



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 against Wise Communication (Pvt)Ltd

File No. PTA/Commercial Affairs/wise com/International Agreement with Wise
communication120/2006

Date of Issuance of Show Cause Notice: 22nd February, 2010
Venue of Hearing: PTA HQs, Islamabad
Date of Hearing: 21st April, 2010

The Authority Present:

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

The Issue:

“Non-payment of APC for USF charges”

Ex parte DECISION OF THE AUTHORITY

1. BRIEF FACTS:

1. Wise Communication (Pvt.) Limited (the “licensee”) is a private limited company incorporated under the Companies Ordinance, 1984 and was awarded a Long Distance International license on 16th August, 2004 bearing No. LDI-13 (09)- 2004 (the “license”) issued by the Pakistan Telecommunication Authority (the “Authority”) to establish, maintain and operate Telecommunication System in licensed region on the terms & conditions contained in the license.

2. Briefly stated that the licensee has failed to make the payments for the months of March, April, May, June, and July, 2009 amounting to Rs. 84, 548,047/- (Rs.39,092,495/-+ Rs.15,013,696/-+ Rs.2,228,289/-+ Rs.17,694,671/- + Rs.10,518,896/-) on account of APC for USF Contribution (calculated on the basis of traffic data submitted by the licensee for the aforesaid months only). In addition, the licensee has also failed to make the payment of eight

(08) installments i.e., 2nd, 3rd, 4th, 5th, 6th, 7th, 8th and 9th of Rs. 383,064,648/- (Rs.52,883,081/- for each) on account of APC for USF Contribution payable till February, 2009, as per the agreed schedule, i.e., 5th of each month, respectively, despite repeated demands of the Authority in contravention of the AP Rules, the AP Regulations, condition of the license and directives of the Authority. Therefore, the licensee was issued show cause notice vide No.PTA/Commercial Affairs/wise com/International Agreement with Wise communication120/2006/859 dated 22nd February, 2010 under section 23 of the Act whereby required the licensee to remedy the aforementioned contravention by making the payments of Rs.467,6122,695/- immediately of receiving the aforesaid notice and also 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. The licensee replied the notice vide its letter No.WCS/LDI/0011/01505 dated 17th March, 2010 in the following terms:

**SUBJECT: SHOW CAUSE NOTICE UNDER SECTION 23 OF THE PAKISTAN
TELECOMMUNICATION (RE-ORGANIZATION) ACT, 1996 (THE "ACT")**

REF: PTA/Commercial Affairs/Wise Com/International Agreement with Wise Communication 120/2006/1/859 dated 22nd February, 2010.

It is humbly submitted that Wise Communication Systems (Pvt) Ltd (The Company) vide its letter no: WCS/LCi/OOia/0911 dated 13th October 2009 have informed Pakistan Telecommunication Authority that the company suffered heavy losses during the past few years due to

a. Anticompetitive practices of M/S PTCL to restrict the entries of LDIs and gradually eliminate it, from the telecomm market.

b. Noxious attitude and malpractices of big players in the market,

c. Exponential growth of the gray traffic because of the obvious reasons.

2. However it was committed that keeping in view the current business scenario the company shall pay

a. Monthly installment of the Rs,15 Mil/ion every month, out of our resources other than LDI.

b. Current APC for USF regularly.

c. Net monthly profit to PTA on the 10W to following month, till clearance of all outstanding dues,

3. The company have fulfilled its commitment and have paid three installments of Rs.15 Million regularly (Last payment was made vide cheque #69485151 dated 18th February 2010}. The company has cleared the payment of its current ARC for the USF vide cheque #6623946 dated 1st March, 2010, cheque #0427514 dated 1st March, 2010

and cheque # 69485173 dated 15th March, 2010 ,The company shall also pay its net profit to PTA on the closing of current financial year.

