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Pakistan's First Right Of Way Policy: Towards Digital Pakistan

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Key Points:

- Following initial rejection and backdoor diplomacy, the Public & Private Right of Way Policy Directive was finally approved in January 2021 for facilitating the installation and maintenance of telecom infrastructure throughout the country.
- The Prime Minister's Task Force on Information Technology and Telecommunication (IT & Telecom) originally sought to devise specific rules for the Right of Way (RoW). However, given the absence of unanimity amongst the stakeholders, the task force presented a basic framework instead, in the form of a policy directive.
- RoW provides an authorisation enabling operators to set up telecom installations on roads, railways, electric transmission cables, et cetera following a payment.
- Key provisions of the policy include one-window operation, fee determination, dispute resolution, ensuring national security, guarding against health hazards, declaring telecom infrastructure as critical infrastructure, sharing of RoW, and establishing common service corridors.
- The implementation of the newly introduced policy directive is expected to reduce the administrative roadblocks for the telecom firms.
- RoW policy is deemed to be a baseline for Digital Pakistan by providing the framework for 5G readiness, ease of doing business, and improved connectivity of small and medium enterprises (SMEs).
- Although the current policy does provide a sufficient framework towards digitalisation yet ensuring its implementation can prove to be an uphill task given its non-binding nature.
- The policy has not specified a target amount of monetary savings or an established period to acquire its goals. Consequently, there is no way to determine or gauge the extent of effectiveness of its different provisions.

INTRODUCTION

The absence of an ROW policy remained the most troublesome impediment in devising a digital infrastructure in Pakistan. Following initial rejection and backdoor diplomacy, the Cabinet Committee for Disposal of Legislative Cases (CCLC) finally approved the Public & Private Right of Way Policy Directive in January 2021 for the installation and maintenance of telecom infrastructure throughout

the state.^{1 2} "Right of Way' means a right belonging to any person or public authority to pass over land or property of another person to provide telecom license services."³ The expression RoW is thus used to denote

¹ Ahmad Ahmadani, "CCLC approves Right of Way for installation, maintenance of telecom equipment," *Pakistan Today*, last modified January 20, 2021, <https://profit.pakistantoday.com.pk/2021/01/20/cclc-approves-right-of-way-for-installation-maintenance-of-telecom-equipment/>.

² Amin ul Haque, "Pakistan's First Right of Way Policy is a Milestone Towards 'Digital Pakistan'", *Emerging Pakistan*, Youtube Video, last modified February 04, 2021, <https://youtu.be/26iFDs7AKIE?t=47>.

³ "Pakistan Telecommunication (Re-Organization) Act, 1996 (with 2006 amendments)," In *THE GAZETTE OF PAKISTAN EXTRAORDINARY: Acts, Ordinances, President's Orders and Regulation* (Islamabad: NATIONAL ASSEMBLY SECRETARIAT, 1996): 4, <https://www.pta.gov.pk/assets/media/telecom-act-170510.pdf>.

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the placement of telecommunication installations or fixtures at third-party sites.⁴

In Pakistan, the RoW was recognised for the first time through the Pakistan Telecommunication (Re-organization) Act, 1996. An amendment was made in the original Act in 2006 by introducing Section 27(A).⁵ The Prime Minister's Task Force on IT & Telecom originally sought to devise specific rules for RoW. However, given the absence of unanimity amongst the stakeholders for about a year, the task force opted to present a basic framework instead, in the form of a policy directive.⁶

The IT and Telecom Division had motioned the CCLC for approving the RoW directive for the installation and maintenance of telecom infrastructure. The committee was notified that Section 27-A of the Pakistan Telecommunication (Re-organization) Act, 1996, assures the RoW to telecommunication operators and compels the local administration to provide the same.⁷ The cabinet committee finally agreed upon the proposed policy directive on January 7, 2021, with some minor conditions.⁸

According to Section 8 (2) (aa) of the 1996 Act, the central government has the power to release policy directive to the relevant authority on issues concerning telecom policy. The authority is then obliged to follow the directive. The directive may cater to the framework for the development of the telecom sector and scarce resources.⁹ The RoW, similarly, is a scarce resource as mandated by the telecommunications act in clause (qc) of Section 2.¹⁰

