

AN ORDINANCE

To regulate broadcast media in Pakistan

WHEREAS it is expedient to provide for the development of broadcast media in order to

-
- (I) improve the standards of information, education and entertainment;
 - (ii) enlarge the choice available to the people of Pakistan in the media for news, current affairs, religious knowledge, art, culture, science, technology, economic development, social sector concerns, music, sports, drama and other subjects of public and national interest;
 - (iii) facilitate the devolution of responsibility and power to the grass-roots by improving the access of the people to mass media at the local and community level; and
 - (iv) Ensure accountability, transparency and good governance by optimizing the free flow of information;

AND WHEREAS, the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of Proclamation of Emergency of the fourteenth day of October, 1999 and the Provisional Constitution Order No.1 of 1999 read with the Provisional Constitution (Amendment) Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:-

PRELIMINARY

1. Short title, extent and commencement. — (1) This Ordinance shall be called the Pakistan Electronic Media Regulatory Authority Ordinance, 2002.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Definitions. - In this Ordinance, unless there is anything repugnant in the subject or context,-

(a) “advertisement” means a set of visual and audio messages for the projection of a product, service, or idea with the object of propagating sale, purchase or hire of the product, service or idea for creating other related effects;

(b) “Authority” means the Pakistan Electronic Media Regulatory Authority (PEMRA) established under section 3;

- (c) "Broadcast media" means broadcast by radio, television including Cable television, closed circuit television, direct broadcasting, multi-point multi-channel distribution systems for radio and television;
- (d) "Broadcaster" means a person engaged in broadcast media;
- (e) "Chairman" means the Chairman of the Authority;
- (f) "Channel" means the set of frequencies that a broadcast station occupies for broadcasting;
- (g) "Company" means a company as defined in the Companies Ordinance 1984 (XLVII of 1984);
- (h) "Copyright" means copyright as defined in the Copyright Ordinance 1962 (XXXIV of 1962);
- (i) "Foreign company" means a company or body corporate organized, and registered under the laws of a foreign government;
- (j) "Frequency" means the frequency of the electromagnetic wave number measured in Hertz per second and used for transmission
- (k) "FAB" means the Frequency Allocation Board established under section 42 of the Pakistan Telecommunication (Reorganization) Act, 1996 (XVII of 1996);
- (l) "Media enterprise" means an enterprise concerned with the publication of a printed newspaper or journal, a radio or television broadcast station or a cinema theatre;
- (m) "license" means a license issued by the Authority to establish and operate a broadcast station or distribute programmes through a cable television network.
- (n) "Licensee" means a person to whom the Authority has issued a licence;
- (o) "Member" means a member of the Authority;
- (p) "National broadcaster" means the Pakistan Broadcasting Corporation, the Pakistan Television Corporation and the Shalimar Recording and Broadcasting Company;
- (q) "PTA" means the Pakistan Telecommunication Authority established under the Pakistan Telecommunication (Reorganization) Act, 1996 (XVII of 1996);
- (r) "Person" includes an individual, partnership, association, company, trust or corporation;
- (s) "Prescribed" means prescribed by the rules made by the Authority;

(t) “programme” means the systematic broadcasting of visual or sound images by a broadcast station but does not include an advertisement; and

(u) “Rules” means the rules made under this Ordinance,

3. Establishment of the Authority.- (1) As soon as may be, after the commencement of this Ordinance, the Federal Government shall, by notification in the Official Gazette, establish an authority to be known as the Pakistan Electronic Media Regulatory Authority (PEMRA) for carrying out the purposes of this Ordinance.

(2) The Authority shall be a body corporate having perpetual succession and a common seal with powers subject to the provision of this Ordinance to hold and dispose of property by the said name, sue and be sued.

(3) The principal office of the Authority shall be at Islamabad and it may set up offices at such place or places in the country as it may deem appropriate.

(4) No act or proceeding of the Authority shall be invalid by reason only of the existence of a vacancy in, or defect in the constitution of, the Authority.

4. Functions of the Authority. - The Authority shall be responsible for regulating the establishment and operation of all broadcast and CTV stations in Pakistan established for the purpose of international, national, provincial, district, local or special target audiences.

5. Power of the Federal Government to issue directives. – The Federal Government may, as and when it considers necessary, issue directives to the Authority on matters of policy, and such directives shall be binding on the Authority, and if a question arises whether any matter is a matter of policy or not, the decision of the Federal Government shall be final.

