



PAKISTAN TELECOMMUNICATION AUTHORITY
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**Enforcement order under sub-section 3 of section 23 of the
Pakistan Telecommunication (Re-organization) Act, 1996 in the
matter of DV Com Data (Pvt) Ltd**

File No. PTA/Finance/WLL/DV Com/113/2006

Date of Show Cause Notice: 5th April, 2010
Date of Hearing: Venue of 13th May, 2010
Hearing: PTA HQs, Islamabad

The Authority Present:

S.Nasrul Karim A. Ghaznavi: Dr. Member (Finance)
Khawar Siddique Khokhar: Member (Technical)

The Issue:

"Non-payment of Annual Radio Frequency Spectrum Fee"

Decision of the Authority 1.

BRIEF FACTS:

1.1 Through this enforcement order of ours, we intend to dispose of the Show Cause Notice dated 23rd February, 2010 ("**the Show Cause Notice**") issued to Dv Com Data (Pvt) Limited ("**the Licensee**") under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 ("**the Act**") on the issue of non payment of Annual Radio Frequency Spectrum Fee ("**the ARFSF**") of Rs. 22,898,400- for the year ended on 30th June 2009, including late payment charges calculated @ 2% per month and accruing till date of actual payment.

1.2 The Licensee failed to make the payment of Annual Radio Frequency Spectrum Fee for the year ended on 30th June 2009, including late payment charges thereon calculated @ 2% per month within 120 days. Hence, the Show Cause Notice under section 23 of the Act was issued to the Licensee on 23rd February, 2010.

1.3 The Licensee vide letter dated 10th May, 2010 ("**the Licensee's Reply**") replied to the Show Cause Notice. The relevant para(s) on the allegations raised in the show cause notice are reproduced as under:

As you would recall that right after the receipt of the aforesaid SCN, I faxed you the copy of the cheque that the Company had already sent to the Authority on account of Frequency Fees. There is no dispute between PTA and the Company about the aforesaid fees, the only Issue was that of the inconsistency between the calculations made by the Company which it said to have been paid by it and the calculation as made by PTA. This does not require any hearing as I had already requested that someone from Finance Wing of PTA shall reconcile this inconsistency with accountant of the Company and after such reconciliation, if any, we would pay the additional amount, if at all.

I would therefore request that the hearing should be postponed and Finance Director should send us the breakup of the final figure as quoted in SCN and then we should have a meeting about that figure with Finance. If, it is really due- we undertake to pay it which means there is no need to have a formal 'hearing' on this issue. In fact, we were waiting for this, when we got the instant hearing notice, hence this letter.

2. THE HEARING

2.1. A hearing on 13th May, 2010 was fixed. Barrister Gohar Ali Khan attended the hearing before the Authority on behalf of the licensee on the said date. The representative of the licensee reiterated the same facts as mentioned in its reply to the show cause notice (referred in Para 1.3 above). However, the licensee's counsel had, during the hearing, committed that he will respond back within a week time in response to the SCN and the misunderstanding on his part regarding the late payment charges.

2.2. The counsel of the licensee vide its letter dated 19th May, 2010 responded in the following terms:

"This in continuation of the hearing proceedings that took place on May 13, 2010 at PTA Headquarters Islamabad on the Show Cause Notice, dated February 23, 2010.

During discussion or hearing the issue of penalty or fine as imposed by the Authority on DV Com Data (Pvt.) Ltd as late payment charges at the rate of 2% was also taken up. At the very outset and without going to the merits of the case, I would like to add that whatever the status of this penalty and the power of the Authority to recall it or not, our company is in the process of rolling out to meet its licensing obligation. For this, it needs huge funding, therefore, the Authority should facilitate us and waive this penalty (if at all) to enable us invest in our licensed activities.

In any case you would recall that I pointed out the discrepancy in the calculation and my request was for remedying this before proceedings further. The

discrepancy that you have issued a SCN and the contents must be based on the "cause " that is the subject matter of the SCN. Therefore, the penalty of 2% must relate to the amount of the ARFSF. The assessment year is the end of June 2009 and as per clause 4.2.2, the due date would be 31st October 2009. The penalty of 2% (Rs. 408,900/-) per month would be payable with effect from 1st November 2009 still February 23, 2010, when the amount was paid. The penalty therefore would be Rs. 1,635,600 and not Rs.2,453,400/-. This is a bit of clarification, please let me know how to proceed now.

In view of the above submission however, I would request that SCN be withdrawn as its case has been satisfied by DVCom Data (Pvt.) Ltd. "

2.3. The aforesaid response was analysed in the light of available record and calculations were re-checked but the aforesaid clarification found to be incorrect.

(i). The licensee was required vide letter dated 23rd January, 2009 for payment of ARFSF of an amount of Rs.21,671,700- (ARFSF Rs 20,445,000- including late payment charges Rs. 1,226,700- (@ 2% per month or part thereof upto 30th January, 2009) for the year ended on 30th June, 2008. The licensee made the payment of Rs.20,853,900- on 26th January, 2009, hence, left a balance of Rs. 817,800- unpaid which was required vide letter dated 3rd November, 2009 to be paid immediately.

(ii). Since the licensee also defaulted in payment of ARFSF for the year ended on 30th June, 2009, hence, show cause notice was issued on 23rd February, 2010 requiring it to make the payment of Rs.22,898,400- including late payment charges upto February, 2010, the licensee made the payment of Rs 20,445,000- on 25th February, 2010 in response to show cause notice, hence, the balance of Rs 2,453,400- was left unpaid.

3. ORDER:

3.1 Keeping in view the above mentioned facts and relevant record and positive attitude of the licensee, the Authority hereby dispose of the aforesaid show cause notice in the following terms:

(i). The licensee is directed to make the balance amount of Rs.2,453,400- for the year ended on 30th June, 2009 within a period of thirty days and warned not to repeat such violation in future,

(ii). the request of the licensee for waiver of late payment charges is regretted owing to the fact that it has to discharge its financial liability in accordance with the terms and conditions of the license and regulations and that the Authority has no powers to waive of late payment charges, once, levied.

(iii). In case of failure to abide by Para 3.1 (a) above, recovery proceedings under section 30 of the Act shall be initiated under section 30 of the Act.

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

(Dr. Khawar Siddiqie Khokar)
Member (Tech)

Signed on 19th of July, 2010 and comprise 04 pages