



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

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www.pta.gov.pk

M/s. Brain Telecom Limited

...Appellant

Versus

Zonal Director (Enforcement) Lahore, Pakistan Telecommunication Authority

...Respondent

APPEAL UNDER SECTION 7 (2) OF PAKISTAN TELECOMMUNICATION
(RE-ORGANIZATION) ACT 1996

Date of preferring the Appeal:	through covering letter of the Appellant dated 21.06.2006
Date of hearing	: 31.10.2006
Venue of hearing	: Conference Room, PTA HQs, Islamabad

The Authority present:

S. Nasrul Karim Ghaznavi (Member Finance): Head
Dr. Muhammad Yasin (Member Technical): Member

The Issue:

“Enforcement order dated 24th May, 2006 and subsequent
letter dated 9th June, 2006 should be expunged”

DECISION OF THE AUTHORITY

BRIEF FACTS:

M/s. Brain Telecom Limited (the “licensee”) is a public limited
Company incorporated under the Companies Ordinance, 1984 and is engaged in

the business of Telecommunication Services pursuant to the non-exclusive license No. DIR (C)/L/PTA/379/2001 dated 31st October, 2001 and license No. LL-13-2004 dated 19th July, 2004 (the “license”) awarded by the Pakistan Telecommunication Authority (the “Authority”) to establish, maintain and operate Non Voice Communication and Data services in Pakistan and local loop services in the region LTR (N/S) respectively on the terms & conditions contained in the license.

2. The Zonal Director Lahore through his letters dated 23rd November, 2005, 2nd December, 2005, 16th December, 2005 and finally dated 4th January, 2006 directed the licensee to provide antecedents of local loop users/subscribers and also to provide traffic monitoring facility and to arrange its demonstration, but the licensee failed to comply the same despite repeated requests of the officer of the Authority, hence the officer of the Authority after issuing Show Cause Notice dated 30th January, 2006 and fulfilling other legal requirements issued an enforcement order dated 24th May, 2006 (the “impugned order”). The licensee submitted compliance report on 2nd June, 2006 which was responded vide PTA letter dated 9th June, 2006.

3. Being aggrieved of the impugned order and subsequent letter dated 9th June, 2006 of the Zonal Director, Lahore, the licensee filed the instant appeal.

4. Vide the impugned order the licensee has been directed to:

- (i) stop providing LL services on DSL, Dialup and ISDN media through Internet;
- (ii) immediately terminate services of its subscribers using DSL, ISDN, Dialup media for transmission of voice; and
- (iii) to comply with the aforementioned instructions and submit compliance report.

5. In the instant appeal the licensee has taken the stance that it has already submitted Compliance report on 2nd June, 2006. In the Compliance report the licensee also alleged that at the one hand the Ministry of Information Technology is putting in efforts and seeking assistance of all market forces to enhance usage of DSL, and Broadband technology by providing triple play service (VVD) while on the other hand PTA is curbing the same through its action as depicted by and through the impugned order and the licensee is therefore in a confusing state of mind. In the appeal before us the licensee has made the following prayer:

- (i) guilt on the part of licensee as indicated in the impugned order may please be deleted,
- (ii) a clear and non-discriminatory policy regarding the use of DSL, ISDN and dialup media including VVD through Broadband/DSM may be

developed; and (iii) requisite changes in licenses/agreements of all the licensees may be incorporated to bring them in conformity with the changing time.

6. The hearing has been convened on 31st October, 2006 at PTA Headquarters Islamabad. Ch. Muhammad Atiq Advocate and Barrister Ch. Muhammad Umar appeared on behalf of the licensee whereas Zonal Director, Lahore attended the hearing through video conferencing live from Lahore. The learned counsel representing the licensee argued that the Authority is competent to issue directions to its licensees and the licensees are obliged to comply with such directions. The learned counsel further submitted that the licensee has always complied with the directions of the Authority and even in the instant case the licensee attended the office of Zonal Director, Lahore on 20th February, 2006 and tendered apology for the delay owing to the fact of the chief executive officer of the company having left the country for performing Hajj. It was further submitted on behalf of the licensee that compliance report has been submitted on 2nd June, 2006 as directed by the officer of the Authority within the time period mentioned in the impugned order. The licensee argued that Mr. Amjad Farooq Alvi, Chairman/CEO of the company personally looks after the licensee's matters/issues pertaining to PTA and as he was out of country for hajj, delay in responding to the Authority occurred. However, immediately on his return to the country, he attended the office of Zonal Director on 20th February, 2006 and submitted all details required by the officer of the Authority. It was further submitted before us that during the meeting of the licensee's CEO i.e. Mr. Alvi and the Zonal Director, Lahore, the licensee itself pointed out that provision of LL services over DSL, ISDN and Dialup media through Internet has potential to be misused. Therefore, the licensee also requested that guilt part in the impugned order may please be deleted. In this regard Paras 2.6 and 2.7 of the impugned order are reproduced as under:

