



PAKISTAN TELECOMMUNICATION AUTHORITY
HEADQUARTERS, F-5/1, ISLAMABAD

Enforcement Order under sub-section 3 of Section 23 of the Pakistan Telecommunication fRe-organization) Act 1996 in the matter of Mv Tel (Pvt.) Ltd.

File No. PTA/Finance/WLL/Mytel/824/2006

Date of Show Cause:	27 th May, 2009
Date of Hearing:	19 ^m August, 2009
Venue of Hearing:	PTA HQs, Islamabad

The Authority present:

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

The Issue:

"Non payment of Annual Radio Frequency Spectrum Fee (ARFSF) of Rs. 671,200/-for the year ended June30, 2008, inclusive of RBS charges, worth Rs. 10,000 till date".

Decision of the Authority

1. Brief Facts:

- 1.1. Mytel (Pvt.) Limited (the "licensee") was awarded non-exclusive Wireless Local Loop License No.WLL-07-2007 dated 8th November 2004 by Pakistan Telecommunication Authority (the "Authority") to provide the licensed services in the Licensed Region, i.e., NTR-1 and to establish, maintain and operate a Telecommunication system, subject to the terms and conditions contained in the license.
- 1.2. As a licensee of the Authority, the licensee i.e. Mytel (Pvt) Limited is required to comply with the provisions of 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 (Functions & Powers) Regulations, 2006 (the "Regulations") and the terms and conditions of the license. Whereas in this case the licensee has violated the clauses 4.1.2 (b) read with 1.3.2, Appendix-2 of the WLL license and regulation 23 of the Regulations, which make it obligatory on the license to deposit Annual Radio Frequency Spectrum Fee/charges of the licensed frequency spectrum within 120 days of the end of the financial year to which such fee relates.
- 1.3. The licensee i.e. Mytel Pvt Limited allegedly has not paid Annual Radio Frequency Spectrum Fee (ARFSF) of Rs. 671,200/- for the year ended on 30th June, 2008, inclusive

of RBS charges, worth Rs. 10,000 and late payment charges till May 2009 despite various reminders by 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 27th May, 2009. In response to aforesaid notice it submitted demand draft of Rs.200,000/- bearing No.4869670 dated 5th June, 2009 vide its letter dated 5th June, 2009 as partial payment and further informed that rest of the payment will be made in due course of time. The detailed reply to the above notice was submitted vide letter dated 26th June, 2009 in the following terms:

Re: SHOW CAUSE NOTICE UNDER SECTION 23 OF THE PAKISTAN TELECOMMUNICATION (RE-ORGANIZATION) ACT, 1996 (THE "Act") - REPLY REGARDING

Reference: **Show Cause Notice No. PTA/Finance/WLL/Mytel/824/2006/746 dated May 27, 2009**

Dear Sir,

It is submitted that we have been granted WLL license in the frequency of 3.5 GHs for NTR-1 vide No. WLL-07-2004 dated November 08, 2004, Mytel has successfully tested the Wimax solution and after completing all required formalities we have been issued commencement certificate vide letter No. Mytel-51/WLL&M/PTA dated May 29, 2007. We appreciated and are thankful for the continued support and encouragement of honorable Authority during all this process.

According to plan, we had to provide services in Peshawar in the first phase and then to expand operations to FATA and Malakand Division in the second phase keeping in view the demand and potential in these markets. For this reason, Mytel had established project offices in the following areas;

Site Area	Site Office
Bajaur, Khyber Agency Khaar, Sheen Kass Mohmand Agency Ghalanai Teerra, Khyber Agency Baagh	Goal Market Main Bazar Malik Din Khel Market

We started the survey as per schedule. During the survey some of staff members were threatened and the equipment & vehicles etc. were snatched. Some Staff members were kidnapped who were got freed later on through Local Jarga of Elders and Payment for money as demanded. The local terrorists demanded to stop activities as they blamed that we were doing it for spying against them to the government and the Americans. Our staff members were beaten badly and the field staff members denied continuing the survey work. We, therefore, had to stop our activities. We however, rescheduled the survey with some pause and then re-continued with the slow go approach. However, when, in the meanwhile the Government started operation against the terrorists in FATA areas we were left with no other option than to stop the survey till the situation gets better. We

suffered millions of loss and rolled back till the time peace is restored in FATA and the inhabitants return to their homes.

The Company has never intentionally delayed any liability of PTA nor violated any regulation and this can be confirmed from the PTA record. It is therefore requested that under the circumstances and situation beyond our control, which are no more a secret, we submit that the remaining annual fee (already paid Rs.200, 000/-vide our letter No.PTA/Finance/09-105 Dated June 05, 2009) for the current year and onwards may very kindly be remitted till the situation in FATA & Malakand Division gets better and workable. Some cuttings of national news-papers reporting violent incidences in FATA are attached in support of our genuine stance.

