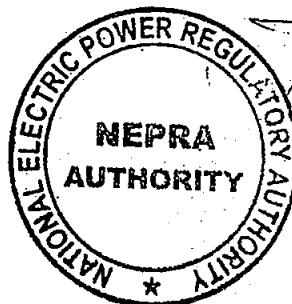
- That NEPRA has been making appropriate amendments in the definition of industrial consumers and it is within its mandate to amend the definition of "Industrial Supply" in the light of the recent amendments in the Finance Bill, 2021.
  - It may be charged "industrial tariff" instead of "commercial" from the date of the Notification of the GoP and all overbilling so made may be ordered to be adjusted in the future bills of the company.
40. K-Electric in its written comments submitted that as per terms of tariff, the categories are decided as per nature of use, instead of the status of sector. The Industry tariff as per terms of tariff is specified for the entities that are involved in manufacturing, value addition and processing of goods which are considered for application of industrial tariff. We understand that the petitioner sector is not involved in manufacturing of goods and is a service industry and accordingly levies services tax in bills to consumers and hence as per current terms of tariff, industrial tariff is not applicable on the petitioner. It has further been mentioned that the status of industry granted to telecom sector by Ministry of Industry and Production, Government of Pakistan does not specifically mention the benefits and concessions available to the telecom sector with the declaration as industry and we suggest that NEPRA may, if deemed appropriate, seek clarification from the respective Ministries as to what benefit the grant of such status warrants so that the same may be evaluated for implementation accordingly. It has also been stated that any changes to the tariff category will implicate the sales mix of DISCOs, and accordingly in case of acceptance of the request by NEPRA, the sales mix differential impact would need to be adjusted in tariff.
41. Upon inquiry from the Authority during the hearing, the representative of PTCL submitted that they are adding value by converting data into voice. The representative of M/s Zong submitted that Telecom Sector has been declared as an Industry by the Federal Government and amendment was also made in the Finance Act, which is the Act of parliament and therefore needs to be implemented in true spirit by the Authority by adding an additional line item under industrial tariff definition of NEPRA for the telecom operators. It was also explained that telecom operators purchase spectrum (radio frequency) from Government of Pakistan by paying huge sum of amounts in dollars, which are converted by system into communication services i.e. SMS based services, small emoji's, Data, Whatsapp, voice calls etc. These are examples of adding value into the radio frequency to make available different products for the consumers. It was further explained that 5G services are also being initiated in Pakistan. Thus, Telecom sector is adding value by converting Radio frequencies to Voice + Data + SMS. Upon inquiry regarding detail of connection performing value addition services, it was explained that all BTS towers and exchanges are performing these functions.
42. The Ministry of Energy (MoE) in its written comments dated 02.08.2021, submitted that the government has extended various reforms, packages & incentives, inter alia; Circular Debt Management Plan (CDMP), facilitative Ease of Doing Business architecture, strategizing increase in sales to high value consumer classes, Industrial Support package (ISP), flat peak & off-peak tariff scheme for industrial units and Zero-Rated Industrial (ZRI) package. Industrial tariff is applicable to the industries production facilities and the warehouses, which are used to transmit the products to the retailer/ distribution network, are considered as commercial value



