



PAKISTAN TELECOMMUNICATION AUTHORITY
HEAD QUARTERS, F-5/1, ISLAMABAD

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Pakistan Telecommunication Company Limited.....**Appellant**

Versus

Director (Wireline licensing), Pakistan Telecommunication Authority...**Respondent**

APPEAL UNDER SECTION 7 (2) OF PAKISTAN TELECOMMUNICATION
(RE-ORGANIZATION) ACT 1996 AGAINST THE DECISION OF THE
AUTHORITY ON DIRECTORY INQUIRY CHARGES

Date of preferring the Appeal: through covering letter of the
Appellant dated 14.06.2006
Date of hearing : 20.09.2006
Venue of hearing : Conference Room, PTA
HQs, Islamabad

The Authority present:

Maj. Gen. (R) Shahzada Alam Malik: Chairman
S. Nasrul Karim Ghaznavi: Member
Dr. Muhammad Yasin: Member

The Issue:

“Request for allowing PTCL’s proposal to charge its customers for
Directory Inquiry Services”

Decision of the Authority

Brief facts:

Through this appeal under sub-section (2) of section 7 of the Pakistan Telecommunication (Re-organization) Act, 1996 (the “Act”) M/s Pakistan Telecommunication Company Limited (the “Appellant”) has impugned the order of the Pakistan Telecommunication Authority (the “Authority”) communicated to the former through the Director (Wireline licensing)’s letter No.PTA/Wireline Licensing/Issuance of licenses to PTCL/544/2006 dated 16th May, 2006 (the “impugned order”) vide which the

Authority has turned down the Appellant's request to allow it to start charging its customer for 17 directory services.

2. Succinctly, relevant facts are that the Appellant vide its letter No.P&R/DR/04/2005/17 dated 23rd February, 2006 placed before the Authority through the office of the Chairman of the Authority, a request to allow it charging (cost plus reasonable margin) of 17 inquiry calls made to the directory inquiry service centre/system.

3. The aforementioned request of the Appellant was still under consideration by the Authority and any decision was yet to be taken by the Authority that the Appellant wrote another letter to the Authority, bearing No.P&R/DR/04/2005/17 dated April 26, 2006, vide which the Authority was informed that the Appellant understands that the Authority has no reservation on the Appellant's proposal to charge the service as per provisions in the Appellant's license, therefore, the Appellant is going to charge the service from 1st June, 2006 and is going to publicize this for customer's information. Vide the aforementioned letter the Authority was further informed that the proposed tariff will be as per the tariff charged for "time announcement-14" i.e. one local call maximum per inquiry call. Looking at this arbitrary act of the Appellant, Mr. Yawar Yasin, Director (Wireline licensing), vide letter dated 15th May, 2006 informed the Appellant that the proposal forwarded by it is under process and till the time any decision is taken PTCL i.e. the Appellant will not charge for the directory inquiry service.

The impugned order:

4. On 16th May, 2006 vide the impugned order; the following decision of the Authority was forwarded to the Appellant through the Director (Wireline licensing) for information and further necessary action:

- a. PTCL shall not charge for the 17 directory inquiry services;
- b. Inquiry service number "17" should not be changed;
- c. PTCL shall continue providing printed directories (white pages)."

Presentation of the instant Appeal:

5. Aggrieved of the aforementioned order of the Authority, of which the Appellant was informed through the office of the Director (wireline licensing) through the impugned order, the Appellant vide letter dated 14.06.2006 preferred the instant appeal with the prayer that the impugned decision may be cancelled and declared null and void, by invoking the appellate jurisdiction of the Authority under sub-section (2) of section 7 of the Act on the following grounds:

- A. That the Respondent (*Director (wireline licensing)*) has contravened primarily the provisions of the Act whereby under section 6(a) and section 6(b) of the Act there exists a mandatory responsibility on the Respondent (*Director licensing*) to ensure that the rights of the licensees i.e. the telecom

stake holders, are protected and that the decisions are manifestly non-discriminatory and equitable.