2.6 *Subsequent to the Show Cause Notice, Mr. Amjad Farooq Alvi, Chairman / CEO of the M/s. Brain Limited attended the office of the undersigned as on 20th February 2006 and presented the details of antecedents of local loop subscribers dated 10th February, 2006.*

2.7 *During the discussion it came to lime light that M/s Brain Limited was providing local loop connections (voice communication) using DSL, ISDN, dialup media on Internet cloud. Provision of voice communication using DSL, ISDN, Dialup Media is the violation of clause 9.2 (a) of NVCNS / EIS License and as the licensee has the license for local loop service, confining its operation to LTR, and the communication through internet cloud could not be physically restricted to any specific geographic region, so it was also the violation of the clause 1.1.1(a) of the local loop service license.*

7. The licensee also narrated Para 15 of the petition and paras 2.7 and 8 of the compliance report. Para 15 of the petition is reproduced hereunder:

15. That is of pertinence to point out at this juncture that the Appellant has very clearly drawn attention of employees/representatives of the Authority at an early stage and now vide this Appeal before the Authority itself, towards the very important factors in regards with benefits of usage of enhanced technologies like Broad Band, DSL, ISDN and triple play services (VVD) etc. including that on internet cloud. If at this juncture the Authority closes its eyes over it and does not permit the developing technologies and after passage of some time, itself, reverts to the same, then, the Appellant and all others who will suffer losses as a consequence of these wrong policies of the Authority shall be qualified to seek damages and PTA and/or its employees would not be qualified to claim protection and benefits of the indemnity clause laid down in section 33 of the Act, because, the same provides coverage to acts done in good faith under this Act and this denial to adherence and imparting with of proper functions of the Authority and fulfilling responsibilities of the Authority as laid down in section 4 and 6 of the Act most recently does not fall within the ambit of the same.

Findings of the Authority:

8. The Appellant/licensee's stance that the delay in responding to the Authority's instructions occurred for the reason that its CEO Mr. Alvi was out of country in connection with performing his obligation of hajj and therefore the same is justifiable is totally misplaced. The licensee is a company incorporated under the Companies Ordinance and is thus a legal person. At the time of issuing the instructions/directions to it, the very person i.e. the company was very much here and operational. It is quite ridiculous to say about a company that the same was unable to respond to the directions of the Authority or of the officer of the Authority because its CEO was out of country. This stance of the Appellant/licensee is thus refuted in view whereof we are of the view that the licensee has not responded to the directions of the Authority communicated through the Zonal Director, Lahore, intentionally and without any cogent reason which action of the licenses has constrained the Zonal Director to initiate legal action against it.

9. The learned counsel representing the licensee before us today also remained unable to satisfy us regarding fulfillment of the licensee's responsibility to provide the information sought for by the zonal director till the time legal action was initiated against it.

10. Moreover, we have also noticed that the directions contained in the impugned order have been complied with by the licensee/Appellant and also a compliance report has been duly submitted to the Zonal Director, Lahore, as was required under the impugned order. Vide the impugned order the licensee has been required not to provide LL services on DSL, Dialup and ISDN media through internet and not only it is evident from the record and the compliance report submitted by the licensee, but also today before us the licensee's learned counsel admitted stated repeatedly that the licensee is not providing LL services through DSL, Dialup and ISDN media through internet. In light of the foregoing we fail to find out and understand the grievance of the licensee/Appellant and consequently, the reason and ground for invoking the appellate jurisdiction of the Authority by filing the instant appeal. The learned counsel when confronted with the question as to why has this appeal been filed, he remained unable to satisfy us.

11. None of the allegations leveled in the appeal has been proved before us. Moreover, we are also unable to entertain the prayers made in the memo of appeal as these have been made beyond the scope of the appeal under section 7 of the Act.

THE AUTHORITY'S DECISION:

12. In light of whatever observed by us, above, we find no reason to interfere in the impugned order and the same is as thus upheld. It will not be out of place to mention here that notwithstanding the violations committed by the licensee having been proved, the Zonal Director, Lahore, has, vide the impugned order, already taken a lenient view in the matter.

13. The instant appeal is, therefore, dismissed.

(S. Nasrul Karim Ghaznavi)
Member (Finance)

(Dr. Muhammad Yasin)
Member (Technical)

14. This order/judgment is passed today, i.e., 2nd November, 2006 and comprises 05 pages.