The RoW provides an authorisation enabling operators to set up telecom installations on roads, railways, electric transmission cables, et cetera following a payment.¹¹ Telecom fixtures pervade all settings, ranging from coaxial cables suspended on cable posts to optical fibre cables laid underground, overland and below the sea

surface.¹² Similarly, apparatus such as exchange offices and telecom towers are omnipresent. For the installation of such equipment, the telecommunication firms require approval from the authority that possesses that specific location, usually a state body.¹³

Though the urban areas in the country are linked through optical fibre cables, the connectivity and access within the cities cannot be considered ideal at all times. A significant reason behind the scenario has been the RoW conundrum.¹⁴ Likewise, the telecom sector had been facing multiple RoW hindrances in spreading the optical fibre cable network and other telecommunication groundwork.¹⁵ The key companies of the telecommunication field had constantly been raising the problems pertaining to the astronomical charges of the RoW, the resultant excessive fee of renting, persistent lags in the administering of permissions, manifold levies at different governmental ranks, issues in the handling of various governing offices, and the harm directed to the telecom infrastructure.¹⁶ Other major obstacles included bureaucratic holdups, the unattainability of particular territorial regions, an upsurge in the expense of conducting business and the demand for splitting the returns.¹⁷

⁴ Aamir Atta, "PTA Looking to Regulate Right of Way for Telecom Companies," *Pro Pakistani*, last modified September 2017, <https://propakistani.pk/2017/09/07/pta-looking-regulate-right-way-telecom-companies/>.

⁵ "Pakistan Telecommunication (Re-Organization) Act, 1996 (with 2006 amendments)," 21-22.

⁶ Pervez Iftikhar, "RoW policy directive – a right step," *The Express Tribune*, last modified January 31, 2021, <https://tribune.com.pk/story/2282133/row-policy-directive-a-right-step>.

⁷ "Pakistan Telecommunication (Re-Organization) Act, 1996 (with 2006 amendments)," 4.

⁸ Ahmad Ahmadani, "CCLC approves Right of Way for installation, maintenance of telecom equipment," *Pakistan Today*, last modified January 20, 2021, <https://profit.pakistantoday.com.pk/2021/01/20/cclc-approves-right-of-way-for-installation-maintenance-of-telecom-equipment/>.

⁹ "Pakistan Telecommunication (Re-Organization) Act, 1996 (with 2006 amendments)," 11.

¹⁰ *Ibid.*, 4.

¹¹ *Ibid.*, 21-22.

¹² "Telecommunications infrastructure," *GIP Digital Watch*, accessed March 12, 2021, <https://dig.watch/issues/telecommunications-infrastructure>.

¹³ Pervez Iftikhar, "RoW policy directive – a right step," *The Express Tribune*, last modified January 31, 2021, <https://tribune.com.pk/story/2282133/row-policy-directive-a-right-step>.

¹⁴ *Ibid.*

¹⁵ "Overview of Pakistan Telecom Sector, Initiatives and challenges," PTA, Accessed March 15, 2021, https://www.itu.int/en/ITU-D/Regional-Presence/AsiaPacific/SiteAssets/Pages/Events/2019/RRITP2019/ASP/Session%207_Pakistan%20%20Md%20Shafique_presentation%20ITU%202-9-2019.pdf.

¹⁶ Jawwad Rizvi, "Telecoms urge authorities to reduce 'right of way' rates," *The News*, last modified February 7, 2018, <https://www.thenews.com.pk/print/277780-telecoms-urge-authorities-to-reduce-right-of-way-rates>.

¹⁷ "Overview of Pakistan Telecom Sector, Initiatives and challenges," PTA, Accessed March 15, 2021, https://www.itu.int/en/ITU-D/Regional-Presence/AsiaPacific/SiteAssets/Pages/Events/2019/RRITP2019/ASP/Session%207_Pakistan%20%20Md%20Shafique_presentation%20ITU%202-9-2019.pdf.