- 1.4. Under the provisions of the Act, the licensee was required to appear before the Authority for personal hearing on 19th August 2009, vide Hearing Notice dated 4th August, 2009. The licensee also submitted its arguments vide letter dated 15th August, 2009 in response to aforesaid hearing notice which are reproduced as under:

QUICK FACTS:

The company has been awarded WLL license in the frequency spectrum of 3.5 Ghz for NTRI. The company has successfully gone through technical testing and deployed a wimax network. After fulfilling all other required formalities, PTA has allowed the company for commercial operations vide commencement certificate vide letter No. Mytel-51/WLL&M/PTA dated May 29, 2007.

As per plan, after deployment of fully tested network in Peshawar, the company targeted the underserved areas with low teledensity. FATA was selected to be started with and established project offices at the following locations.

- *Goal Market, Khar, Sheen Kass, Bajaur Agency.*
- *Main Bazar, Ghalanay, Mohamand Agency.*
- *Malik Din Khel Market, Baagh Teera, Khyber Agency.*

The respective plan could not be turned into reality due to unfavorable law and order situation in the licensed region. A few details are annexed for your ready reference.

<i>Annexure</i>	<i>NEWSPAPER</i>	<i>DATED</i>	<i>HEADING</i>
<i>I</i>	<i>The News</i>	<i>July 16, 2007</i>	<i>45 die in Swat, DIK Suicide hits</i>
<i>II</i>	<i>The News</i>	<i>October 27, 2008</i>	<i>10 troops killed in Mohmand Suicide attack</i>
<i>III</i>	<i>The News</i>	<i>November 12, 2008</i>	<i>Bajaur tribesmen want security forces in Salarzai</i>
<i>IV</i>	<i>Pakistan Institute of Peace Studies</i>	<i>November 2 1, 2008</i>	<i>Study on Kidnapping in NWFP and tribal areas</i>
<i>V</i>	<i>The News</i>	<i>March 28, 2009</i>	<i>Bomber maws down 76 in mosque</i>

VI	<i>The News</i>	<i>April 01, 2009</i>	<i>Chief Minister NWFP, asks President Asif AH Zardari to declare NWFP war-hit Zone</i>
VII	<i>The News</i>	<i>May 23, 2009</i>	<i>Five soldiers among 22 killed in Swat & Dir Lower</i>

LAW AND ORDER SITUATION IN THE LICENSED AREA:

The terrorism and law and order situation in NWFP has become worst in the past few years. Terrorism is a great hurdle in socio-economic prosperity, political stability and geo-strategic sustainability of this province. Development activities are almost halt in these areas. The rule of ignorance, stagnation, fanaticism, and destruction is spreading like a wildfire in NWFP and FATA. Owing to the reason, hundreds of industrial unit are closed and thousands of people are unemployed. In this regard, the Government of NWFP, Sarhad Chamber of Commerce and all industrial units asked Federal Government a number of times to declare NWFP as war affected zone. Moreover, Local & Foreign NGO's declared this province as war hit zone and extended all their relief activities accordingly.

IMPACT OF CURRENT LAW AND ORDER SITUATION:

The current prevailing situation of NWFP has greatly affected and disturbed the overall economic and commercial activities in the region. In wake of the current planned military operation against militants & circumstances prevailing in FATA we have been compelled to suspend our business activities till the time it becomes safe, feasible and profitable as we have already suffered millions of loss. Some major problems faced has already been forwarded in reply of show cause vide letter No.PTA/Finance/09-114 dated June 26, 2009 (Copy annexed for ready reference).

RELIEF REQUESTED IN APPEAL:

It is requested that keeping in view the prevailing situation, lenient view may please be taken to remit the remaining balance of spectrum annual renewal fee. We also refer to the PTA's decision dated April II, 2006 regarding the reduction of annual fee for WLL services in Balochistan (Copy annexed for ready reference).

- 1.5. Nawab Ali, Director Business Development and Sajid Hazoor Chief Financial Officer appeared before the Authority on behalf of the licensee and reiterated the same stance as already communicated vide its detailed reply dated 26th June, 2009 and 15th August, 2009. Keeping in view the circumstances mentioned by the licensee its case has already been forwarded to Ministry of Information and Telecommunication for guidance in the matter.

2. Order.

- 2.1. After careful perusal of the record, and keeping in view the circumstances mentioned by the licensee coupled with the positive attitude of the licensee the show cause notice dated 27th May 2009 is disposed of in the following terms:
 - a) The licensee is directed to pay Rs. 6,21,984/- (ARFSF Rs.380,000/-+ RBS Rs. 10,000/-+ Late payment charges Rs.231,984/- upto 30th September, 2010) on account of Annual Radio Frequency Spectrum Fee and RBS charges for the year ended on 30th

June, 2008 in three equal monthly installments to be paid on or before 31st July, 2010, 31st August,, 2010 and 30th September, 2010, respectively.

- b) In case of failure to pay each installment its license No.WLL-07-2007 dated 8th November 2004 shall stand suspended without further notice to the licensee till further orders of the Authority.
- c) However, the aforesaid amounts are adjustable in case the MOIT decides the matter in favour of the licensee.

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

(Dr. Khawar Siddique Khokhar)
Member (Technical)

(Dr. Mohammed Yaseen)
Chairman

Signed on 28th June, 2010 and comprises 05 pages.