6. Members of Authority.- (1) The Authority shall consist of a Chairman and nine members to be appointed by the President of Pakistan.

(2) The Chairman of the Authority shall be an eminent professional of known integrity and competence having substantial experience in media, business, management, finance, economics or law.

(3) Out of nine members one shall be appointed by the Federal Government on full time basis and five shall be eminent citizens chosen to ensure representation of all provinces with expertise in one or more of the following fields: media, law, human rights, and social service. Of the five members from the general public, two members shall be women.

(4) Secretary, Ministry of Information and Media Development, Secretary, Interior Division and Chairman, Pakistan Telecommunication Authority shall be the ex officio members.

(5) The members, other than ex-officio members, shall participate in all meetings and shall receive such fee and expenses for each meeting as may be prescribed.

7. Tenure of members.- (1) The Chairman and members, other than ex officio members, unless earlier removed for misconduct or physical or mental incapacity, shall hold office for a period of four years and shall be eligible for re-appointment for a similar term or as the Federal Government may determine:

Provided that the Chairman and a member shall retire on attaining the age of sixty-five years.

Explanation. - For the purposes of this section the expression “misconduct” means conviction for any offence involving moral turpitude and includes conduct prejudicial to good order or unbecoming of a gentleman.

(2) The Chairman or a member may, by writing under his hand, resign his office.

8. Meetings of the Authority, etc. (1) The Chairman or, in his absence, the member elected by the members for the purpose, shall preside at a meeting of the Authority.

(2) One-third of the total members shall constitute a quorum for meetings of the Authority requiring a decision by the Authority.

(3) The members shall have reasonable notice of the time and place of the meeting and the matters on which a decision by the Authority shall be taken in such meeting.

(4) The decisions of the Authority shall be taken by the majority of its members present, and in case of a tie, the member presiding a meeting shall have a casting vote.

(5) All orders, determinations and decisions of the Authority shall be taken in writing and shall identify the determination of the Chairman and each member separately.

9. Remuneration, of Chairman and members.- (1) The Chairman and members shall be paid such emoluments as the President of Pakistan may determine and shall not be varied to their disadvantage during their term of office.

10. Chairman and members not to engage themselves in certain business, etc.-

(1) The Chairman shall not, during his term of office, engage himself in any other service, business, vocation or employment, or enter into the employment of, or accept any advisory or consultancy relationship with any person or entity engaged in applying for a licence from the Authority or operating a broadcast station established within the purview of the Authority or in providing services or products to the Authority on any of

the projects, schemes, proposals or plans undertaken, executed or supervised by the Authority or any related undertaking of such aforesaid person or entity.

(2) The members shall not have any direct or indirect financial interest, or have any connection with any such person, entity or related undertaking as mentioned in subsection (1) of this section associated in any way with the licensee of a broadcast station for so long as they are members and hold office.

11. Officers, employees, etc. – To carry out the purposes of this Ordinance, the Authority may, from time to time, appoint members of its staff, experts, consultants, advisers and other officers and employees on such terms and conditions as it may deem fit.

12. Officers, etc. deemed to be public servants. – The Chairman, members, members of its staff, other officers and employees of the Authority shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code (Act XLV of 1860).

13. Delegation.- The Authority may, by general or special order, delegate to the Chairman or a member or any member of its staff, or an expert, consultant, adviser, or other officer or employee of the Authority any of its powers, responsibilities or functions under this Ordinance subject to such conditions as it may by rules prescribe:

Provided that the delegation of such power shall not include the power to grant, suspend, revoke or cancel a broadcast licence.

Provided further that the rules made under this Ordinance shall specify use of delegated powers and shall be framed and enforced after promulgation of this Ordinance and before the notification of the establishment of the Authority.

14. Fund.- (1) There shall be established a fund to be known as “PEMRA Fund” which shall vest in the Authority and shall be utilized by the Authority to meet charges in connection with its functions including payment of salaries and other remunerations to the Chairman, members, servants, experts and consultants of the Authority.

(2) The Fund shall consist of.-

- (i) seed money by the Federal Government;
- (ii) fees for issuance of licences for establishing and operating broadcast or CTV stations;
- (iii) loans obtained with the special or general sanction of the Federal Government;
- (iv) foreign aid obtained with sanction of and on such terms and conditions as may be approved by the Federal Government; and
- (v) all other sums received by the Authority from any other source.