The Trajectory of Major Right of Way Developments in Pakistan

Document	Development	Year
Pakistan Telecommunication (Re-organization) Act	RoW recognised for the first time in the country	1996
Revised Pakistan Telecommunication (Reorganization) Act	Section 27 (A) introduced	2006
Telecommunications Policy	Demand for one-window treatment for the RoW	2015
Public & Private Right of Way Policy Directive	Basic principles for the provision of the RoW introduced	2020

Compiled by the Author

KEY PROVISIONS OF THE POLICY DIRECTIVE

Without an RoW policy, the country had been trailing behind the other states in the region, with Afghanistan being the only country beneath Pakistan in the telecommunication arena. The newly introduced policy directive is anticipated to reduce the administrative roadblocks for the telecom firms.¹⁸ Some of the significant provisions of the policy directive include:

1. Fast Track Operation

The local organisations are required to ensure a one-window operation for collecting requests for furnishing an RoW approval, according to the procedure drafted, documented and decided in the directive.¹⁹ Moreover, as per the policy, the time schedule mentioned in Section 27A of the 1996 Telecom Act ought to be duly abided by. Also, if the application is not responded to, by the licensee, within a period of thirty days, it will be considered as an approved request.²⁰

2. Fee Determination

According to the policy, if there is no prior contract, the licensee will make a fair payment to the private owner. The payment will be determined in the light of:

- The charges of comparable sites in the vicinity
- Increase in the expenses of construction and restoration
- Lease valuation of the site

In the case of public ownership of the RoW, no

¹⁸ "Right Of Way," *The Nation*, last modified January 22, 2021, <https://nation.com.pk/22-Jan-2021/right-of-way>.

¹⁹ Ministry of Information Technology and Telecommunication (Digital Pakistan), *Statutory Notification S. R. A. 1474(I)/2020*, (Islamabad, The Gazette of Pakistan, December 31, 2020): 3282, <https://moitt.gov.pk/SiteImage/Misc/files/ROW%20Policy%20Directive%20.pdf>.

²⁰ "Pakistan Telecommunication (Re-Organization) Act, 1996 (with 2006 amendments)," 21.

favoured treatment may be accorded to any licensee.²¹ The policy directive holds that the charges levied for the provision of the RoW are proportionate with the magnitude of service provided. It should not be treated like other taxation avenues. The government bodies cannot equate charging for providing the RoW to a profitable or moneymaking affair.²² Therefore, the fee is supposed to fall within a specified rate structure to avoid overcharging.²³

3. Resolution of Disputes

The policy requires the prompt resolution of any disputes between the licensees and the owners. As established by the 1996 Telecom Act, Section 27 A (6), the latest policy directive ensures that the complaint is processed within sixty days in the event of any dispute regarding the awarding of RoW.²⁴

Besides, the policy calls for the formation of a virtual complaint submission portal. Given the kinds of cases, it also requires the establishment of a proper complaint mechanism from the federal to the division level.²⁵

4. National Security

If the licensee acquires the RoW for a military property of strategic significance, due diligence will be a prerequisite whenever the licensee plans to carry out any activity in the area. Also, identity information regarding labour, contractors, foreigners, if any, need to be shared with the public authority. Besides, any related monitoring of the telecom network is bound to be centred within Pakistan in order to ensure national security.²⁶

²¹ MoITT, *Statutory Notification S. R. A. 1474(I)/2020*, 3282-3283.

²² Ibid.

²³ Kalbe Ali, "Right of Way policy for telecom sector approved," *DAWN*, last modified January 21, 2021, <https://www.dawn.com/news/1602693>.

²⁴ "Pakistan Telecommunication (Re-Organization) Act, 1996 (with 2006 amendments)," 22.

²⁵ MoITT, *Statutory Notification S. R. A. 1474(I)/2020*, 3283-3284.

²⁶ Ibid., 3284.

5. Guarding Against Health Hazards

The protection of the people from any health hazard associated with radio base station antennas, as stated in the Protection from Health Related Effect of Radio Base Station Antennas Regulations, 2008, is reiterated by the policy.²⁷ It postulates that the necessary precautionary measures to protect the masses from any harmful effects of the installations ought to be taken.²⁸

6. Telecom Installations – Critical Infrastructure

The telecom installations are regarded as “critical infrastructure” in the policy directive.²⁹ Any individual obstructing the steady functioning of the relevant infrastructure would be “debilitating privacy, national security, public health or safety, or any combination of these matters.”³⁰

The policy directive will render any step taken for harming a telecommunication installation as an act of disruption. Legal proceedings may be initiated against the offender.³¹

7. Sharing of Right of Way

The RoW may be shared by a licensee on the footings specified by the owner of the RoW.³² Besides, the matter may be taken up to the designated authority in case a current licensee declines the request for sharing the RoW.³³

8. Establishing Common Services Corridor

Infrastructure development sectors will be urged to furnish common services corridor for installing telecommunication infrastructure. In order to acquire a no-objection certificate (NOC) from the relevant authorities, the privately held housing schemes, when established, will be obligated to ensure a telecommunication ducting system.^{34 35}

²⁷ Protection from Health Related Effect of Radio Base Station Antennas Regulations, 2008. https://www.pta.gov.pk/media/reg_040309.pdf

²⁸ MoITT, *Statutory Notification S. R. A. 1474(I)/2020*, 3284-3285.

