



PAKISTAN TELECOMMUNICATION AUTHORITY
HEADQUARTERS, F-5/1, ISLAMABAD
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**Enforcement order under sub-section 3 of section 23 of the Pakistan
Telecommunication (Re-organization) Act, 1996 in the matter Al Badar Etisalat
Private Limited**

File No, PTA/Wireline Licensing/Al Badar Etisalat (Pvt.) Ltd/470/2006

Date of Issuance of Show Cause Notice: 11th March, 2010
Date of Hearing: 18th May, 2010
Venue of Hearing: PTA HQs, Islamabad

The Authority present:

| | |
|------------------------------|--------------------|
| Dr. Muhammed Yaseen: | Chairman (PTA) |
| S. Nasrul Karim Ghaznavi: | Member (Finance) |
| Dr. Khawar Siddique Khokhar: | Member (Technical) |

The Issue:

"Non-Payment of PTA dues and failure in submitting annual audited accounts"

Ex-Parte decision of the Authority

Brief Facts:

1. Al-Badar Etisalat (Pvt.) Limited (the "licensee") was awarded a non-exclusive Local Loop License No. 14-2004 dated 20th July, 2004 by Pakistan Telecommunication Authority ("the Authority") to provide the licensed services in the licensed region of ITR and to establish, maintain and operate Telecommunication system, subject to the terms & conditions contained in the license.
2. As a licensee of the Authority, Al-Badar Etisalat (Pvt) Limited was required to comply with the provisions of the prevailing regulatory laws comprising the Pakistan Telecommunication Authority (Re-organization) Act 1996 (the "Act"), the Pakistan Telecommunication Rules, 2000 (the "Rules"), the Pakistan Telecommunication Authority (Function & Powers) Regulations, 2006 and the terms and conditions of the license.
3. The licensee has failed to fulfill the requirements/obligations provided in the rules/regulations and the license conditions mentioned below:
 - (i). vide clause 3.2.1 of the license, it was obliged to establish at least one Network Connection Point in each licensed regions and commence the provision of Mandatory

service in each Licensed Region within eighteen (18) months from the effective date i.e., the date of issuance of license. In addition, clause 5.4 of Appendix-B of the Rules also provide that the license shall terminate on the first anniversary of the effective date if the licensee has not before that date commercially provided licensed services or commercially operated the licensed system. For the purposes of aforesaid clause the licensee was granted Commencement Certificate vide Letter No.PTA/Wireline Licensing/Al Badar Etisalat (Pvt) Ltd/470/2006 dated 20th August, 2007 subject to fulfillment of certain requirements including setting up of office, development of complaint centre, compliance of QoS obligations and compliance of monitoring facility with direction to obtain satisfactory reports form respective PTA Zonal offices, but it failed to fulfill the aforementioned requirements and to obtain the required reports;

(ii) vide clauses 4.1.2(a), 4.1.3, 4.2.1, 4.2.2, and 4.2.3 read with clause 3.4 and 3.6 of the license and sub-regulation (6) and (7) of regulation 23 of the Regulations the licensee was obliged to deposit Annual Regulatory fees and contributions (i.e., ALF, R&D and USF) within 120 days of the end of the financial year to which such fees and contributions relates, and vide clause 4.2.4 of the license, the it was required to submit annual audited financial statements in support of its calculations of annual fees and contributions payable pursuant to Article 4 of the license and the Authority shall have the right to audit such statements at any time, but if failed to submit annual audited accounts alongwith annual regulatory fees and contributions for the years ended on 30th June, 2005 to 2009 despite repeated demands of the Authority within the due date.

(iii) vide clause 12.3 of the license and regulation 46 of the Regulations, the licensee was obliged to maintain its address, telephone number, fax number, email address and the name and designation of the contact person for the purposes of receiving communication from the Authority, but the licensee has failed to maintain the aforesaid information with the Authority and could not be contacted through the available address for meetings and inspections despite various letters.

4. Powers of the Authority to issue Show Cause Notice: Under section 23 of the Act, whenever provisions of the Act, the rules framed thereunder or the terms and conditions of licence are contravened by a licensee, the Authority may proceed against it with the issuance of a show cause notice. For ready reference, the said section is reproduce as under;

Section 23 of the Act

1) *Where a licensee contravenes any provision of this Act or the rules made thereunder or any term or condition of the licence, the Authority or any of its officers not below the rank of director] may by a written notice require the licensee to show cause within thirty days as to why an enforcement order may not be issued.*

(2) *The notice referred to in sub-section (1) shall specify the nature of the contravention and the steps to be taken by the licensee to remedy the contravention.*

(3) *Where a licensee fails to—*

(a) *respond to the notice referred to in sub-section (1); or*

- (b) *satisfy the Authority about the alleged contravention; or*
- (a) *remedy the contravention -within the time allowed by the Authority, or any of its officers not below the rank of director], the Authority[or any of its officers not below the rank of director], may, by an order in writing and giving reasons—*
- (i) *levy fine which may extend to three hundred and fifty million rupees; or*
- (ii) *suspend or terminate the licence, impose additional conditions or appoint an Administrator to manage the affairs of the licensee, but only if the contravention is grave or persistent.*
- (4) *Without prejudice to the provisions of sub-section (1) and sub-section (3), the Authority or any of its officers not below the rank of director may, by an order in writing, suspend or terminate a licence or appoint an Administrator, if the licensee—*
- (a) *becomes insolvent or a receiver is appointed in respect of a substantial part of the assets;*
- (b) *being an individual, become insane or dies.*

