



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 in the matter of Falcon-i (Pvt.) Ltd.

File No. PTA/Wireline Licensing/Falcon-i/Data-CVAS/761/2007

Date of Show Cause:	22 nd February, 2010
Date of Hearing:	16 th June, 2010
Venue of Hearing:	PTA HQs, Islamabad

The Authority present:

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

The Issue:

"60% Change in Management and control of the license without prior notification to the Authority"

Decision of the Authority

1. Brief Facts:

- 1.1. Falcon-i (Pvt.) Limited (the "licensee") is a private limited company incorporated under the Companies Ordinance, 1984 and is engaged in the business of Voice Class Value Added Services pursuant to the non-exclusive licence No.DIR(L)/CVAS 224/PTA/2007 dated 9th August, 2007 (the "license") issued by the Pakistan Telecommunication Authority (the "Authority") to establish, maintain and operate Data Class Value Added Services in Pakistan subject to the terms and conditions contained in the licence.
- 1.2. As a licensee of the Authority, Falcon-I (Pvt.) limited was required to comply with the provisions of the prevailing regulatory laws comprising of the Pakistan Telecommunication Authority (Re-organization) Act 1996 (the "Act"), the Pakistan Telecommunication Rules, 2000 (the "Rules"), the Pakistan Telecommunication Authority (Function & Powers) Regulations, 2006, Class Licensing and Registration Regulations, 2007 and the terms & conditions of the license. Whereas in this case the licensee has violated the provision of section 21(4) (j) of the Act, rule 11 of the Rules, regulation 21 of the Pakistan Telecommunication Authority (Function & Powers) Regulations, 2006, sub-regulation (2) of regulation 17 of the Class Licensing and Registration Regulations, 2007 by changing its management and control of the license without prior notification to the Authority.

- 1.3. The licensee i.e. Falcon-I (Pvt.) limited allegedly changed its 60% management / directorship and control of the license without prior notification to the Authority 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 22nd February, 2010, which was duly responded to by the licensee vide its letter dated 10th March, 2010 in the following terms:

Subject: Reply to Show Cause Notice dated 22 Feb 2009 Ref No. CVAS/7 61/2007/863

Dear Sir,

This is with reference to the captioned Show Cause Notice hereinafter called the "said Notice" received by us on 24 Feb 2010. Ourparawise reply to the said notice is as under:

- 1. Contents of para-1 are not denied that Falcon-i (Private) Limited is company incorporated under the relevant provisions of Companies Ordinance, 1984. It is also not denied that company is engaged in the business of Voice Class Value Added Services as Licensee of the PTA by virtue of Non- Exclusive License No. DIR (1)1 CVAS-224/PTA/2007 issued on August 9, 2007.*
- 2. Contents of para-2 are not denied.*
- 3. Contents of para-3 do not faithfully convey the true meaning, import and effect of the provisions as stated in the para under reply. More particularly, Section 21(4) (j) of the PTA (RE-ORGANIZATION ACT 1996) refers to "restrictions" and "limitations" on transfer or assignment of license. Since the Show Cause Notice does not even slightly mentions about the any transfer or assignment regarding the license, therefore, it has no application at all. It is however not. denied that in case of change of substantial ownership and management control, the licensee has to notify the Authority prior to the proposed change.*
- 4. Contents of para-4 as stated are denied. The company admittedly on its own accord vide its letter dated 19 August 2009 submitted various documents being licensee of the Authority (detail whereof is mentioned in the said letter). The Company being private liability corporate entity at all material times duly fulfilled all regulatory law / regulations and filed the necessary returns in timely manner to the SECP (The Corporate Regulator). The company could not prior notify the Authority regarding its change of management & ownership as the same was not substantial in nature. This stance of the company can be appreciated considering the points as follows:*
 - i). As per Memorandum & Articles of the company, its management and control vests in the BOD. Out of first four directors three stood retired on completion of their three years term on or about 31.10.2007 and were also eligible for re-election if they so desire. The new five directors were appointed at the same time including Miss. Farha Agha who was also in the BOO previously. So therefore, unless the process of election / appointment of directors is complete, technically it was not possible to notify the Authority with prior notice regarding proposed change in the management.*

