

# PEMRA (Amendment) Act

(August 23 2006)

The Senate on August 22, 2006 passed amendments to Clauses 2-28 of the Pakistan Electronic Media Regulatory Authority Ordinance, 2002.

The text is: WHEREAS it is expedient further to amend the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 (XIII of 2002), for the purposes hereinafter appearing.

It is hereby enacted as follows:

Short title and commencement: (1) This Act may be called the Pakistan Electronic Media Regulatory Authority (Amendment) Act, 2006. It shall come into force at once. Amendment of the preamble, Ordinance XIII of 2002: In the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 (XIII of 2002) hereinafter referred to as the said Ordinance, in the preamble:

(a) for the word "broadcast" occurring for the first time after the word "regulate", the word "electronic" shall be substituted;

(b) for the word "broadcast" occurring after the words "the development of", the word "electronic" shall be substituted.

Amendment of section 1, Ordinance XIII of 2002: In the said Ordinance, in section 1 in sub-section (2), after the word "of", the words "Islamic Republic of" shall be inserted.

Amendment of section 2, Ordinance XIII of 2002: In the said Ordinance, in section 2:

(a) for clause (c) the following shall be substituted, namely:

"(c) "broadcast media" means such media which originate and propagate broadcast and pre-recorded signals by terrestrial means or through satellite for radio or television and includes teleporting, provision of access to broadcast signals by channel providers and such other forms of broadcast media as the Authority may, with the approval of the Federal Government, by notification in the official Gazette, specify;"

(b) after clause (c), amended as aforesaid, the following new clause shall be inserted, namely: "(ca) "broadcast station" means physical, technical and software infrastructure for the operation of radio or television and also includes satellite uplinking from ground, repeaters and all such other accessories;"

(c) in clause (d), after the word "media", the words and commas "except broadcast journalists not actively involved in the operation, ownership, management or control of the broadcast media" shall be inserted;

(d) after clause (d), the following new clause shall be inserted, namely: "(da) "Cable TV" means reception of broadcast and pre-recorded signals from different channels and their distribution to subscribers through a set of closed transmission paths;"

(e) after clause (e), the following new clause shall be inserted, namely: "(ea) "Chairperson" means the head of a Council of Complaints;"

(f) after clause (1), the following new clause shall be inserted, namely: "(fa) "channel provider" means a vendor who represents local or foreign channels and provides access of their signal to a distribution service;"

(g) after clause (h), the following new clauses shall be inserted, namely: "(ha) "distribution service" means a service which receives broadcast and pre-recorded signals from different channels and distributes them to subscribers through cable, wireless or satellite options and includes Cable TV, LMDS, MMDS, DTH and such other similar technologies; (hb) "DTH" means direct to home distribution of audio-visual signals received via satellite to small dish antennas across the foot-print of the satellite to subscribers; (he) "electronic media" includes the broadcast media and distribution services;"

(h) after clause (k), the following new clauses shall be inserted, namely: "(ka) "illegal operation" means the broadcast or transmission or distribution of, or provision of access to, programmes or advertisements in the form of channels without having a valid licence from the Authority; (kb) "LMDS" means local multipoint distribution service to transmit audio-visual signals through wireless devices, on a higher frequency range for the provision of cable television service;"

(i) in clause (1) for the words and comma "journal, a radio or television broadcast station or cinema theatre", the words "a broadcast media or distribution service" shall be substituted;

(j) after clause (1), amended as aforesaid, the following new clause shall be inserted, namely: "(la) "MMDS" means multi-channel multi-point distribution service to transmit audio-visual signals through wireless devices to multiple subscribers, after receiving such signals from other channels of communication;"

(j) for clause (m), the following new clause shall be substituted, namely: "(m) "licence" means a licence issued by the Authority to establish and operate a broadcast media or distribution service;"

(k) after clause (n), the following new clause shall be inserted, namely: "(na) "newspaper" means a newspaper as defined by the Press, Newspapers, News Agencies and Books Registration Ordinance, 2002;

(l) in clause (s), after the word "rules", the words "or regulations" shall be inserted;

(m) in clause (t), the word "and", at the end, shall be omitted;

(n) after clause (O) the following new clause shall be inserted; namely: "(ta) "regulations" means the regulations made under this' Ordinance;"

(o) in clause (u) for the comma at the end, a semi colon shall be substituted;

(p) after clause (u), the following new clauses shall be inserted, namely: "(v) "Teleport" means a facility with installed equipment used or required in the process of uplinking or downlinking of audio-visual programmes and signals between an

earth station and a satellite; and,

(w) "uplinking" means transmission of audio-video signal from ground transmission facility to a satellite in order to transmit any programme within or outside Pakistan."

