



PAKISTAN TELECOMMUNICATION AUTHORITY
HEAD QUARTERS, F-5/1, ISLAMABAD

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MOBILINK'S PCO PROJECT

Date of hearing : 27.12.2006
Venue of hearings : Conference Room, PTA
HQs, Islamabad

The Authority present:

S. Nasrul Karim Ghaznavi: Member (Finance)
Dr. Muhammad Yaseen: Member (Technical)

The Issue:

“Launching of PCO project by M/s Mobilink without approval and permission of the Authority”

Determination of the Authority

1. PREFACE:

- 1.1 The Pakistan Telecommunication Authority (the “Authority”) conferred upon M/s Pakistan Mobile Communication Ltd. (Mobilink) (the “licensee”) the authorization by to establish, maintain and operate Cellular Mobile Telephone public service and system vide license No.7(30)/89-PTC date 4th July, 1992 which was revalidated by the Authority on 9th August, 1997 through letter No.PTA/M9T)-006 (the “license”).

1.2 In a short span of time, the licensee tremendously expanded its services and became the operator of millions of customers and as such was declared by the Authority as the one having Significant Market Power (SMP) vide the Authority's determination in the month of August, 2004. As per its own statement of July, 2006 the licensee got coverage to over 1000 cities/town/villages of the country.

2. The licensee's approaching the Authority for establishing PCOs:

2.1 As mentioned above, the licensee was granted license only for cellular mobile telephone public service and system. In June, 2006 the licensee desired to start providing pay phone services as well. However, being fully conscious of the fact that under the license the licensee is not authorized to provide the same services, on 2nd June, 2006 it applied to the Authority for permission to start pay phone services on nationwide basis on the ground of having acquired the required capability by successfully extending its coverage over 750 cities of the country.

2.2 Vide letter dated 31st July, 2006 the licensee approached the Authority through Director (Wireline Licensing) for grant of Voice Class Value Added License to provide the services in the entire country, accompanied with a bank draft in the amount of Rs.3,15,500/- as the initial license fee, which request of the licensee is still pending with the Authority for grant or otherwise of the aforementioned license.

3. Background of today's hearing:

3.1 Brief facts constraining the Authority to call the licensee for today's hearing are that, as mentioned in the preceding paras, while the licensee's application for allowing it to start pay phone services and its subsequent application of 31st July, 2006 for grant of Voice Class Value Added License were still pending for any decision of the Authority, the licensee on 16th October, 2006 advertised in the national press its project of providing pay phone services and encouraged the public to invest in it. The next day i.e. 17th October, 2006 the licensee awaked from slumber and felt the need of informing the Authority as well and thus wrote a letter in the name of the Chairman of the Authority dated 17th October, 2006 informing the Authority of the project of PCOs it had started. The Authority was thus informed a day after informing the general public of its scheme/project of launching PCOs. However, even a little before the licensee's letter of 17th October, 2006 the Authority had the information of the licensee's launching of the un-authorized project of PCOs.

3.2 The Authority took cognizance of the matter and vide Member (Technical)'s letter No.1-8/06/CMT.Gen/P&R/PTA dated 10th November, 2006 directed and required the licensee to show and explain the authority authorizing it to launch the project of PCOs without the Authority's approval and permission.