Explanation—*For the purpose of this section, the Administrator shall be appointed from amongst the persons having professional knowledge and experience of telecommunication.*

5. As the facts stated in Para 3, above, amount to sever violation of the aforementioned license conditions, rules/regulations, hence, the Authority issued Show Cause Notice (the "Notice") dated 11th March, 2010 under section 23 of the Act whereby required the licensee to remedy the contravention by making the aforesaid payments and submission of annual audited accounts alongwith annual license fee for the years ended on 30th June, 2005 and 2009 within seven days and also to submit written reply to the Notice within thirty (30) days of the issuance of the Notice and explain as to why the license should not be suspended, terminated or any other enforcement order should not be passed under section 23 of the Act against the licensee.

6. But the licensee neither submitted its reply to the Notice within the statutory period of thirty days nor submitted annual audited accounts alongwith annual regulatory fees and contributions (ALF, R&D and USF) for the aforesaid period till date, hence, committed sheer violation of the provisions of the license, rules/regulations and the Act.

7. Therefore, before passing an enforcement order a Hearing Notice dated 3rd May, 2010 was issued and served on the licensee whereby informed the licensee to attend the hearing dated 18th May, 2010. The show cause and hearing notice were served on the address of the company provided and maintained by the licensee with PTA. In addition, the hearing notice was also sent at the address: *office No.10-A/2, Taj Mahal Plaza, Murree Road, Rawalpindi*, but the licensee did not turn up for hearing on the said date.

8. Clause 12.3 of the license and Regulation 46 of the Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006, provided as under:

12,3. Communication with the licensee (1) *The licensee shall maintain on file with the Authority a current address for the Licensee, including telephone number, fax number and email address, and the name and title of a contact person, for the purposes of receiving communications from the Authority. Any notice or other communication to the Licensee permitted under this License may be given by hand delivering the same, or by mail, facsimile or electronic mail addressed to the licensee at its most recent address on file with the Authority.*

46. Communication with the licensee (1) *The licensee shall maintain on file with the Authority its current address, including telephone number, fax number and email address, and the name and designation of a contact person, for the purposes of receiving communications from the Authority. Any notice or other communication to the licensee permitted under its license or the Regulations may be delivered to it by hand, mail, facsimile or electronic mail addressed to the licensee at its current address(s) available on file with the Authority and any such delivery or communication, as the case may be, if sent on the address referred to above shall be deemed to have been delivered or communicated, as the case may be, to the licensee.*

(2) *Any change in address, telephone numbers, fax numbers or contact person as referred in sub-regulation (1) shall be communicated to the Authority within seven (7) days of such change.*

9. As the show cause and hearing notices has been served at the address given and maintained by the licensee with the Authority, hence, are deemed to be delivered and communicated to the licensee.

10. Therefore, the Authority has no option but to proceed ex-parte, on the basis of available record.

(a). The licensee was obliged to comply with/fulfill the requirements mentioned in Para 3,above, which the licensee has failed to comply with.

(b) The Authority has been making repeated requests to the licensee vide various letters including dated 18th October, 2006, 17th October, 2007, 4th December, 2007, 20th February, 2008, 10th October, 2008, 21st November, 2008, 3rd December, 2008 and 15th October, 2009 requiring the licensee to make the payments and submit annual audited accounts, but the licensee neither deposited the Authority's dues nor submitted annual audited accounts which constitute sheer disregard to the writ of the Authority. The Authority has made its reasonable efforts to contact the licensee, but failed to contact.

(c). Foregoing clearly shows that the licensee is not complying with the directions of the Authority and has closed its offices/operations without informing the Authority. The hearing notice has been served on the address of the licensee that is available in the record but neither the licensee nor any of its representatives attended the hearing establishing an irresponsible and non-serious attitude of the licensee towards the writ of the Authority.

11. Order

11.1. Keeping in view the above facts coupled with the available record, the Authority has no option except to proceed *ex-parte* in the matter and dispose of the show cause notice in the following terms:

- (a) License No. 14-2004 dated 20th July, 2004 issued to **Al-badar Etisalat (Pvt) Ltd** for provision of LL services in the region of ITR is hereby **TERMINATED** with immediate effect,
- (b) **Al-badar Etislat (Pvt.) Ltd** is further directed to submit annual audited accounts alongwith annual license fee including additional fee (on account of late payment @ 2% per month of part thereof) for the years ended on 30th June, 2005 to 2009 within thirty (30) days and in case of failure recovery proceedings under section 30 of the Act shall be initiated by the Authority against the company for recovery of all payable dues as arrear of land revenue.
- (c). ALL LDI, LL/WLL, Mobile Licensees are directed to forthwith terminate all telecommunication facilities extended to the licensee pursuant to the license till further orders of the Authority.

S.Nasrul Karim A. Ghazanvi
Member (Finance)

Dr. Mohammed Yaseen
Member (Technical)

Dr. Mohammed Yaseen
Chairman

This determination signed on 06-07-2010 and comprises 05pages