(3) The Authority may open and operate one or more accounts in local or foreign currency, in any scheduled bank.

15. Budget.- The Authority shall, in respect of each financial year, prepare its own budget and submit it to the Federal Government three months before the commencement of every financial year for information.

16. Accounts and Audit. – (1) The Authority shall maintain complete and accurate books of accounts of its actual expenses and receipts in such form as the Federal Government may, in consultation with the Auditor General of Pakistan, determine.

(2) The Authority shall cause to be carried out audit of its accounts by one or more auditors who are chartered accountants within the meaning of the Chartered Accountants Ordinance, 1961 (X of 1961).

(3) Notwithstanding the audit provided in sub-section (2) the Auditor-General shall have the power to audit or cause to be audited the accounts of the Authority.

17. Annual report. – The Authority shall compile and submit an annual report on its operations and accounts for each financial year to the President of Pakistan and shall also arrange for its publication and circulation to the media and the public.

18. Categories of broadcast stations.- The Authority shall issue licences for broadcast and CTV stations in the following categories, namely:-

- (i) International scale stations;
- (ii) National scale stations;
- (iii) Provincial scale stations;
- (iv) Local Area or Community based stations;
- (v) Specific and specialized subject stations; and
- (vi) Cable Television Network stations.

19. Licence to broadcast or operate.- (1) The Authority shall have exclusive right to issue licences for the establishment and operation of all broadcast stations including Cable TV network, provided that this exclusive right shall be used by the Authority in conformity with the principles of fairness and equity applied to all potential applicants for licences whose eligibility shall be based on prescribed criteria notified in advance and that this shall be done through an open, transparent bidding process.

(2) No person shall engage in broadcasting or CTV operation except after obtaining a licence issued under this Ordinance.

(3) Every licence shall be subject to such terms and conditions as may be prescribed.

(4) The Authority shall have the power to charge fees at such rates as the Authority may fix from time to time for the grant of a licence and for its annual renewal.

20. Terms and conditions of licence.- A broadcaster or CTV operator who is issued a licence under this Ordinance shall –

- (a) Respect the sovereignty, security and integrity of the Islamic Republic of Pakistan;
- (b) Respect the national, cultural, social and religious values and the principles of public policy as enshrined in the Constitution of the Islamic Republic of Pakistan;
- (c) Ensure that programmes and advertisements do not encourage violence, terrorism, racial, ethnic or religious discrimination, sectarianism, extremism, militancy or hatred;
- (d) Comply with rules made under this Ordinance;
- (e) broadcast or distribute programmes in the public interest specified by the Federal Government or the Authority in the manner indicated by the Government or, as the case may be, the Authority, provided that the duration of such mandatory programmes do not exceed ten per cent of the total duration of broadcast or operation by a station in twenty-four hours except if, by its own volition, a station chooses to broadcast or distribute such content for a longer duration;
- (f) Comply with the codes of programmes and advertisements approved by the Authority;
- (g) Not broadcast or distribute any programme or advertisement in violation of copyright or other property right;
- (h) Obtain license from the PTA and the FAB before import of any transmitting apparatus for broadcasting or CTV operation system; and
- (i) Not sell, transfer or assign any of the rights conferred by the license without prior written permission of the Authority.

21. Concurrence of Provinces: (1) The Authority, except where applications for the issue of licenses relates to the Islamabad Capital Territory, shall invite a representative of the Government of the Province concerned with regard to the proposed location of the radio station or TV channel or CTV station for which the application has been made and shall consider the viewpoint of the concerned Provincial Government before taking a decision on the issuance, suspension, revocation or cancellation of a license:

Provided that where the Provincial Government objects to the issuance of a particular license or its suspension, revocation or cancellation, the applicant shall be provided an opportunity to be present at the meeting of the Authority and afforded a public hearing with regard to the observations made by the Provincial Government.

(2) Where the broadcast signal of a radio station or a TV channel or the CTV network has the potential to cover an area outside the limits of the Province in which the unit is proposed to be located, the Authority shall invite one or more representatives from each of the four Provincial Governments to express their viewpoint, if any, on the inter-Provincial dimensions of the broadcast signal.