²⁹ Kalbe Ali, “Right of Way policy for telecom sector approved,” *DAWN*, last updated January 21, 2021, <https://www.dawn.com/news/1602693>.

³⁰ MoITT, *Statutory Notification S. R. A. 1474(I)/2020*, 3285.

³¹ Kalbe Ali, “Right of Way policy for telecom sector approved,” *DAWN*, last modified January 21, 2021, <https://www.dawn.com/news/1602693>.

³² “Pakistan Telecommunication (Re-Organization) Act, 1996 (with 2006 amendments),” 21.

³³ MoITT, *Statutory Notification S. R. A. 1474(I)/2020*, 3285-3286.

³⁴ Ministry of Information and Technology, *Telecommunications Policy 2015*, (Universal Service Fund, 2015): 20. <https://usf.org.pk/UserFiles/file/Telecommunications%20Policy%20-2015%20APPROVED.pdf>.

³⁵ MoITT, *Statutory Notification S. R. A. 1474(I)/2020*, 3286.

PROSPECTS FOR DIGITAL PAKISTAN

The policy is expected to expedite the process of installing and sustaining telecom infrastructure. It is envisaged to facilitate the removal of obstacles in laying fibre optic cables and telecom installations throughout the state. Such smooth dispensing of the RoW can lay down the foundation for digitalisation in Pakistan. The major areas which will benefit from the policy include the follows:

5G Readiness

Implementation of the RoW policy can ensure the widespread public introduction of 5G services in the country.³⁶ Pakistan has revitalised its drive to ensure the commercial availability of the sophisticated 5G technology by 2022-23. The Minister for IT and Telecom Syed Amin ul Haque has stated the state’s plan to introduce 5G internet by the end of next year.³⁷

SME Connectivity Scale-up

SMEs makeup about 90% of all businesses in the country and provide employment to 80% of the non-agrarian human resources. Their contribution accounts for 40% of the state’s GDP per annum.³⁸ By swift furnishing of the RoW to the applicants, the Pakistan Telecommunication Association (PTA) and the government of Pakistan will generate a setting encouraging ingenuity and innovativeness, thus allowing SMEs to discover the opportunities engendered by 5G.³⁹

Ease of Doing Business

The RoW is an important feature in determining a state’s capacity to provide a conducive setting for “Ease of Doing Business”. Following successful execution, the policy directive shall direct a rapid rolling out of digital groundwork across the state.⁴⁰ Online trade and market can allow business owners to rise above the standard mode of exchange and access the international market as web-based businesses can be administered even at

³⁶ Pakistan Telecommunication Authority, *Annual Report 2020*, (Islamabad: PTA, 2020): 97, https://www.pta.gov.pk/assets/media/annual_report_2020_15012021.pdf.

³⁷ “Pakistan to launch 5G internet network in 2022-23, shows report,” *ET Telecom*, January 24, 2021, <https://telecom.economicstimes.indiatimes.com/news/pakistan-to-launch-5g-internet-network-in-2022-23-shows-report/80433150>.

³⁸ “Pakistan to Launch 5G by Dec 2022. IT Minister Says Government Aims to Increase IT Exports to \$5b by 2023,” *Ministry of Information Technology & Technology*, Accessed March 20, 2021, <https://moitt.gov.pk/NewsDetail/ZDA4YjNjOWEtMjMwNC00Njk0LTlhNDYtMTkyMDY0YmY5YzBl>.

³⁹ PTA, *Annual Report 2020*, 97.