4.It is added that PTA issued an order vide letter #Q2-03/2009/AAP/PTA dated 10th July, 2009 for suspension of authorization to terminate international incoming traffic ,due to which the company suffered a loss of about 232 Million which has been withheld by the international carrier, in addition to suffering the reputation of the company in the international market .Moreover a fine of Rs.20 Million was levied on the company which have no justification as the company had already been punished by the PTA through suspension its services from 10th July,2009 to 11th November,2009-The company has represented against the decision of PTA in the high court and the case is also sub judice in the supreme Court of Pakistan. Under the present market condition Wise comm is committed to pay;-

a. Rs: 20 Million per month with effect from July 2010 on the 15th of every month till clearance of dues.However,Rs,15 Million per month shall be regularly paid up to 30th June,2010,

b. Current APC after 90 days as per A PC rules.

c. Net profit of the company at the end of each financial year till clearance of dues,

5, PTA is requested to kindly take lenient view of the situation to save the industry in general by stabilization of ASR and Wisecomm in particular, by allowing the company to continue its business. The positive action of the regulator shall not only save its licensee but also enable us to clear outstanding dues, in condition to saving the jobs of over hundreds of employees. We are trying to prove our bonafides as per commitments.

6. The Authority is requested to:-

a, Condone the penalty imposed on the company.

b. Allow the company to clear its dues as requested vide para 4{a-c) above.

3. However, prior to disposing of the aforesaid show cause notice, the licensee was given opportunity of personal hearing vide letter No.PTA/CA/Wise Comm/International Agreement 120/2006/229 dated 15th April, 2010 requiring it to appear before the Authority on 15th April, 2010 and thereafter was re-fixed for 21st April, 2010 and communicated to the licensee vide letter dated 15th April, 2010. In response to hearing notice, the licensee vide its letter dated 12th April, 2010 requested for adjournment of the hearing and then through its counsel Muhammad Ali Tipu, who had delivered the request for adjournment by hand on 20-04-2010, however, the Authority did not allow requests and informed the licensee vide letters dated 15th April, 2010 and 20th April, 2010, respectively. Muhammad Khurram Siddiqui, Deputy Director (Law) also telephonically communicated the Authority's refusal to grant adjournment to Muhammad Ali Tipu, Advocate. The licensee had earlier confirmed vide its letter dated 19th April, 2010 that it

will appear before the Authority through its Vice Chairman (Mr. Shafiq Ahmed Abbasi) alongwith its counsel.

4. However, on the date of hearing, i.e., 21-04-2010 neither the licensee nor any of its representatives appeared before the Authority.

5. The issue is, therefore, decided on the basis of the available record and in the light of the licensee's reply to the show cause notice.

The Authority has been making repeated requests to the licensee vide various letters including dated 17th June, 2009, 21st July, 2009, 21st August, 2009, 4th September, 2009, 16th September, 2009, 22nd October, 2009, 14th December, 2009 and 21st December, 2009 to make the payment on account of APC for USF for the months of March, April, May, June and July, 2009 and the aforesaid eight (08) instalments alongwith late payment charges, respectively, but in vain, which constitute sheer disregard to the writ of the Authority.

2. FINDINGS OF THE AUTHORITY:

i. Clause 8.1 of the Appendix B of the Rules and condition 3.1 of the license obliged the licensee to observe the provisions of the Act, the Rules and the Regulations.

ii. Sub-rule 2 of rule 5 of AP Rules and sub-regulations (3) and (4) of regulation 6, and sub-regulation (2) of regulation 10 of the AP Regulations make it obligatory on the licensee to deposit APC for USF contribution within ninety (90) days after the end of calendar month for which the payment obligation arises.

iii. The licensee has failed to make the payment within the given time mentioned in the AP Rules and AP Regulations, hence, charge of contravention of the provision of the license, AP Rules, and AP Regulations have been established. In addition, the arguments of the licensee relating to financial liquidity owing to hefty APC for USF payments is not accepted on the ground that the licensee itself failed to make the payments in time which accumulated. Moreover, the requests for adjournments is just to delay the process of discharging the financial liability.

3. ORDER:

3.1. Keeping in view the above mentioned facts coupled with the available record, the Authority hereby dispose of the aforesaid show cause notice in the following terms:

(a). Wise Communication (Pvt) Limited is hereby directed to remedy the contravention by making the payment of APC for USF Contribution of **Rs.467,612,695/-** for the months of March, April, May, June and July, 2009 and the aforesaid eight (08) instalments of the amounts payable till February, 2009 including late payment charges calculated upto 31st January, 2010 within a period of 30th days from the issuance of this order.

(b). In case of failure to abide by this Order, its license No. LDI-13 (09) -2004 dated 16th August, 2004 **shall stand suspended** w.e.f. 23rd May, 2010, without further notice, till further orders of the Authority.

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

(Dr. Khawar Siddique Khokhar)
Member (Technical)

(Dr. Mohammed Yaseen)
Chairman

4. This determination signed on _____ and comprises 05 pages.