



PAKISTAN TELECOMMUNICATION AUTHORITY
HEADQUARTERS, F-5/1 ISLAMABAD
Ph: 051-9225328 Fax: 051-9225338

Re:
Dancom Pakistan (Pvt.) Limited

Enforcement Order under Section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 read with sub-rule (4) of Rule 9 of the Telecom Rules, 2000

File No. PTA/Finance/LDI/Dancom 19/2006

Date of Issuance of Show Cause Notice: 19th June, 2009
Date of Hearing: 30th September, 2009
Venue of Hearing: PTA H/Qs, Islamabad

The Authority:

Dr. Mohammed Yaseen:	Chairman
S. Nasrul Karim A. Ghaznavi:	Member (Finance)
Dr Khawar Siddique Khokher	Member (Technical)

The Issue:

Non payment of outstanding dues

Decision by the Authority

1. Brief Facts:

- 1.1. **Dancom Pakistan (Pvt) Limited**” (the "licensee") was awarded non-exclusive Long Distance and International Services License No. LDI-05 (01)-2004 dated 3rd April, 2004 by Pakistan Telecommunication Authority (the “Authority”) to establish, maintain and operate a Telecommunication System and to provide licensed services in Pakistan subject to the terms and conditions contained in the license.
- 1.2. As a licensee of the Authority, the licensee i.e. Dancom Pakistan (Pvt.) Limited is required to comply with the provisions of prevailing regulatory laws comprising of the Act, the Pakistan Telecommunication Rules, 2000 (the “Rules”) the Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006 (the “Regulations”), and the terms and conditions of the license.
- 1.3. Clauses 4.2.1, 4.2.2, 3.4.1, 3.6.1 and 4.1.2(a) of the LDI License read with clause 8.1 of the Appendix B of the Rules, and regulation 23 of the Regulations obliged the licensee to

make payments of all regulatory dues, i.e., annual license fee, USF and R&D contributions within 120 days of the close of each financial year.

- 1.4. Clause 4.2.4 of the LDI license obliged it to submit audited financial statements and summary of accounts to the Authority within the said period of 120 days of the end of the financial each year.
- 1.5. The licensee i.e. Dancom Pakistan (Pvt) Limited failed to make the payment of Rs.63,063,137/- on account of Annual Regulatory Dues (i.e., annual license fee, USF and R&D contributions) for the years ended on 31st December, 2007, US \$ 4,766 as late payment charges on contribution towards grey traffic monitoring equipment and has also not provided annual audited accounts for the year ended on 31st December, 2008 in contravention of the statutory requirements mentioned above. Hence, a show cause notice (the "Notice") under section 23 of the Act was issued to the licensee on 19th June 2009 which was replied by the licensee on 15th July 2009 within the statutory period of (30) days and denied the allegations in the following terms:

*“Subject: **Show Cause Notice Under Section 23 of the Pakistan Telecommunication (Re-Organization) Act 1996.***

Kindly refer to your Notice No. PTA/Finance/Finance/LDI/DANCOM 19/2006/901 dated 19th June 2009.

It is stated that Dancom intends to fully comply with all the prevailing regulatory laws mentioned in the notice.

1. As regards to the provision of the Clause 8.1 of the appendix B of the rules, Regulation 23 of the regulations, clause 3.4.1, 3.6.1 & 4.1.2(a) of the terms and conditions of the License, it is submitted that Director Finance PTA has not made adjustment of allowable deduction as per License clause 3.4.1, 3.6.2, 4.1.1(a) - copy of the License clauses attached. Vide PTA letter No. PTA/Finance/LDI/DANCOM 19/2006 dated September 01, 2008 issued by Director Finance-PTA in which Dancom has been instructed to provide the proof of payment made to PTCL as Interconnection Charges so this payment can be adjusted as allowable deductions from Gross Revenue, (copy of PTA letter is enclosed)

Dancom provided the advance payment of Rs. 2.5 million & requested for installments to show its bonafide upon demand of PTA with no effect on Dancom's stand on the issue of calculations. PTA has raised the demand in year 2008 of previous year starting from 2005, 2006 & 2007 and therefore it took us time to collect the proof of payments made to PTCL as Interconnection charges. Dancom paid Rs. 256 million in year 2005, Rs. 520 million in year 2006 and 147 million in year 2007 as Interconnection charges to PTCL.