Amendment of section 4, Ordinance XIII of 2002: In the said Ordinance, for section 4 the following shall be substituted, namely: "4. Functions of the Authority- (1) The Authority shall be responsible for regulating the establishment and operation of all broadcast media and distribution services in Pakistan established for the purpose of international, national, provincial, district, local or special target audiences.

(2) The Authority shall regulate the distribution of foreign and local TV and radio channels in Pakistan.

(3) The Authority may, by notification in the official Gazette, make regulations and also issue determinations for carrying out the purposes of this Ordinance.

Amendment of section 6, Ordinance XIII of 2002: In the said Ordinance, in section 6: (a) in sub-section (1), for the word "nine", the word "twelve" shall be substituted; (b) in sub-section (3), for the word "nine", the word "twelve" shall be substituted; (c) in sub-section (4), for the words and commas "Media Development, Secretary, Interior Division and Chairman Pakistan Telecommunication Authority" the words and commas "Broadcasting, Secretary, Interior Division, Chairman, Pakistan Telecommunication Authority and Chairman, Central Board of Revenue" shall be substituted; (d) after sub-section (4), amended as aforesaid, the following new sub-section shall be inserted, namely:

"(4A) The remaining two members shall be appointed by the Federal Government on need basis on the recommendation of the Chairman.

(e) in sub-section (5), the commas and words, "other than ex officio members, shall participate in all meetings and" shall be 'omitted'; (f) after sub-section (5), amended as aforesaid, the following new subsection shall be added, namely: "(6) A member, other than an ex officio member, shall be deemed to have vacated his office if he absents himself for three consecutive meetings of the Authority without the leave of the Authority."

Amendment of section 13, Ordinance XIII of 2002: In the said Ordinance, in section 13, for the first and second proviso the following shall be substituted, namely: "Provided that the delegation of such power shall not include the power to grant, revoke or cancel a broadcast media or distribution service licence except Cable TV."

Amendment of section 14, Ordinance XIII of 2002: In the said Ordinance, in section 14:

(a) in sub-section (1), for the word "servants" the word "employees" shall be substituted; (b) in sub-section (2), in clause (ii) after the word "issuance" the words "and renewal" shall be inserted; (c) after sub-section (3), the following new sub-section shall be added namely: "(4) The Authority may invest its funds in such investments as it may, from time to time, determine."

Amendment of section 18, Ordinance XIII of 2002: In the said Ordinance, for section 18 the following shall be substituted, namely: "18. Categories of licences: (1)

The Authority shall issue licences for broadcast media and distribution service in the following categories, namely; (i) International and National Scale Stations; (ii) Provincial Scale broadcast; (iii) Local Area Community-based Radio and TV Broadcast; (iv) Specific and Specialised subjects; (v) Distribution Services; and (vi) Uplinking facilities, including Teleporting and DSNG.

The Authority may further sub-categorise the categories specified in sub-section (1) as it may deem fit."

Amendment of section 19, Ordinance XIII of 2002: In the said Ordinance, in section 19: (a) for sub-section (1) the following shall be substituted, namely: "(1) The Authority shall have exclusive right to issue licences for the establishment and operation of all broadcast media and distribution services, 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:

Provided that the bidding shall be held if the number of applications exceeds the number of licences to be issued by the Authority."

(b) in sub-section (2) for the words "broadcasting or CTV operation" the words "any broadcast media or distribution service" shall be substituted;

(c) for sub-section (4), the following shall be substituted, namely: "(4) The Authority shall have the power to determine number of licences to be issued in each category or sub-category and 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."