- 3.2 The licensee, in response to the aforementioned letter of the Authority dated 10th November, 2006 informed the Authority vide its letter dated 17th November, 2006 as under:
- i. in response to the licensee's request of 2nd June, 2006 for establishing PCOs the Authority required it to pay Rs.70 million as Spectrum Administration Fee which the licensee despite the Ministry's clearance that the same should not be linked with granting of permission of PCOs, paid on July 31, 2006 and inspite of the same permission for establishment of PCOs has not been granted so far;
 - ii. PCOs were established by the licensee only on the issuance of Policy Guidelines by the Ministry of IT on October 5, 2006;
 - iii. Although thrust of the licensee's PCOs project remained the rural population of the country, it did not restrict the service to remote areas since in the Ministry's guidelines it is clarified that mobile cellular operators would be allowed to operate PCOs as part of its platform services in its licensed area;
 - iv. the fact may please be noted that the requirement to seek approval of PTA HQs after clear instructions by the Ministry was not spelled out anywhere;
 - v. our pay phone project is in the larger general public interest and the our efforts relating to establishment of PCOs and facilitating the economic transition of the society at grass roots level were also commended by the president of Pakistan.
- 3.4 Upon receiving the foregoing entirely unsatisfactory reply from the licensee, instant hearing was convened for 6th December, 2006 and vide Hearing Notice of the Authority served through its Director (Litigation & Adjudication), bearing No.Dir(L)/CVAS-Mobilink/PTA/2006-649 dated 30th November, 2006 the licensee was required to appear before the Authority on the aforementioned date of hearing. On the licensee's requested for adjournment on the ground of its concerned officers' engagements in connection with some seminar/meeting at Cairo, Egypt, from 6th December, 2006 the hearing was rescheduled to 4th December, 2006. However, the licensee again requested for adjournment and finally the case was re-fixed for today i.e. 27th December, 2006 with the condition of maintaining status quo by not further expanding the project till final adjudication of the issue by the Authority.
- 3.5 The new date of hearing i.e. 27th December, 2007 and the aforementioned direction of maintaining status quo was communicated to the licensee vide the Director (L&A)'s letter dated 4th December, 2006.

4. Proceedings at today's hearing:

- 4.1 Attendance at the hearing: M/s Mobilink was represented by Mr. F.R Adhami, Chief Officer Regulatory and Government Affairs and Mr. Niaz H Brohi, Head of litigation and law Deptt. of the licensee. While from PTA DG (ID) Mr. Wasim Tauqir, DG(CA) Mr. Tariq Sultan, Director (Wireless Local Loop and Mobile) Mr. Abdul Samad, Director (Litigation & Adjudication) Mr. Shafaqat Jan, Assistant Director (law-II) Ms. Namiqa Nazar Bhatti, DD(licensing) Mr. Muhammad Shafiq, DD(Commercial Affairs) Mr. Zeshal Gul and AD(Finance) Mr. Imran Shafi Rana attended the hearing.
- 4.2 Presentation of the case: Hearing was started with the case officer, namely, Ms. Namiqa Nazar Bhatti, AD(law-II)'s presentation of the brief facts and background of the hearing before the Authority followed by her request before the Authority to require the licensee to show the authorization under which it has started its project of PCOs and explain its position on the issue of launching its PCO project without any permission or/and approval of the Authority.
- 4.3 The licensee's stance before the Authority: Mr. Adhami opened arguments on behalf of the licensee and highlighted the licensee's achievements in the field of telecommunication and appreciated the Authority's guidance in this regard. On the Authority's reminder of confining the arguments to the issue in hand, the licensee's representatives mainly argued that the unusual delay from the Authority in entertaining or in responding to the licensee's request for granting it permission to start PCOs constrained it to start the services on the basis of the policy directives of 5th October, 2006 issued by the Ministry of IT. The licensee further took the stance that one of the reasons for launching of its PCO project is to serve the rural and underdeveloped areas of the country and to provide better employment opportunities to the public in underserved areas and that their this effort has also been appreciated by the president of the Islamic Republic of Pakistan. The licensee also objected to the Authority's calling the letter of the MoIT No.2-30/2003-DT dated 5th October, 2006 as "Policy Guidelines" on the ground that under section 8 of the Pakistan Telecom Act, 1996 the Ministry can issue only directives and not guidelines. It was, therefore, vehemently argued by the licensee that the aforementioned letter of the Ministry should not be called and treated as guidelines but directives issued by the Ministry.
- 4.4 Licensee's response to the Authority's queries: The Ministry's aforementioned policy guidelines are addressed to the Chairman of the Authority and are issued for the Authority's implementation. In response to the Authority's query as to how the licensee out of its own has implemented upon itself the Ministry's policy guidelines which are yet to be implemented by the Authority, the licensee openly confessed that it had misunderstood the MoIT's guideline of 5th October, 2006 and had got the impression as if the Ministry vide the aforementioned guidelines has allowed the cell phone operators to start PCOs.

4.5 The licensee's admission and request before the Authority: As mentioned above, the licensee at the end admitted that it has wrongly interpreted the policy guidelines and have committed the irregularity of launching the project without approval of the Authority and requested the Authority for taking a lenient view in the matter and further requested for allowing it to continue with the project for future.