(3) In applying the provisions of sub-section (2) the Authority shall ensure that the consultation with the Provincial Government or the Provincial Governments, as the case may be, is conducted with the objective of facilitating freedom of expression on the air waves within the framework defined by this Ordinance and shall ensure that no unreasonable delay occurs in the issuance of a license and its utilization by the licensee merely on the grounds that the Federal Government and the Provincial Governments require unspecified time to fulfill their respective and related procedures.

22 Duration for consideration of the application for a license. The Authority shall take decision on the application for a license within one hundred days from the receipt of the application.

23. Exclusion of monopolies.- (1) No person shall be entitled to the benefit of any monopoly or exclusivity in the matter of broadcasting or the establishment and operation of broadcast or CTV stations or in the supply to or purchase from, a national broadcaster of air time, programmes or advertising material and all existing agreements and contracts to the extent of conferring a monopoly or containing an exclusivity clause are, to the extent of exclusivity, hereby declared to be inoperative and of no legal effect.

(2) In granting a license, the Authority shall ensure that, as far as possible, open and fair competition is facilitated in the operation of more than one channel in any given unit of area or subject and that undue concentration of media ownership is not created in any city, town or area and the country as a whole by virtue of the applicant for a broadcast or CTV operation license already owning or operating, as sole or joint shareholder of any other broadcast or CTV station, printed newspaper or magazine.

24. License, application, issuance, refusal and validity.- (1) Any person desirous of obtaining a license for broadcasting or operating a cable TV network and for establishment and operation of a broadcast station or CTV network shall apply to the Authority in such manner and form as may be prescribed.

(2) The Authority shall process each application in accordance with prescribed criteria and shall hold public hearings in the respective provincial capitals of each Province, or as the case may be, Islamabad, before granting or refusing the license.

(3) Each application shall be accompanied by such fee as the Authority may prescribe.

(4) A license shall be valid for a period of five, ten or fifteen years subject to payment of the annual fee prescribed from time to time.

(5) The Authority may renew a license on such terms and conditions as may be prescribed and in case of refusal to renew a license reasons shall be recorded in writing.

25. Certain persons not be granted license. - A license shall not be granted to—

- (a) A person who is not a citizen of Pakistan or resident in Pakistan;
- (b) A foreign company organized under the laws of any foreign government; or
- (c) A company the majority of whose shares are owned or controlled by foreign nationals or companies whose management or control is vested in foreign nationals or companies.

26. Council of Complaints. – (1) The Federal Government shall establish a Council of Complaints, herein called the Council, with as many branches as necessary, within two hundred days of the establishment of the Authority.

(2) The Council shall receive and review complaints made by persons or organizations from the general public against any aspects of programmes broadcast by a station or CTV network established through a license issued by the Authority and render opinions on such complaints.

(3) The Council shall consist of a Chairman and five members being citizens of eminence from the general public at least two of whom shall be women.

(4) The Authority shall formulate rules for the functions and operation of the Council within two hundred days of the establishment of the Authority.

(5) The Council may recommend to the Authority appropriate action of censure, fine against a broadcast or CTV station or licensee for violation of the codes of programme content and advertisements as approved by the Authority as may be prescribed.

27. Prohibition of broadcasts or CTV operation.- The Authority shall by order, giving reasons in writing for declaring the order, prohibit any broadcaster or CTV operator from broadcasting or re-broadcasting or distributing any programme if it is of opinion that such particular programme is likely to create hatred among the people or is prejudicial to the maintenance of law and order or likely to disturb public peace and tranquility or endangers national security.

28. Suspension of broadcasting or CTV operation.- A broadcaster or operator shall not cease or suspend broadcasting except on account of force majeure or with the prior approval of the Authority.

29. Power to authorize inspection. - (1) The Authority may authorize any of its officers or its nominees to enter the premises of a broadcaster or a CTV operator for purposes of inspection after giving reasonable notice.

(2) A broadcast or CTV station shall, at all reasonable times, be open to inspection by an authorized officer under sub-section (1) and the licensee shall provide such officer with every assistance and facility in performing his duties.

(3) The authorized officer shall, within forty-eight hours of the inspection, submit his inspection report to the Authority.