(d) after sub-section (4), the following new sub-section shall be added, namely: "(5) The Authority shall devise a Code of Conduct for programmes and advertisements for compliance by the licensees."

Amendment of section 20, Ordinance XIII of 2002: In the said Ordinance, in section 20: (a) for the words and letters "broadcaster or CTV operator" the word "person" shall be substituted; (b) in clause (a) for the word "respect" the words "ensure preservation of" shall be substituted; (c) in clause (b), for the word "respect" the words "ensure preservation of" shall be substituted;

(c) for clause (e), the following clause shall be substituted, namely; "(c) ensure that all programmes and advertisements do not contain or encourage violence, terrorism, racial, ethnic or religious discrimination, sectarianism, extremism, militancy, hatred, pornography, obscenity, vulgarity or other material offensive to commonly accepted standards of decency;"

(e) in clause (e), (i) for the words "or distribute" occurring for the first time, the commas and words, "if permissible under the terms of its licence," shall be substituted; and the words "or distribute" occurring for the second time after the words "chooses to broadcast" shall be omitted;

(f) in clause (I), after the word "Authority" the words "and appoint an in-house monitoring Committee, under intimation to the Authority, to ensure compliance of the Code" shall be added; and (g) for clause (h), the following clause shall be

substituted, namely: "(h) obtain NOC from PTA before import of any transmitting apparatus for broadcasting, distribution or teleporting operation."

Substitution of section 21, Ordinance XIII of 2002: In the said Ordinance, for section 21 the following section shall be substituted, namely: "21. Consultation with the Provinces: (1) The Authority, except where applications for the issuance of a licence relates to Islamabad Capital Territory, shall invite the comments of the Government of the Province concerned, with regard to the proposed location of the Radio, TV or MMDS station for which the application has been made, and if the concerned Provincial Government has any reservation to the issuance of the licence, the Authority shall invite the representative of the Provincial Government and consider its viewpoint before taking a decision on the issuance of a licence:

Provided that where the Provincial Government objects to the issuance of a particular licence, the applicant shall be provided an opportunity to be present at the meeting of the Authority and given an opportunity of being heard with regard to the observations made by the Provincial Government.

(2) Where the signal of a radio, TV or MMDS station 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 the concerned provincial governments to express their viewpoint, if any, on the inter-provincial dimensions of the signal."

13. Amendment of section 23, Ordinance XIII of 2002: In the said Ordinance, in section 23: (a) in sub-section (1), for the word and letters "or CTV stations" the word "media or distribution service" shall be substituted; (b) for sub-section (2), the following shall be substituted, namely: "(2) In granting a licence, the Authority shall ensure that open and fair competition is facilitated in the operation of more than one media enterprise 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:

Provided that if a licensee owns, controls or operates more than one media enterprise, he shall not indulge in any practice which may impede fair competition and provision of level playing field."

Amendment of section 24, Ordinance XIII of 2002: In the said Ordinance, in section 24, for sub-section (1) the following shall be substituted, namely: "(1) Any person desirous of obtaining a licence for establishment and operation of broadcast media or a distribution service shall apply to the Authority in such manner and form as may be prescribed."

Amendment of section 25, Ordinance XIII of 2002: In the said Ordinance in section 25: (a) in clause (b), the word "or" shall be omitted; (b) in clause (c), for the full stop at the end, a semicolon and the word "or" shall be substituted; (d) after clause (c), amended as aforesaid, the following new clause shall be added, namely: "(d) any person funded or sponsored by "a foreign government or organisation."

Amendment of section 26, Ordinance XIII of 2002: In the said Ordinance, in Section 26: (a) for sub-section (1) the following shall be substituted, namely: "(1) The Federal Government shall, by notification in the official Gazette, establish Councils of Complaints at Islamabad, the provincial capitals and also at such other places as the Federal Government may determine."

(b) in sub-section (2): (i) for the word "The" the word "Each" shall be substituted; and (ii) for the words and letters "by a station or CTV network" the words "or distributed by a station" shall be substituted;

(c) in sub-section (3): (i) for the word "The" the word "Each" shall be substituted; and (ii) for the word "Commissioner" the word "Chairperson" shall be substituted;

(d) after sub-section (3), the following new sub-section shall be inserted, namely: "(3A) The Councils shall have the powers to summon a licensee against whom a complaint has been made and call for his explanation regarding any matter relating to its operation."

