



PAKISTAN TELECOMMUNICATION AUTHORITY
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Hearing: 21st April, 2006.
File No.14-61/L&A/ PTA/03

**DECISION IN APPEAL FILED BY PTCL AGAINST ORDER DATED 9TH
FEBRUARY, 2004 ISSUED BY ZONAL DIRECTOR KARACHI**

Appeal under Section 7(2) of the
Pakistan Telecommunication (Re-Organization) Act, 1996 read with amendments
thereto

1. INTRODUCTION

1.1 That Pakistan Telecommunication Authority (the Authority) is a body corporate established pursuant to section 3 of the Pakistan Telecommunication (Re-Organization) Act, 1996 (the Act), which, among others, performs the following functions:

- (i) regulate the establishment, operation and maintenance of telecommunication systems and the provision of telecommunication services in Pakistan; and
- (ii) investigate and adjudicate on complaints and others claims made against licensees arising out of alleged contraventions of the provisions of this Act, the rules made and licenses issued there under and take action accordingly.

1.2 That section 7(2) of the Act provides that if any person is 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

1.3. M/s Pakistan Telecommunication Company Limited (the "Appellant") is licensee of PTA for basic telephony and M/s. South Asian Media Wise Online (Pvt) Ltd with brand name 'SAMW' (the "Licensee") is licensee for Non-Voice Communication Network Services.

2. BRIEF OF THE CASE

2.1 Briefly stated that PTA Zonal office Karachi received information from NSS PTCL that Licensee is involved in terminating international calls by utilizing PRI (bothways) and 128 Kbps internet bandwidth at Room No. 714 Progressive Plaza Beaumont Road, Near PIDC Building Karachi. PTA Zonal Office constituted a raiding team comprising Lt. Col (R) Aurangzeb, Manager NSS PTCL, Lt. Col (R) Ghulam Haider, Dy. Director PTA, Major (R) Muhammad Riaz, Security Officer NSS PTCL, and Mr. Abdul Rehman Durwaish, DE SMC PTCL headed by Mr. Mushtaq Ahmad Bhatti, Zonal Director PTA. The raiding team conducted an inspection on 30th July, 2002 of the said premises and during the inspection it was revealed that Licensee has obtained bandwidth of 128 kbps from M/s. Webnet (contrary to its license conditions) and also installed 4 PRI's both way from PTCL. These both ways 4 PRI's were being used by SAMW for illegal voice termination. This fact was supported by the evidence of AS 5300 (alongwith voice cards) server configuration data and observations results. As the licensee was involved in illegal voice termination, therefore, the equipment used for this illegal activity was confiscated. Being aggrieved of this action, the Licensee filed a civil suit No. 818/2002 in Sindh High Court at Karachi against the aforesaid raid and confiscation of equipment. The honourable High Court vide orders dated 2nd August, 2002 restrained the Authority from disposing the equipment seized from the said premises. In the said orders the High Court also observed that the 'Defendants raided the premises of the Plaintiff office and seized all equipments, on 30.7.2002, without informing the contravention of any provision of the Ordinance, Rules or terms and conditions of the license though plaintiff has not yet commenced its operation. No Show Cause Notice has been issued to them'.

2.2. As M/s. Webnet (Pvt) Ltd (another licensee of PTA) had provided bandwidth to the licensee contrary to license conditions and 4 PRI's both ways from PTCL facilitated the licensee to violate the provision of the Act and license conditions, therefore, PTA issued Show Cause Notice dated 5th August, 2002 under section 23 of the Act to SAMW, Webnet and PTCL. M/s. Webnet (Pvt) Ltd categorically denied of having any involvement in the illegal act committed by the Licensee and admitted that it has provided bandwidth for test purposes only from 20th July, 2002 to 5th August, 2002 whereas the Licensee denied the allegations leveled in the Show Cause. Moreover, PTCL also conducted enquiry in the matter and reported that no any employee of PTCL was involved in this activity rather the Licensee misused the PRI's. The Authority convened a hearing on 19th December, 2002 and issued a determination whereby imposed fine of Rs. 10,000/- on M/s. Webnet (Pvt) Ltd only. As the case of Licensee was pending in the High Court, therefore, no any decision was announced against the Licensee at that time. However, later on, the Licensee withdraw its case from the court

and Zonal Director conducted hearing on 15th December, 2003, 22nd December, 2003 and then 30th December, 2003 and passed the determination dated 9th February, 2004 whereby imposed fine of Rs. 100,000/ and also instructed the Licensee to restore services. The Licensee deposited the fine but did not restart its services. Appellant filed an appeal dated 4th March, 2004 against the impugned determination and requested for enhancement of fine upto Rs. 9,000,000/-, the same be recovered and compensate the Appellant as well as cancel the license of the licensee.

2.3. In order to decide the appeal dated 4th March, 2004, the Authority convened a hearing on 21st April, 2006. Brig. (R) Waqar Ahmed and Lt. Col. (R) Aurangzeb appeared on behalf of Appellant whereas Zonal Director Karachi Mr. Rizwan Ahmed Haidery appeared to defend the alleged determination. The Appellant argued that the Licensee was involved in termination of illegal international traffic bypassing the Appellant gateway exchange using Internet Bandwidth of 128 kbps provided by M/s Web Net (Pvt) Ltd as confirmed vide their letter dated July 2002. The Authority also gone through the record, data and the NSS observation record of PRIs (both way) having Master No.5664106, voice cards, CISCO AS 5300 equipment which reveled that approximately 37000 calls were made during one week. In this regard they also highlighted the signed certificates received from the individuals, who had received the calls from the Licensee that they did not have fax machines installed on their telephones. In support of their stance they further stated that during the inspection of premises of the Licensee, the employees present on site were asked to demonstrate transmission of a fax message through their system, but they failed to do so because the system was not configured to take fax traffic. Further the NSS observation reports also exhibited that the estimated revenue loss was around Rs.09 (nine) million.