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- addition. Telecom companies being engaged in provision of telecom services through retail/distribution network infrastructure, may be treated as commercial value-added activity for which consumer has to pay and, therefore, the same may be continued to be served electricity under commercial tariff category. In view of above, it has been submitted that any consideration of the Authority for the relocation of telecom companies from commercial category to industrial category may not be aligned with the economic objectives underlying the various industrial packages/concessions in field. Moreover, this relocation will result in the revenue gap and put extra burden on other consumers or fiscal space.
43. The Ministry of energy during the hearing submitted that any change in tariff category of Telecom Sector would directly impact the other consumers and the impact would be around Rs.20 billion. It also submitted that various other sectors like "Film" has also been declared as Industry and they are also eying for shift in tariff to Industrial Category. The MoE further stated that definition in tariff is very clear i.e. manufacturing, value addition and processing, therefore, Telecom sector does not fall under any of these definitions. The objective of declaring Telecom Sector as an Industry may not be to provide relief in terms of reduction in electricity rates, rather may be for tax purposes for which they have already taken enough discounts from the Revenue side, therefore, shifting it to electricity side will open Pandora's box and other such industry like banking sector will also ask for such benefits. While responding to the query from the Authority, the MoE submitted that all tariff notifications are approved by the Federal Government, wherein commercial tariff is charged from the Telecom Sector.
44. Mr. Zubair representing CPPA-G stated that electricity is the basic requirement and by allowing industrial tariff to Telecom Sector would burden the electricity sector in order to support the luxury products offered by Telecom Sector.
45. The Ministry of Finance (MoF) in its written comments dated 30.07.2021, submitted that Telecom Companies/Cellular Mobile Companies Operators are basically involved in commercial activities and electricity cost is a pass through item. Further, Telecom Companies/Cellular Mobile Companies Operators fix their consumer end tariff without consulting the Regulator. It also mentioned that electricity supply to these companies for their infrastructure units under the category "A-2 Commercial" may be continued and they may not be considered for supply of electricity under the tariff category "B-2 Industrial Supply".
46. The Ministry of Information Technology and Telecommunication, vide letter dated 29.04.2020, while referring to the meeting of the Committee on issues of CMOs constituted by the Prime Minister, held on 13.04.2020, stated that like any high tech industry, Telecom Operators use electricity for their infrastructure i.e. Data Centers, exchanges, points of presence (POPs), BTSs, Mobile Switching centers, Base Station Controllers (BSCs) etc. MoIT&T accordingly requested NEPRA to implement the Government orders.
47. Here it is pertinent to mention that the Authority during the proceedings of XWDISCOs Tariff Petitions for the FY 2020-21 and onward had also deliberated this matter as a separate issue. However, since separate Petitions were subsequently filed by the Telecom Operators in the matter, therefore the Authority decided to issue a separate decision in this regard.



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48. Having heard the respective contentions/ submissions of the Petitioners, Interveners, Commentators, the Ministry of energy & other parties and perusal of the record, the decision of the Authority is as under.
49. The Telecommunication companies have filed tariff petitions before NEPRA to change their consumer category from 'Commercial' to 'Industrial' for charging electricity tariff. Regarding consumer category, it is noted that the NEPRA (Amendment) Act, 2018 defines the term 'Consumer category' as "consumer category means such category of consumers as may be prescribed". Further, the term 'Prescribed' is defined in the Act as 'prescribed means prescribed by rules made under this Act.' Furthermore, under Section 46 of the Act, the powers to make rules is conferred on the Federal Government. Therefore, reading the definitions of the terms 'prescribed' and 'rules' with the Section 46 of the Act, the consumer categories need to be prescribed by the Federal Government by making rules. Thus, pursuant to NEPRA Act, amended in 2018, redefining the consumer categories is the domain of the Federal Government.
50. The Authority observed that XWDISCOs tariff regime is a revenue capped tariff. The amount of Revenue Requirement, determined by the Authority for each DISCO, is allocated among different categories of consumers keeping in view their sales mix and socio economic conditions, for the purpose of recovery. Change in tariff category of Telecom Operators to "Industrial Tariff", would result in revenue gap which needs to be allocated to remaining consumer categories i.e. Residential, Commercial etc. This may either lead to increase in the tariff of these categories or would be picked up the GoP as subsidy. Given the stake of the Federal Government in the instant matter, the Authority, inter alia, invited the views of the MoE and the Finance Division while processing the petitions filed by the telecommunication companies for change of their consumer category from commercial to industrial for electricity tariff.
51. In response to NEPRA's communication, the MoE vide its letter dated 02.08.2021, on the petitions filed by telecommunication companies, inter alia, stated that *"...industrial tariff is applicable to the industries production facilities. The warehouses, which are used to transmit the products to the retailer/ distribution network, are considered as commercial value addition. Telecom companies being engaged in provision of telecom services through retail/ distribution network infrastructure may be treated as commercial value added activity for which consumer has to pay and, therefore, the same may be continued to be served electricity under commercial tariff category. In view of above, it is stated that any consideration of the Authority for the relocation of telecom companies from commercial category to industrial category may not be aligned with the economic objectives underlying the various industrial packages/ concessions in field. Moreover, this relocation will result in the revenue gap and put extra burden on other consumers or fiscal space."*
52. Similarly, the Finance Division in the matter has stated that *"this Division is of the view that Telecom Companies/ Cellular Mobile Companies Operators are basically involved in commercial activities and electricity cost is a pass through item. Further, Telecom Companies/ Cellular Mobile Companies Operators fixed their consumer end tariff without consulting the Regulator. Therefore, Finance Division is further of view that electricity supply to these companies for their infrastructure units under the Category "A-2 Commercial" may be*



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continued and they may not be considered for supply of electricity under the tariff category "B-2 Industrial Supply".