30. Power to vary conditions, suspend or revoke the license.- (1) The Authority may revoke or suspend the license of a broadcaster or CTV operator on one or more of the following grounds, namely:-

(a) The licensee has failed to pay the license fee and charges;

(b) the licensee has contravened any provision of this Ordinance or rules made there under and an opinion to this effect has been rendered by a Committee constituted by the Federal Government, comprising a nominee of the licensee, a nominee of the Authority and a retired judge of a High Court or the Supreme Court who shall be the Chairman of the Committee;

(c) The licensee has failed to comply with any condition of the license; and

(d) If the shareholders of the licensee, being a company, have transferred the majority of their shares.

(2) Except for reason of necessity in the public interest a license shall not be suspended or cancelled under sub-section (1) unless the licensee has been given reasonable notice to show cause.

31. Powers to issue certificate. - The Authority shall issue the necessary certificates and documentation to the broadcast station or CTV network to conduct up-link between a ground transmission facility and a satellite in order to transmit any programme content for broadcast purposes within or outside Pakistan.

32. Power to grant exemptions.- The Authority may grant exemptions from any provisions of this Ordinance, where the Authority is of the view that such exemption serves the public interest and the exemptions so granted shall be supported by recording the reasons for granting such exemptions in writing provided that the grant of exemptions shall be based on guidelines and criteria identified in the Rules and that such exemptions shall be made in conformity with the principles of equality and equity as enshrined in the Constitution.

33. Offences and penalties. - (1) any broadcaster or CTV operator or person who violates or abets the violation of any of the provisions of the Ordinance shall be guilty of an offence punishable with a fine which may extend to one million rupees.

(2) Where such broadcaster or CTV operator or person repeats the violation or abetment, such person shall be guilty of an offence punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Where the violation or abetment of the violation of any provision of this Ordinance is made by a person who does not hold a license, such violation shall be punishable with imprisonment for a term which may extend to four years, or with fine, or with both.

34. Cases to be initiated on complaint. - No court shall take cognizance of any offence under this Ordinance except on a complaint in writing by the Authority or any officer authorized by it.

35. Cognizance of offences etc.- (1) No court inferior to that of a Magistrate of the first class shall try an offence punishable under this Ordinance.

(2) Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898 (Act V of 1898), it shall be lawful for any Magistrate of the first class to pass any sentence authorized by this Ordinance even if such sentence exceeds his powers under the said section 32.

36. Offences by companies. - (1) Where any offence under this Ordinance has been committed by a person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company as well as the company itself shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the person guilty of an offence under this Ordinance, is a company, corporation or firm, every director, partner and employee of the company, corporation or firm shall, unless he proves that offence was committed without his knowledge, or consent, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

37. Ordinance overrides other laws. - (1) The provisions of this Ordinance shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force, or any contract, agreement or any other instrument whatsoever:
Provided that –

(a) the national broadcasters, namely the Pakistan Broadcasting Corporation shall continue to be regulated by the Pakistan Broadcasting Corporation Act 1973 (XXXII of 1973) and the Pakistan Television Corporation and Shalimar Recording and Broadcasting Company Limited shall continue to be administered under the provisions of the Companies Ordinance 1984 (XLVII of 1984); and

(b) Other existing private broadcasters or CTV operators who had been granted respective monopolies in multi-modal distribution system, cable TV and in FM radio shall henceforth be regulated by this Ordinance except in respects where specific exemptions are granted by the Authority.

38. Indemnity. - No suit, prosecution or other legal proceeding shall lie against the Federal Government or any Provincial Government or local authority or any other person

exercising any power or performing any function under this Ordinance or for anything which is in good faith done or purporting or intended to be done under this Ordinance or any rule made there under.

39. Power to make rules. - (1) The Authority may, with the approval of the Government, by notification in the official Gazette, make rules to carry out the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of the fore-going power, such rules may be provided for all or any of the following matters, namely:-

(a) to prescribe the forms for the licenses for working, installing, operating, or dealing in transmission broadcast or distribution apparatus and the manner in which applications for the licenses shall be granted;

(b) To prescribe the terms and conditions of the license including fee to be charged in connection with the issuance of licenses and related matters, and

(c) to prescribe standards and measures for the establishment of broadcast or CTV stations, installation of broadcasting equipment, transmitters, receivers, boosters, converters, distributors and common antennae.

40. Removal of difficulties. - If any difficulty arises in giving effect to the provisions of this Ordinance, the Authority may make such order, not inconsistent with provisions of this Ordinance, as may appear to it to be necessary for the purpose of removing the difficulty.