- B. That the Appellant cannot legally be prohibited from taking financial decisions based on commercial viability, such as charging 17 inquiry calls. The Respondent (*Director licensing*) has passed the impugned Decision beyond the ambit and scope of authority provided under law, hence, is arbitrary, unlawful and of no legal effect.
- C. That the Respondent (*Director licensing*) has issued the Decision unlawfully in the sense that reasonable opportunity was not afforded to the Appellant to put forward its stance and limitation as required under the well settled principle of natural justice.
- D. That the Respondent (*Director licensing*) has passed the Decision in contravention of the PTCL License Section 4 of Part 1 of Schedule 2 whereby it is manifestly stipulated that ***“the licensee may charge for directory inquiry services, but subject to approval from the Authority.”***
- E. That the stipulations contained in PTCL (*Appellant*) License under section 4 of Part 1 of Schedule 2 manifestly authorize PTCL to take such financial decisions on the basis of commercial viability. According to the true spirit and intent of the said section, the condition of approval of PTA in this regard, relates to the variation of the charge that needs to be fixed. It does not authorize PTA to completely prohibit PTCL from charging 17 inquiry calls at all. The true interpretation has to be given effect, otherwise, if PTA had had the authority to completely restrict PTCL from charging 17 inquiry calls, the discretionary authority conferred upon PTCL by the said section of the License to charge ‘17’ inquiry calls would not have been afforded at all. Henceforth, the Impugned Decision is liable to be set aside on the sole ground of being ultra vires of the ambit and scope of authority prescribed by law and is also in direct contravention of the License of PTCL which in effect forms a charter of rights and obligation between PTA and PTCL.
- F. That such a heavy burden of cost in providing free inquiry services would not only adversely effect the business of the Appellant but would also serve as a causal link to reduce the capacity of the Appellant to enhance tele-density which in turn would hamper the general masses who are being served by the Appellant with telecom services in far flung and remote areas, still unexplored by any other telecom service provider.
- G. That the Decision has been issued in contravention of the general principles of equity and justice. It must be noted that the Appellant is already incurring heavy costs for publishing directory books on the directions of PTA.

- H. That the Appellant strives for the provisioning of telecom services to the general masses of the country at large, reaching the geographical corners of the country. The profits of the Appellants benefit mainly the GOP, the strategic investor and other shareholders. The Decision in issue would cause a grave loss to the business of the Appellant which in effect would cause a serious loss to the economy of the country.
- I. That there exist a bulk of frivolous, obnoxious and non serious callers to '17 inquiry which are causing constant and continuous abuse and misuse of this free facility. A charge for such calls would deter the bulk of frivolous calling and stop increase in the heavy costs incurred by PTCL.
- J. That the Respondent has not been delegated the power to issue such a policy decision by the PTA. Henceforth, the very foundations of the Decision are un called for and are out rightly against all cannons of justice.
- K. That this Appeal is being filed to invoke the appellate jurisdiction of PTA under section 7 of the Act to adjudicate upon the validity of the Decision issued by the respondent, in satisfaction of its prime object and policy to provide protection to the telecommunication stake holders including the operators as the petitioner in the instant case.

Hearing of the Appeal:

6. Initially the Appeal was fixed for hearing on 6th July, 2006 and the date of hearing was communicated to the Appellant through AD (L&A-I)'s letter No.14-342/L&A/PTA/2006 dated 30th June, 2006. However, in response to the aforementioned Hearing Notice the Appellant requested for adjournment of the hearing telephonically as well as through letter of the Chief Engineer (P&R) bearing No.P&R/DR/45/2006 dated 4th July, 20006, allowing which request of the Appellant, the hearing was adjourned. Again Notice of hearing in the matter was issued vide Director (L&A)'s letter No.14-342/L&A/PTA/06/559, on 13th September, 2006 (which, out of a typographical mistake, was dated as 13th July, 2006) and the appeal was fixed for hearing before the Authority for today i.e. 20.09.2006.

The relevant statutory provision:

7. Since the instant Appeal has been filed under sub-section (2) of section 7 of the Act, the provisions of section 7 of the Act are reproduced as under for ready reference;

“7. **Appeal and revision.**—(1) A person aggrieved by any decision or order of the Authority on the ground that it is contrary to the provisions of this Act, may, within thirty days of the receipt of such decision or order, appeal to the High Court or to ay other tribunal established by the federal government for the purpose, in the manner prescribed by the High Court for filing the first appeal

before that Court or the tribunal and the Court or the tribunal shall decide such appeal within ninety days.

(2) A person aggrieved by any decision or order of any officer of the Authority acting under the delegated powers of the Authority may, within thirty days of the receipt of the decision or order, appeal to the Authority in prescribed manner and the Authority shall decide such appeal within thirty days." [Underlined is ours for emphasis]

The representative of the parties present:

8. M/s Ikram ul Haq, Deputy Legal Advisor-II, PTCL and Mr. Gul Ahmad, GM (Regulatory Affairs), PTCL, represented the Appellant and presented the Appellant's case before the Authority. On legal issues, the Authority was assisted by PTA's legal team comprising of Mr. Kamran Ali DG (L&R), Shafaqat Jan Director (L&A), Ms. Namiqa Nazar Bhatti AD (Law-II) and Ms. Erum Latif AD (L&R). For providing assistance to the Authority on technical, financial and other issues, Mr. Imran Ahmad Zubairy, DG (Finance), Mr. Wasim Tauqir, DG (ID), Mr. Tariq Sultan, DG (CA) and Mr. Yawar Yasin, Director (Wireline licensing) attended the hearing.