- ii). *The company for the second time on or about 6 October 2008 when one the Director & the Chief Executive namely Mr. Tariq A. Niazi resigned and Mr. Syed Slaman Hussain was appointed as new director as well Chief Executive of the Company. Change of one director thus can not be termed as substantial change in the management.*
- iii). *Similarly, for the first time three share holders namely Fatima AltafAgha, SameeraAgha and Marium Agha (each holder of 500 shares in total 1500 shares out of 10,000 shares) sold their shareholding in favour of Miss. Far aha Agha a majority shareholder which transfer of shares was only 15 % of the entire shareholding of the company which was obviously not substantial in nature.*
- iv). *The Company on the second occasion undergone some change regarding its shareholders when Miss Farah Agha transferred part of her shareholding in favour of Mr. Duraid Qureshi, Mrs. Momina, Duraid, Mrs. Moomal Shunaid and Mr. Tariq Niazi. The said Mr. Niazi sold his 4500 shares to Mr. Salman Hussain (Current Chief Executive & one of the Director) for the third time. Suffice it to say that all these changes were brought into the notice of the SECP at the relevant time.*

5 *Contents of para-5 of the Show Cause notice under reply as stated are denied that upon alleged failure on the part of licensee in prior notifying to the Authority the proposed change it has purportedly made in the ownership & management control it has violated and contravened any prevailing regulatory laws and/or any term of the License. It is denied that the company on the basis of grounds mentioned in the show cause notice thus can be held liable to any penalty as prescribed under Section 23 of the Act. Please note that resort to Section 23 of the Act can only be made by the Authority when at the first instance steps are notified by it to the Licensee to remedy the contravention. Section 23(3) very clearly says that only in cases where Licensee fails to respond to the notice, fails to satisfy the alleged contravention and It remedy the contravention within time stipulated by Authority and not otherwise. Therefore, penal provisions of Section 23(3) of the Act, 1996 under the facts and circumstances of the case can not be pressed into service against the company.*

6. *More so, please appreciate that company vide its letter dated 19 August 2009 itself submitted documents to the Authority. In doing so by the company, if at all there has been any delay in submission of any document or information the same was not intentional or willful much less aimed at to contravene any provision of law, license and/ or regulatory frame work.*

In view of the above submissions made hereinabove it is most respectfully requested that Show Cause Notice dated 22 Feb 2009 may very kindly be withdrawn.

1.4. Under the provisions of the Act, the licensee was required to appear before the Authority for personal hearing on 5th April, 2010 vide Hearing Notice dated 29th March, 2010, but the licensee made request vide letter dated 2nd April, 2010, hence, the matter was adjourned and re-fixed on 16th June, 2010 for hearing vide letter dated 9th June, 2010. Mr. Masood Khan, Advocate alongwith Mr. Asif Kasmani, Company Secretary,

appeared on behalf of the licensee before the Authority on the said date and reiterated the same stance as already communicated vide its letter dated 10th March, 2010. He further submitted that he was not aware of the fact that prior notification of the Authority was required for such change in management/directorship of the company. In addition, the licensee assured the Authority that no such violation will be repeated by it and all related provisions and license conditions would be adhered to in future and requested the Authority to accept his apology and take sympathetic and lenient view of the instant mistake.

2. Order

2.1. After careful perusal of record and keeping in view the positive attitude of the licensee, the show cause notice dated 22nd February, 2010 is disposed of in the following terms:

- (a). The licensee i.e. Falcon-I (Pvt.) limited, is warned not to repeat such violation in future and to comply with the terms and conditions of license in true spirit.
- (b). Change in management as intimated by it vide its letters dated 19th August, 2009 and 21st December, 2009 is taken notice of and the licensing division is directed to update its record accordingly.

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

(Dr. Khawar Siddique Khoknar)
Member (Technical)

Signed on 28 June, 2010 and comprises 04 pages.