2.4 In reply to the arguments offered by Appellant, Zonal Director, Karachi confronted and explained that on complaint by NSS PTCL, a team was constituted which conducted raid and found the licensee involved in illegal voice termination. Pursuant to the inspection report, PTA issued Show Cause Notice dated 5th August, 2002 to the Licensee. The Licensee replied the Notice on 23rd August, 2002, and denied the allegations levelled in the Notice. However, pursuant to instructions from PTA Headquarters vide letter dated 9th September, 2003 Zonal Director conducted three hearings and issued the impugned determination whereby the fine of Rs. 100,000/- was imposed which the Licensee has deposited. The Authority enquired about the basis and reasons for the limit of fine Rs.100,000/- only in such a serious case. The Zonal Director replied that:

- (a). Officer of the Authority cannot impose a higher fine as demanded by the Appellant under the Regulations.

- (b). The bandwidth used was provided by another licensee namely M/s. Webnet (Pvt) Ltd and the PRI's were provided by the Appellant, which were used in illegal voice termination but fine to M/s. Webnet (Pvt) Ltd (a co-accused) was awarded to Rs. 10,000/-only.

But the Authority was not satisfied with this reply. The Authority is of the view that if the contravention was of such a nature that demand huge fine, then the said Zonal Director should forward the case to the Authority with recommendations for issuance of decision keeping in view the nature, contravention and losses incurred in the transaction rather to decide and impose nominal fine. Secondly, contravention of M/S. Webnet is of different nature and cannot be made the basis for imposition of fine to another company.

2.5. The Appellant further submitted that license of the Licensee should be cancelled so that this sort of practice could be discouraged. On the claim of Appellant regarding compensation out of the enhanced amount of fine, it was clarified by the Authority that in case if fine amount be enhanced in appellate proceedings against the Licensee, then compensation from this amount cannot be given to the Appellant rather the fine amount would directly be deposited into PTA Account. Secondly, the Appellant had not lodged any independent claim against licensee at that time, therefore, in appeal such claim cannot be accepted. Thirdly action had been taken against the Licensee under section 23 of the Act and not on any claim of the Appellant. The Appellant then submitted that they will not claim any share from the enhanced fine as compensation and requested for enhancing the amount of fine. The Appellant also informed that the person involved in the illegal act was working in the company named SISCO some time back. The Authority is of the view that fine can be imposed on licensees only and not on persons working in other companies in their personal capacity. However, it was reiterated that Appellant would locate the whereabouts of the company and its Directors and inform to the Authority for purposes of initiation of legal proceedings. The Authority also viewed the technical report exhibiting telecom facilities available at site, i.e., international connectivity through LAN connectivity via Webnet, 128 kbps via LAN and 4 bothway PRIs, meter reading, the nature of equipment and its configuration with Access Server, and approximate minutes, i.e., 150,000 assuming 4 minutes/unit hence approximate calls, i.e., 37000 calls in a week and also putting reliance on raid report. All these facts demand serious action on the part of the Authority and the Authority is conscious of its duties and cannot let the licensees to earn millions out of illegal business by causing loss to national exchequer and then disappear. The Authority observed that licensee has caused huge loss to national exchequer by illegal voice termination, therefore, there are sufficient reasons to enhance fine as well, so that growing trends to grey traffic can be discouraged.

3. ORDER

3.1. Keeping in view the above mentioned circumstances, arguments of PTCL and Zonal Director Karachi, perusal of the requisite documents including technical reports, High Court orders dated 2nd August, 2002, PTA determination against Webnet, part compliance of determination dated 2nd February, 2004 passed by Zonal Director and huge loss caused to national exchequer, the Authority hereby dispose of the appeal of the Appellant with following orders:

- (a) License of M/s. SAMW Online (Pvt) Ltd is cancelled and PTCL is directed to terminate forthwith all telecom facilities extended to the licensee.
- (b) As M/s. SAMW Online (Pvt) Ltd defaulted in payment of PTA dues Rs. 37,593/- as annual license fee, therefore, M/s. SAMW Online (Pvt) Ltd is directed to deposit the arrears within 30 days of this order.
- (c) The fine imposed earlier by Zonal director Karachi is enhanced upto Rs. 4.5 Million only/(Rupees forty-five hundred thousand only). The fine Rs. 100,000/- already deposited by the company shall be included in the enhanced amount.
- (d) The company is hereby directed to deposit Rs. 4.4 Million and Rs. 37,593/- within thirty days of this order. In case of non-payment the Authority reserves the right to initiate recovery proceedings under section 30 of the Pakistan Telecommunication (Re-organization) Act, 1996 for recovery of outstanding arrears as land revenue.

MEMBER (FINANCE)

MEMBER (TECHNICAL)

This Determination is signed on 5th day of July, 2006 and comprises 05 pages.