53. The Authority also noted that the petitioners have, inter alia, stated that through Finance Bill 2021, an amendment is made in Section 2(29C) of the Income Tax Ordinance, 2001 and new clause 'c' is inserted which declares telecommunication sector as an Industrial Undertaking. Based on the said amendment in the Income Tax Ordinance, the petitioners have requested NEPRA to direct DISCOs throughout Pakistan to charge Industrial Tariff instead of existing Commercial Tariff from the Telecom Operators.
54. The Authority considers that in the Income Tax Ordinance 2001, besides Telecommunication Companies, the Construction and hotel businesses have also been included in the definition of 'Industrial Undertaking'. However both these sectors i.e. construction and hotel are not included in the Industrial category of consumers for the purpose of electricity tariff. After going through the referred Finance Bill/Income Tax Ordinance, the Authority is of the view that the inclusion of these sectors in the definition of Industrial undertakings in the Income Tax Ordinance is for the purpose of extending tax incentives available for industrial sector. However, it does not confer on these businesses, right to avail the Industrial Supply Tariff for use of electricity. The Authority is of the considered view that the applicability of specific tariff category depends on the nature of use of electricity by the consumers.
55. It is pertinent to note that the categories of consumers presently being used in the consumer end tariff determinations are mostly the legacy which power sector was using under the WAPDA as vertically integrated utility. After the amendment in NEPRA Act in 2018, the powers to prescribe consumer categories has been specifically vested in the Federal Government.
56. In the consumer end tariff Determinations, the 'Industrial Supply' is defined as "Industrial Supply means the supply for bona fide industrial purposes in factories including the supply required for the offices and for normal working of the industry." Further, the "industry" is defined as "a bona fide undertaking or establishment engaged in manufacturing, value addition and/or processing of goods."
57. The words 'Industrial Supply means the supply for bona fide industrial purposes in factories', as used in the definition of Industrial Supply, indicate the intent to apply the Industrial Supply tariff on the industries involved in some manufacturing or production activities.
58. As per Pakistan Factories Act, 1934 a "factory" means any premises, including the precincts thereof, whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily carried on with or without the aid of power, but does not include a mine, subject to the operation of the Mines Act, 1923 (IV of 1923):
59. As such the outfits of the telecommunication sector cannot be termed as factories; hence in the considered opinion of the Authority the same may not qualify the criteria for application of tariff under the 'Industrial Supply' category.

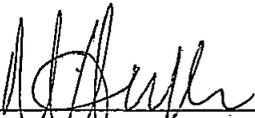
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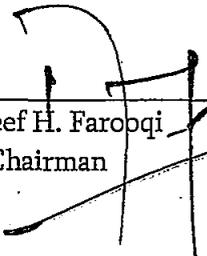


60. The petitioner have asserted that owing to the value addition carried out by the telecommunication companies, they are eligible for industrial tariff. The Authority has observed that in a simplest form, the value addition refers to extra value created over and above the original value of something. The Authority is of the considered view that the term 'value addition' used in the definition of Industry for the purpose of applying industrial supply tariff is used in the context of value addition through manufacturing or production process. In case a more broader meaning of the term 'value addition' is assumed, a large number of commercial activities will fall within the definition of 'industry' for the purpose of electricity tariff which cannot be the intent of the definition given in the consumer end tariff determinations.
61. In view of the above discussion, the Authority is of the considered view that the telecommunication companies do not fulfill the criteria as laid down in the consumer end tariff determinations for application of 'industrial supply' tariff. Hence, the petitions are dismissed.

AUTHORITY

  
Engr. Maqsood Anwar Khan  
Member

  
Rafique Ahmed Shaukat  
Member

  
Tauseef H. Farooqi  
Chairman





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