⁴⁰ Telecom Wing MOITT, *National Broadband Policy, 2021, Telecom Policy 2021, Digital Pakistan* (Islamabad: Ministry of Information Technology and Telecommunication, January 21, 2020): 44, [https://moitt.gov.pk/SiteImage/Misc/files/National%20Broadband%20Policy%202021%20Consultation%20Draft\(1\).pdf](https://moitt.gov.pk/SiteImage/Misc/files/National%20Broadband%20Policy%202021%20Consultation%20Draft(1).pdf).

a meagre scale. Moreover, for businesses that employ digital commerce, the expenses linked with distance are decreased by almost 66%. It indicates the potential of significant profits for SMEs and also for women-led businesses allowing them to “go global”.⁴¹

Broadband as a Utility

The RoW way charges have been restraining broadband infiltration. However, the increased social and economic reliance of the masses on the internet has created the basis for affirming “broadband as a utility”.⁴² The policy directive is a major indication of the state’s increased commitment to digitalisation. The policy’s implementation would allow improved connectivity and coverage and more incredible speed.⁴³

Digital Pakistan Touchstone

The RoW policy will lay down the infrastructure baseline for Digital Pakistan. Earlier, the unaffordable cost of right of way used to render telecommunications ventures unrealistic.⁴⁴ The policy is expected to play a vital part in the fulfilment of Digital Pakistan Vision, as stated by the Federal Minister for IT and Telecom Syed Amin ul Haque. He rendered the sanctioning of the directive as a “historical success”.⁴⁵

WAY FORWARD

Although the Public & Private Right of Way Policy Directive is a major development in the country’s vision for a Digital Pakistan, however, the current policy can benefit from fortifications in certain areas.

Not an Alternative for Obligatory Laws

Although the current policy does provide a sufficient framework regarding the matter yet ensuring its implementation can prove to be an uphill task given its non-binding nature. A fundamental concern regarding the RoW directive is that it is a policy. A policy cannot be considered as an alternative for obligatory laws.

Therefore, all the RoW owners are not under a legal obligation to abide by the policy directive.

Lack of Specific Strategy/Roadmap

Despite the extensive framework of the directive, there is no way to judge the output of the policy. The directive has not specified the amount of monetary savings that will be ensured, nor a time period has been set to acquire the goals of the policy. In such a scenario, it is impossible to gauge the extent of effectiveness of its different aspects.

RECOMMENDATIONS

Introducing Mandatory Rules

A policy directive falls short of comprising definite rules. Explicit rules are required to regulate those issues that necessitate legally binding laws. Therefore, there is a need to establish fixed rules regarding the RoW. In the absence of compulsory regulations, there will be room for lapses in the implementation of the policy.

Standardised Dispute Resolution Mechanism

The RoW policy calls for setting up a dispute resolution mechanism to resolve conflicts between the RoW licensees and owners. However, it is imperative that the mechanism that is eventually designed as per the policy for dispute resolution is regularised. A standardised apparatus will ensure that all parties get an even playing field and the consequent verdicts remain consistent.

All in all, the Public & Private Right of Way Policy Directive is a much-anticipated step for the telecommunication sector that can eventually also benefit the end-user. The basis for Digital Pakistan has been laid through the policy. However, there is still much to be done. The state should continue to interact with the telecommunication operators, RoW owners, as well as Pakistan Telecommunication Authority to further build on the foundation laid down by the policy directive.

⁴¹ Cabinet Division, *E-COMMERCE POLICY FRAMEWORK OF PAKISTAN*, (Islamabad: Ministry of Commerce & Textile, 2019): ii (Foreword), <https://www.commerce.gov.pk/wp-content/uploads/2019/08/Draft-E-Commerce-Policy-Framework-Final-23-8-19.pdf>.

⁴² Telecom Wing MOITT, *National Broadband Policy, 2021, Telecom Policy 2021, Digital Pakistan* (Islamabad: Ministry of Information Technology and Telecommunication, January 21, 2020): 6, [https://moitt.gov.pk/SiteImage/Misc/files/National%20Broadband%20Policy%202021%20Consultation%20Draft\(1\).pdf](https://moitt.gov.pk/SiteImage/Misc/files/National%20Broadband%20Policy%202021%20Consultation%20Draft(1).pdf).

⁴³ “Right Of Way,” *The Nation*, last modified January 22, 2021, <https://nation.com.pk/22-Jan-2021/right-of-way>.

⁴⁴ Jawwad Rizvi, “Telecoms urge authorities to reduce ‘right of way’ rates,” *The News*, last modified February 7, 2018, <https://www.thenews.com.pk/print/277780-telecoms-urge-authorities-to-reduce-right-of-way-rates>.

⁴⁵ Press Information Department, PR no 140. Islamabad: January 20, 2021, http://pid.gov.pk/site/press_detail/15705.