9. Being the case officer, Ms. Namiqa Nazar Bhatti appraised the Authority of the background of the case and narrated the brief facts and background of the case.

The Appellant's arguments/presentation of the case:

10. After brief presentation of the case by the case officer, the Chairman of the Authority requested the Appellant to start presentation of their stance. Mr. Gul Ahmad, while justifying the Appellant's request for charging its customers for 17 directory services contended that PTCL is providing "Directory Services" both by publishing the telephone directory books as well as operator assisted call service centers with computerized directory assistance system (CDAS). As per Mr. Ahmad's submissions, the average historical cost of publishing telephone directory books has been worked out and comes to Rs.202/46 per book for 1996 and Rs.237/61 per book for 2001 issues respectively, based on which figures, the total cost for publishing 5.6 millions directories would be well above Rs.1300 millions. The Appellant's representative further contended that with the increasing competition and faster expansion of the PTCL/the Appellant as well other networks, the utility of telephone directory books has diminished to a great extent. Therefore, PTCL has been proposing to the Authority persistently for waiver of printing and provisioning of telephone directory books for the following reasons:-

- a. Computerized directory assistance systems have been installed in major cities and are being expanded to other cities;
- b. The information for these computerized systems is updated on monthly basis and available on PTCL websites;

- c. CD based directory-country wide information can be available at reasonable cost; and
- d. With increase in telecom operators in de-regulated environment, the utility of keeping multiple telephone books is cumbersome and therefore the directory assistance service is the best alternative.

11. Mr. Gul Ahmad informed the Authority that in response to the aforementioned reasons, the Authority responded that the issue was deliberated its length after receiving inputs from the industry, consumers and consultation papers and it has been established that most of the subscribers do not possess computers or access to internet for accessing the web or CD. Moreover printed telephone directories are more reliable and useful in emergency situation and that the telephone companies the world over publish telephone directories.

12. The Appellant further argued that fully competitive telecom market in Pakistan has led to collapse of prices squeezing the margin to bare minimum, leaving no option for cross subsidy to support such services. The directory inquiry calls makes significant proportion of the total number of calls utilizing proportionate network resources. In addition to the network resources, additional arrangements and investments have been made adding further to the cost of providing directory inquiry service and that as is the case in competitive markets, the Telecom Operators are constrained to charge directory inquiry service due to heavy costs involved. The cost of service, being both capital and labor intensive, will further increase keeping in employees' related costs and more Capex for further expansion. The ever-thinning margins and continued printing of telephone directory books, with additional anticipated cost of around 1.3 billions Pak Rupees, provides no other option to the Appellant but to charge the 17 directory inquiry service.

13. Before winding up the Appellant's stance as was presented through the slides shown on the screen, Mr. Ahmad took the Authority by surprise when he categorically admitted, as opposed to the Appellant's pleading, that the impugned order has been passed by the Authority and the Appellant, by invoking the review jurisdiction of the Authority is requesting the Authority to review its earlier order i.e. the impugned order and allow it to start charging its customers for its 17 directory services.

PTA law division's objection regarding maintainability of the Appeal:

14. PTA's legal team, at the very outset of its submissions, opposed the Appeal and by raising a preliminary legal objection, objected to the very maintainability of the Petition/Appeal filed by the Appellant under sub-section (2) of section 7 of the Act. It was brought in the Authority's notice that the impugned order has been passed by the Authority and has only been communicated to the Appellant through the office of the Director (Licensing). The impugned order was read out before the Authority and it was highlighted before the Authority that the officer issuing the letter/impugned order has in very clear words mentioned in his letter/impugned order that the contents/order is

approved by the Authority and that the Director (Licensing) is only doing the job of forwarding the same order of the Authority for information and further necessary action to the Appellant. It was further submitted that for all purposes the impugned order is order of the Authority and thus an appeal under sub-section (2) of section 7 of the Act from an order passed by the Authority is not maintainable and as such the instant appeal is liable to be dismissed. It was contended that appeal from the order of the Authority should be made to the High Court under the provisions of sub-section (1) of section 7 of the Act and not to the Authority.