Below is the table of calculations:

	2005	2006	2007	Total
Revenue from LDI	240,003,596	620,562,02	73,080,870	933,646,489

	<u>256,931,588</u>	<u>520,487,829</u>	<u>147,955,970</u>	<u>925,375,387</u>
Paid Gross Profit/Loss)	(16,927,992)	100,074,194	(74,875,100)	8,271,102
ALF	0.50%			
R&D	1%			
USF	1.50%			

Already paid amount vide pay order no 049389 dated 22/12/08 for Rs 2,500,000/=

As required vide PTA letter No. PTA/Finance/LDI/DANCOM19/2006 dated September 01, 2008, one set of copies of the proof of the payments is enclosed.

It is therefore requested that this matter be treated according to License clauses 3.4.1, 3.6.2, 4.1.2 and payment of Rs.925 million be adjusted as allowable deductions from the Gross Revenue of Rs.933 millions.

2. *Regarding late payment charges of US\$ 4,766, it is submitted that Authority had kindly allowed the payment in three equal installments that was paid by Dancom accordingly. Dancom was never apprised by any letter of PTA about imposition of late payment charges except the first time through this show cause notice. It is requested to waive off the late payment charges of US\$ 4,766.*

3. *Regarding the submission of Annual Audited Accounts of year 2008, it is submitted that same was pending for signatures of directors one being absent due to medical treatment abroad. A copy is enclosed. Dancom regrets the delay.*

Dancom once again reiterates that since taking over of new management last year and freshly starting up again, is striving hard to regain its business despite odds. It is our contention to fully comply with all prevailing laws & regulations.

In view of above, it is requested that Show Cause be disposed off in accordance with above submissions”

- 1.6. Under the provisions of the Act, prior to passing any enforcement order, the licensee was required to appear before the Authority for personal hearing on 17th September 2009, vide Hearing Notice dated 7th September 2009, which was adjourned from 7th September 2009 to 30th September 2009 on the request of licensee.
- 1.7. The licensee appeared before the Authority on 30th September, 2009 through representatives namely Mr. Ather Minallah, Advocate Supreme Court, and Mr. Asif Raza (Financial Consultant) who reiterated the same facts/position as stated in its reply to the notice. In addition, the licensee disputed the calculations of payable dues and requested the Authority for one hour time to sit together with PTA Finance Team and reconcile the same as it intend to resolve the issue and not to defend the same. Keeping in view the foregoing statement, the Authority allowed one hour time to the representatives of the licensee for reconciliation of payable dues with PTA Finance Team.
- 1.8. The hearing was resumed after one hour. The licensee alleged that dispute remains as it is because the interconnected payments have not been deducted and it has right to verify the same. Secondly, the figure given in the show cause notice and the figures given now are different, hence, need revision of show cause notice.

- 1.9. In the end, it prayed for two days time, i.e., 2nd October, 2009, for submission of written arguments, which request was allowed by the Authority. However, the written arguments were reached in PTA on 5th October, 2009, which are produced *in verbatim*,

**“Re: SHOW CAUSE NOTICE
PTA/Finance/Finance/LDI/DANCOM19/2006/801 Dated June 19, 2009”**

Please refer to the above mentioned Show Cause Notice (“Notice”).

M/S Dancom Pakistan (Pvt) Limited (“Company”) is duly incorporated under the company laws of Pakistan and, inter alia, engaged in the business of telecommunication in Pakistan.

Besides other telecommunication activities, the Company is engaged in providing Long Distance International Public Voice Telephone Services for the purposes of which the Company applied to the Pakistan Telecommunication Authority (“Authority”) for issuance of Long Distance International (LDI) License (“LDI License”). The Authority after satisfying itself issued the LDI License to the Company in terms of section 21 of the Pakistan Telecommunication (Re-Organization) Act, 1996 (“Act”). The LDI License unambiguously defines the Licensed Services.

The Company, in pursuance of the LDI License, inter alia, established the Licensed Services and at all times endeavored to comply with the terms and conditions of the LDI License. However, with respect to the payment of license fee, there was difference regarding the interpretation of the relevant clauses of the LDI License despite the fact that the terms and conditions were clear and unambiguous. The said dispute relating to the interpretation of the relevant clauses led to the issuance of the titled Show Cause Notice (“Notice”).