(e) in sub-section (4), for the word "Council" the word "Councils" shall be substituted; and e) in sub-section (5), for the word "Council" the word "Councils" shall be substituted.

Amendment of section 27, Ordinance XIII of 2002: In the said Ordinance for section 27, the following shall be substituted, namely: "27. Prohibition of broadcast media or distribution service operation: The Authority shall by order in writing, giving reasons therefor, prohibit any broadcast media or distribution service operator from (a) broadcasting or re-broadcasting or distributing any programme or advertisement if it is of the opinion that such particular programme or advertisement is against the ideology of Pakistan or is likely to create hatred among the people or is prejudicial to the maintenance of law and order or is likely to disturb public peace and tranquillity or endangers national security or is pornographic, obscene or vulgar or is offensive to the commonly accepted standards of decency; or (b) engaging in any practice or act which amounts to abuse of media power by way of harming the legitimate interests of another licensee or wilfully causing damage to any other person."

Amendment of section 28, Ordinance XIII of 2002: In the said Ordinance, in section 28,-

(a) in the marginal heading for the words and letters "broadcasting or CTV" the words "broadcast media or distribution service" shall be substituted; and (b) for the words "broadcaster or" the words "broadcast media or distribution service" shall be substituted.

Amendment of section 29, Ordinance XIII of 2002: In the said Ordinance, after section 29,-

(a) in sub-section (1),-

(i) for the words and letters "broadcaster or a CTV", the words "broadcast media or distribution service" shall be substituted;

(ii) in sub-section (1), the words "after giving reasonable notice" shall be omitted;

(b) in sub-section (2), for the word and letters "or CTV station" the words "media station or distribution service premises" shall be substituted;

(c) after sub-section (3), the following new sub-sections shall be added, namely:-

"(4) The Authority may authorise any of its officers to undertake investigation, in the manner it may prescribe, in any matter with regard to its functions and to seek any specific information, from any person, which the Authority may deem useful in order to enable it to determine and dispose of such matter.

(5) The Authority or as the case may be the Chairman after issuing a show cause notice to a broadcast media or distribution service may seize its broadcast or distribution service equipment, or seal the premises, which is being used in contravention of the provisions of this Ordinance or the rules made thereunder or any other law:

Provided that the equipment shall be returned to the holder of a valid licence after imposing on him such penalty as the Authority may determine.

(6) The Authority may, after the licensee has been given reasonable opportunity to show cause, impose fine up to one million rupees on a licensee who contravenes any of the provisions of this Ordinance or the rules or regulations made thereunder."

Insertion of section 29A, Ordinance XIII of 2002: In the said Ordinance, after section 29, the following new section shall be inserted:

"29A. Dues to be recovered as arrears of land revenue,- All dues including outstanding licence fee, annual renewal fee or any other charges, including fine as imposed by the Authority shall be recoverable as arrears of land revenue."

Substitution of section. 30, Ordinance XIII of 2002.- In the said Ordinance, for section 30, the following shall be substituted namely: -

"30. Power to vary conditions, suspend or revoke the licence.(1) The Authority may revoke or suspend the licence of a broadcast media or distribution service by an order in writing on one or more of the following grounds, namely: -

(a) the licensee has failed to pay the licence fee, annual renewal fee or any other charges including fine, if any;

(b) the licensee has contravened any provision of this Ordinance or rules or regulations made thereunder:

Provided that in the case of revocation of a licence of broadcast media an opinion to this effect shall also be obtained from the Council of Complaints;

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

(d) where the licensee is a company, and its shareholders have transferred a majority of the shares in the issued or paid up capital of the company or if control of the company is otherwise transferred to persons not being the original shareholders of the company at the time of grant of licence, without written permission of the Authority.

(2) The Authority may vary any of the terms and conditions of the licence where such variation is in the public interest.