15. It was also pointed out by the legal team before the Authority that the Appellant through the memo of the instant Appeal has invoked the Appellate Jurisdiction of the Authority under sub-section (2) of section 7 of the Act while in today's presentation/arguments before the Authority the Appellant, by taking a totally new stance, quite opposite to its pleadings of 14th June, 2006 (Memo of appeal) has contended that it has invoked the Review Jurisdiction of the Authority with the request before the Authority to review its own earlier order i.e. the impugned order.

16. While further explaining the legal position of the Appeal, it was submitted before the Authority that the Appellant is itself not clear as to whether it has invoked the appellate jurisdiction of the Authority under sub-section (2) of section 7 of the Act by filing appeal or it is asking the Authority for reviewing its earlier order/impugned order under the review jurisdiction (if any) of the Authority. It was further pointed out that if the petition before the Authority, filed by the Appellant is taken as an appeal (as also mentioned in the titled of the memo of the appeal), the same is not maintainable as the impugned order has been passed by the Authority itself and none of the orders passed by the Authority can be challenged before the Authority under sub-section (2) of section 7 of the Act. However, as argued and requested by the Appellant today, if their case be taken as the one filed under the review jurisdiction of the Authority, the Act from which the Authority derives its powers, nowhere empowers the Authority to review its own orders. Hence, in both cases the case/appeal is not maintainable whether it is review or appeal.

17. In light of the foregoing submission made by PTA's legal team, the Authority was requested to require the Appellant to first establish maintainability of their case/appeal.

Appellant's response to the legal objection:

18. The Appellant, on the Authority's direction to establish the maintainability of the petition/appeal first, could only reply that since it (the Appellant) has not been provided with the detailed reasons and the judgment written by the Authority for the impugned order, their understanding of the impugned order is that the same has been passed by the Director (licensing) and as such the Appeal is maintainable. When confronted with the Chairman's query as to whether it (the Appellant) has ever applied for the detailed order/judgment to the Authority, Mr. Ikram ul Haq, the Appellant's deputy legal advisor responded in negative and requested that the detailed reasons be given to him now and the order may kindly be reviewed. However, the Appellant failed to point out the law under which the Authority could review its order/the impugned order. At this point, head

of PTA's legal team Mr. Kamran Ali, DG (L&R), offered Mr. Haq, the Appellant's the legal representative that he can have a copy of the Authority's detailed reasons for the impugned order any time on prior written application.

The Authority's decision:

19. We have carefully considered the arguments and contentions advanced by the Appellant as well as the legal objections raised by PTA's legal team and perused the material placed on the record, particularly the memo of appeal filed by the Appellant, in light of the relevant provisions of the law i.e. the Act.

20. The undisputed fact of the case is that the Appellant, as is evident from the memo of appeal, has filed Appeal under sub-section (2) of section 7 of the Act and not a review petition as presented by the Appellant today, before us, and the undisputed legal position is, firstly, that an appeal under sub-section (2) of section 7 of the Act lies only from an order passed by an officer of the Authority acting under the delegated powers and not against the orders of the Authority which are appealable only before the High Court or any other Tribunal established particularly for the same purpose and, secondly, the Authority, under the Act, has no power to review its own orders and thus the review jurisdiction has not been conferred upon the Authority by the law.

21. Now coming to the point as to whether the impugned order is order of the Authority or order of the officer of the Authority acting under the delegated powers, it is on the record that there is present a detailed and well reasoned order of the Authority on the issue in the relevant file and in the noting sheet of the same file of the licensing division, Member (Finance), Member (Technical) and Chairman of the Authority have approved the order and in the same noting sheet have required the Director (wireline licensing) to intimate this approval of the impugned order to the Appellant. Apart from the foregoing, it is more than clear from the letter/impugned order that the officer of the Authority i.e. Director (wireline licensing) is only forwarding an order which has been passed by the Authority to the Appellant for information and necessary action and is intimating the Appellant that their request dated 23rd February, 2006 has been turned down by the Authority. Therefore, for every purpose the impugned order is order of the Authority and not of the officer of the Authority.

22. In view of the foregoing and applying the undisputed legal position as mentioned in para 15, above, on the facts mentioned in para 15 and 16, we feel no hesitation in holding that the instant appeal before us is not competent and is, as such, dismissed.

23. This being so, the remedy available to the Appellant was to challenge the impugned order before the High Court under sub-section (1) of section 7 of the Act which the Appellant has not done within the prescribed period of thirty days, the impugned order has thus attained finality and the Appellant is under obligation to follow the same in true letter and spirit.

Appeal dismissed.

23. This order/judgment is made today at this 20th day of September, 2006.

(Maj. General (R) Shahzada Alam Malik)
Chairman

(S. Nasrul Karim Ghaznavi)
Member (Finance)

(Dr. Muhammad Yasin)
Member (Technical)