5. The Authority's findings:

5.1 The Authority's treating the points raised by the licensee: We will now take the licensee's points raised in its arguments one by one as under:

- i. The licensee, on the point of justifying its PCO project on the ground of the delay occurred from the Authority in responding to or allowing the licensee's request for starting its PCOs project is totally uncalled for. Mr. Adhami and Mr. Brohi, both, themselves replied in negative when confronted with the query as to whether a delay from the Authority in response to any request from a licensee would entitle the licensee to start the services requested for without the Authority's permission.
- ii. So far as the licensee's argument/stance of serving the rural and underdeveloped areas of the country through its scheme of PCOs is concerned, the same is a deviation from the licensee's own stance it had earlier taken in its letter of 17th November, 2006 wherein, in response to the Member (Tech)'s letter of 10th November, 2006, the licensee has itself admitted and categorically stated that "*we did not restrict the service to remote areas...*".
- iii. Another total "U" turn taken by the licensee today before us, which has indeed taken us by surprise, is its legal objection of not calling the Ministry's letter of 5th October, 2006 as the Guidelines and that the Ministry can not issue Guidelines but only directives. To repel this argument of the licensee we would again go to the first sentence of the second paragraph of the licensee's aforementioned letter of 17th November, 2006. The said para starts with these words "*It was only on issue of Policy guidelines by the Ministry of IT on October 5, 2006 (placed on the Ministry's website the same date) that we established PCOs...*". The licensee, as highlighted above, itself called it "guidelines" but vehemently objected to our using the same term for the Ministry's letter.
- iv. In the letter referred to above, the licensee has also openly challenged, rather in somehow harsh words, the Authority's domain to give permissions or approvals to its PCO project. In the said letter the licensee says "*...the fact may please be noted that the requirement to seek approval of PTA Headquarters after clear instructions/guidelines by the Ministry was not spelled out anywhere.*" However, today before us, quite

opposed to its aforementioned position, the licensee has, without any hesitation, confessed and admitted that it had got a wrong impression of the policy guidelines and the same has thus been wrongly implemented by it.

- v. As mentioned in the paras above, vide the last hearing notice of 4th December, 2006 the licensee was also directed to maintain status quo by not further expanding its PCOs till final adjudication of the matter by the Authority. On the basis of the information received by the Authority regarding violation of the aforementioned directions the licensee was asked today to satisfy the Authority that no such violation has taken place. The licensee's representatives present before us today, except with the oral assertion that directions for strict compliance of the Authority's directives were circulated among the officers of the licensee, could not provide any documents showing issuance of the said instructions.
- vi. The licensee's stance on the record and today before us in the hearing has not been persistent.

5.2 The Authority's observations: After perusing the record and hearing the licensee at length, we are of the considered opinion that the project of PCOs has been launched by the licensee without any authority and permission and is thus illegal. The licensee has no such permission under the license nor has the Authority ever allowed it in this regard. The policy guidelines issued by MoIT dated 5th October, 2006 are meant for the Authority and are to be implemented by the Authority only. The licensee by implementing upon itself, out of its own, the aforementioned guidelines, has exceeded its limitations. However, looking at its confession and admission, today before us, we are fully inclined to take a lenient view in the matter.

5.3 The foregoing is besides the fact of receiving various complaints by the Authority from the industry on the issue of the licensee's starting its PCOs without any permission or approval of the Authority as such practice of the licensee is anti-competitive.

5.4 The Authority's Decision: Based on the foregoing, we hold and determine as under:

- i. The licensee is directed to immediately stop its project of PCOs and tender apology to the Authority, within seven days of the issuance of the instant determination, for the violation committed by it and, if it is interested in the project under question, formally apply to the Authority with tariff and re-start the project after formal approval of the Authority, if given;
- ii. The licensee is warned not to commit any violation of the law and terms and conditions of the license in future; and

- iii. Any violation of the instant determination shall be taken as contravention of the provisions of the terms and conditions of the license and proceedings under section 23 of the Act shall be initiated against the licensee.

S. Nasrul Karim Ghaznavi,
Member (Finance)

Dr. Muhamamd Yasin,
Member (Technical)

Signed on this 27th day of December, 2006.