(3) Except for reason of necessity in the public interest a licence shall not be varied, suspended or revoked under sub-section (1) or sub-section (2) unless the licensee has been given reasonable notice to show cause and a personal hearing."

Insertion of section 30A, Ordinance XIII of 2002: In the said Ordinance, after section 30, the following new section shall be inserted, namely:

"30A. Appeals: Any person aggrieved by any decision or order of the Authority may, within thirty days of the receipt of such decision or order, prefer an appeal to the High Court:

Provided that PEMRA shall make available a copy of its decision or order of revocation of licence within twenty four hours of the decision to the licensee for preferring an appeal to the High Court."

Amendment of section 31, Ordinance XIII of 2002: In the said Ordinance, for section 31, the following shall be substituted, namely:-

"31. Uplinking +facilities.- (1) No person shall carry out uplinking without a valid Teleport or Satellite TV licence from the Authority;

(2) The authority may subject to fulfilment of such conditions, as may be prescribed, issue permission in writing to any party to carry out temporary uplinking from a ground transmission facility to a satellite in order to transmit any programme within or outside Pakistan."

Amendments of section 33, Ordinance XIII of 2002: In the said Ordinance, in section 33,-

(a) in sub-section (1),-

(i) for the words and letters "broadcaster or CTV" the words "broadcast media or distribution service" shall be substituted and

(ii,) for the words "one million" the words "ten million" shall be substituted;

(b) in sub section (2) for the words and letter "broadcaster or CTV" the words "broadcast media or distribution service" shall be substituted;

(c) in sub-section (3) after the word "both", a comma and the words, "in addition to the confiscation of the equipment used in the commission of the act" shall be added; and

(d) after sub-section (3), amended as aforesaid, the following new subsection shall be added, namely: -

"(4) Whosoever damages, removes, tampers with or commits theft of any equipment of a broadcast media or distribution service station licensed by the Authority, including transmitting or broadcasting apparatus, receivers, boosters, converters, distributors, antennae, wires, decoders, set-top boxes or multiplexers shall be guilty of an offence punishable with imprisonment which may extend to three years. or with fine, or both."

Insertion of sections 33A and 3311, Ordinance XIII of 2002: In the said Ordinance, after section 33, the following new sections shall be inserted, namely:

"33A. Officers of Federal, Provincial and Local Governments to assist Authority.- The officers of Federal, Provincial and Local Governments, including the Capital the Provincial Police shall assist the Authority and its officers in the discharge of their functions under the provisions of this Ordinance and the rules and regulations made thereunder.

33B. Warrants for search: (I) Where on information furnished by the Authority, the Court has reason to believe that any unlicensed broadcast media or distribution service is being owned, controlled or operated or its equipment is being kept or concealed, it may issue a search warrant and the person to whom such warrant is directed, may enter the premises where such unlicensed broadcast media or distribution service is being owned, controlled, operated or provided or its equipment is being kept or concealed, or carry out search and inspection thereof and seize all or any equipment therein.

(2) Any equipment of a broadcast media station seized under subsection (1) having no ostensible owner shall vest with the Authority."

Amendment of section 34, Ordinance XIII of 2002: In the said Ordinance, in section 34, after the word "under", the words and figures "sub-section (1) or (2) of section 33 of" shall be inserted.

Insertion of section 34A, Ordinance XIII of 2002: In the said Ordinance, after section 34, the following new section shall be inserted, namely:

"34A. Offences to be compoundable and cognisable: The offences under sub-sections (3) and (4) of section 33 of this Ordinance shall be compoundable and cognisable."

Amendments of section 39, Ordinance XIII of 2002: In the said Ordinance, in section 39 in sub-section (2),-

(a) in clause (b) the word "and", at the end, shall be omitted;

(b) for clause (c) the following shall be substituted, namely: -

"(c) to prescribe standards and measures for the establishment of broadcast media stations, installation of broadcasting, distribution service or teleporting equipment, transmitters, receivers, boosters, converters, distributors and common antennae;

(d) to prescribe terms and conditions for the broadcast media or distribution service operators who own, control or operate more than one media enterprise; and

(e) to define the circumstances constituting undue concentration of media ownership and abuse of powers and anti-competitive practices by media companies."