The Notice

The titled Notice dated June 19, 2009 alleges as follows;

The Company had failed to pay;

Contribution to the Research and Development Fund (“R&D Fund”) in terms of Clause 3.4.1 of the LDI License. The basis of calculation as mentioned in the said clause is as follows;

“--- calculated on the basis of 1% of the Licensee’s annual gross revenue from Licensed Services for the most recently completed Financial year of the Licensee minus inter operator payments and related PTA/FAB mandated payments. However initial License fee and initial spectrum fee shall not be deducted from the gross revenue”

It is obvious from the above that;

- a)** *Licensees annual gross revenue unequivocally relates to “Licensed Services”,*

- b) *Deduction of the inter operator payments and related PTA/FAB mandated payments there from i.e from the annual gross revenue of the Licensed Services for the recently completed Financial year.*

*In view of the above, the calculations made in the Show Cause Notice are contrary to clause 3.4.1 above. Whilst the calculation sheet attached with the Show Cause Notice as **Annexure A**, correctly reflects the gross annual revenue of LDI Services for each year as reflected in the audited accounts submitted by the Company, no deduction has been taken into consideration as required by clause 3.4.1 of the LDI License. Therefore, the calculation sheet needs to be corrected accordingly. It is also pertinent to mention that in the opinion of the Authority only such amounts as reflected in the audited accounts have to be considered which are shown as actually paid. The Company, despite having a different interpretation, nevertheless accepts the view to this extent in order to amicably settle the matter.*

The issues relating to the Universal Service Fund and the Annual Fee are similar as the Show Cause Notice, particularly the Annexure A thereto, is erroneously based on calculations which are contrary to clauses 3.6.1 and 4.1.2(a) respectively. No deductions have been made while the calculations have been applied to the gross annual revenue in case of each year.

It is important to note that during the last hearing the representatives of the Authority made certain statements which were beyond the scope of the Show Cause Notice. It is a settled law that no nothing whatsoever can be taken into consideration unless the answering Respondent Company has been provided copy/copies of such documents or has been associated with any inquiry, calculations etc. It is further important to note that the Show Cause Notice has neither been revised, amended or modified nor any fresh material other than what has been stated in the Show Cause Notice has been made available to the Company.

It is, therefore, advised that in case the Authority has any material or evidence not mentioned in the Show Cause Notice, the same may be provided to the Company or the Notice be amended, revised or modified accordingly failing which any determination will materially prejudice the company and the same will be without lawful jurisdiction and patently illegal.

It is, therefore, humbly submitted that the Company may be given a fair and just opportunity to amicably resolve the pending dispute so that the determined amount in accordance with the relevant clauses of LDI License could be deposited without further delay.

For and on Behalf of the Answering Respondent Company”.

2. Findings of the Authority:

- 2.1. The license conditions and regulations as already quoted in Para 1.3, and 1.4, above, obliged the licensee to pay annual regulatory fees and contributions within 120 days of each financial year and also to submit annual audited accounts. The licensee failed to

discharge its financial liability under the license within the given time, hence, establishes the allegation of contravention of the aforesaid provisions. Moreover, the reply to the notice and arguments submitted by it in its support did not satisfy us on the charges mentioned in the notice.

- 2.2. The annual fees and contributions have rightly been calculated on the basis of annual audited accounts provided by the licensee and all the adjustments of deductible amounts have been made as per the license conditions and on the basis of evidences submitted by the licensee pursuant to aforesaid show cause notice which arrived at Rs. **58,091,009/-**, hence, the apprehension of the licensee of not deducting the deductible amounts while calculating the annual regulatory fees is not valid.
- 2.3. During the last opportunity of reconciliation on the day of hearing it was informed of the payable dues and the methodology for calculating the same. No new fact has been brought to the notice of the licensee which require afresh notice under the Act, hence, its averments relating to the notice are based on incorrect information, hence, not accepted.
- 2.4. Its argument of difference of interpretation of license conditions does not hold weight on the ground that no telecom system can be operated or telecom service be provided without a valid license otherwise it would be an offence under section 31 of the Act. The term “Licensed services” as per the license granted to it under section 21 of the Act “means all Mandatory Services and other Telecommunication Services not prohibited under the license” which are specified in clause 1.1 of the license. The licensee earned its revenue from providing licensed telecommunication services in the country, therefore, applicable annual fees and contributions were rightly calculated on the basis of gross revenue as per the formula given in the license.
- 2.5. After making the deductions allowed under the license on the basis of evidences provided by it, the total payable dues excluding APC for USF till November 2009, are given below:

DANCOM PAKISTAN PVT LTD

Outstanding Dues till November 2009

	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>TOTAL</u>
Gross Revenue	894,293,339	956,574,699	73,080,870	1,923,948,908
Less: Interconnect charges (based on Dancom's claim)				
<i>(PTCL bills paid in respective years)</i>	<i>(256,931,588)</i>	<i>(520,562,023)</i>	<i>(147,955,970)</i>	<i>(925,449,581)</i>
License Fee	637,361,751	436,012,676	(74,875,100)	998,499,327
Annual License Fee	3,186,809	2,180,063		5,366,872
R & D Charges @ 1%	6,373,618	4,360,127		10,733,744
USF & 1.5%	9,560,426	6,540,190		16,100,616
Total	19,120,853	13,080,380		32,201,233

Total Payable Charges for 2005

<u>LDI ALF</u>	<u>R & D</u>	<u>USF</u>	<u>Total</u>
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Payable Dues	3,186,809	6,373,618	9,560,426	19,120,853
Late Payment Charges 2% per month (May 06 to Nov 09) 43 months	2,740,656	5,481,311	8,221,967	16,443,933
Total Payable for the year ended December 31, 2005	5,927,464	11,854,929	17,782,393	35,564,786

Total Payable Charges for 2006

	LDI ALF	R & D	USF	Total
Payable Dues	2,180,063	4,360,127	6,540,190	13,080,380
Late Payment Charges 2% per month (May 07 to Nov 09) 31 months	1,351,639	2,703,279	4,054,918	8,109,836
Total Payable for the year ended December 31, 2006	3,531,703	7,063,405	10,595,108	21,190,216
Total Payable amount to PTA				56,755,002
Total	9,459,167	18,918,334	28,377,501	56,755,002
Dues on Under booked Revenue	63,618	127,236	190,854	381,708
Total Annual Regulatory Dues	9,522,785	19,045,570	28,568,355	57,136,709
RBS Charges				954,300
Total Payable				58,091,009

2.6. The licensee was allowed to make the payment of contribution on account of grey traffic equipment in installments, but it failed to pay the same within given time, therefore, late payment charges as per license condition 4,2,3 and regulation 7 of the Regulations were levied for which no separate notice is required. Moreover, the request of the licensee relating to waiver of late payment charges of US \$4,766/- cannot be entertained as the Authority has no power to waive of any amount including late payment charges once levied.

2.7. Its request of providing fair chance to amicably resolve the pending dispute is just to create a ground to further delay the payments. Record reveals that it was given fair chance to reconcile and verify the accounts and payable dues. It was also granted relief in terms of making payment in installments, which it failed to honour. Lastly, on its request again opportunity was granted on the day of hearing, but the end result was hopelessly the same.

3. Order of the Authority:

3.1. The foregoing shows that the contents of the aforesaid show cause notice stand proved and since the licensee has not complied with financial obligations contained under the conditions of license except submission of annual audited accounts for the year 2008, the Authority hereby passes the following order:

- (a). Under sub-rule 4 of rule 9 of the Telecommunication Rules, 2000, the licensee is directed to remedy the contravention by paying **Rs. 58,091,009/-** detail is mentioned in Para 2.5 above, on account of annual regulatory dues and contributions with late payment charges alongwith compliance report of such

payments within **twenty five (25) days** of the issuance of this “Enforcement Order”.

- (b). In case of the licensee’s failure to comply with Para 7.2, above, “Final Enforcement Order” under sub-rule 5 of Rule 9 of the Telecommunication Rules, 2000 shall be issued against the licensee.

(S. Nasrul Karim A. Ghaznavi)
Member (Finance)

(Dr. Khawar Siddique Khokhar)
Member (Technical)

(Dr. Mohammed Yaseen)
Chairman

Signed on 21st December, 2009 and comprises 08 pages.