



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

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www.pta.gov.pk

M/s. TF Payphone (Pvt) Ltd

.....Appellant

Versus

Deputy Director (Finance) and Assistant Director (Finance), Pakistan
Telecommunication Authority

...Respondent

**APPEAL UNDER SECTION 7 (2) OF PAKISTAN TELECOMMUNICATION (RE-
ORGANIZATION) ACT 1996**

Date of preferring the Appeal: through covering letter of the
Appellant dated 28.04.2006
Date of hearing : 18.07.2006
Venue of hearing : Conference Room, PTA HQs,
Islamabad

The Authority present:

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

The Issue:

“Demand note was issued without addressing the contention
raised by M/s. TF Payphone (Pvt) Ltd”

DECISION OF THE AUTHORITY

BRIEF FACTS:

M/s. TF Payphone (Pvt) limited (the “licensee”) is a private limited Company incorporated under the Companies Ordinance, 1984 and is engaged in the business of Card Payphone services pursuant to the non-exclusive license No. 7(96)/90-P&T dated

9th July, 1992 awarded by ministry of Communication and later on modified by Pakistan Telecommunication Authority (the "Authority") vide letter No. 23rd September, 2002 (the "license") to establish, maintain and operate Card Payphone services in Pakistan on the terms & conditions contained in the license.

2. The licensee has defaulted in payment of PTA dues for the years ended 30th June, 2005 as well as not provided its annual audited accounts for the said year. In this regard PTA made request to the licensee but in vain. PTA then conducted meeting with the licensee for payment of dues and submission of annual audited accounts. Pursuant to these meetings and previous correspondence officers of the Authority issued letter dated 7th April, 2006 requiring the licensee to submit Annual Audited Accounts duly approved by the Board and certified by Chartered Accountants and clear outstanding PTA dues by 29th April, 2006.

3. M/s. TF Payphone (Pvt) Ltd (the "Appellant") being aggrieved of the impugned letter dated 7th April, 2006 (the "impugned letter") issued by Deputy Director (Finance) and Assistant Director (Finance) filed the instant appeal dated 28th April, 2006. The Appellant has defaulted in payments of PTA Rs. 1,243,008/- on account of Annual License fee for the year ended by 30th June, 2005. PTA issued various letters to the Appellant for payment of PTA dues and also called meetings whereby required the Appellant to deposit PTA dues and submit Annual Audited Accounts. During the meeting dated 6th January, 2006 the Appellant claimed that it had been making payments of royalty fee to the Ministry during the period 1992-1996, but later on it intimated that the Appellant has never made any payments to the Ministry. Therefore, PTA issued the impugned letter to the Appellant.

2. The Appellant instead of complying the aforesaid directions filed the instant appeal dated 28th April, 2006 under section 7(2) of the Act. In the appeal the licensee submitted that:

(a). The Appellant wrote letter dated 22nd October, 2005 to PTA whereby drew the attention towards following points: (i) enforcement, applicability of Telecom Act, and issuance of incorporation certificate. The Appellant also provided annual audited accounts for the year ended 2004 pursuant to meeting dated 24th October, 2005. PTA instead of redressing points of contention issued letter dated 23rd November, 2005 and stated that the Appellant is liable of pay Rs. 1,969,278/- in respect of annual license fee for the year 2004. PTA included the income from "distribution of PTCL Calling Cards" and "Non refundable securities" for the purposes of annual license fee. This income is not generated from licensed services as defined in the Act. Furthermore, PTA imposed late payment charges on the total annual license fee contrary to its letter dated 23rd September, 2002. The Appellant also had meeting with Member Finance on 6th January, 2006 and provided the desired documents vide letter dated 15th March, 2006.

(b). DG (Finance) vide letter dated 15th March, 2006 informed that licensee is violating section 7(b) of the license by not paying annual license fee and also intimated that the Appellant is violating section 20 and 21 of the Act by providing services in AJ&K based on license issued by SCO, the same was sent to MOIT. PTA without show cause under section 23 of the Act issued the said letter. The Appellant further informed that about 8 companies including TF Payphone were providing telecom services in AJ&K since 2001.

(c). The Appellant has reservations on calculations of annual license fee:

- (i) PTA Act came into force on 17th October, 1996. The Act did not have retrospective effect. The Appellant under duress paid annual license fee/royalty for the period 1992- to 17th October, 1996. This amount should be adjusted.
- (ii) PTA does not have right over annual license fee on AJK operations from 2001 to 23rd May, 2005. This needs to be refunded.
- (iii) Income from distribution of PTCL Calling Cards and income from Non-refundable Securities be excluded from Gross Income for the purposes of annual license fee.
- (iv) PTA levied penalty on the total outstanding amount instead of excluding the amount already paid.

3. The hearing has been convened on 18th July, 2006 at PTA Headquarter. Mr. Ikram Khan, Managing Director, Mr. Rashid Awan Shami DGM (Finance) and Mr. Muhammad Shoaib Advocate High Court appeared before the Authority on behalf of the Appellant whereas DD (Finance) and AD (Finance) appeared on behalf of the Respondent. At the very outset of the hearing it was noted that all the representatives have appeared on behalf of Appellant which is a subsidiary of M/s. Telecom Foundation (Pvt) Ltd and is operating the license, therefore, the Authority asked about the status of the license, it was revealed that license for card payphone services has been issued to M/s. Telecom Foundation (Pvt) Ltd and not to M/s TF Payphone (Pvt) Ltd. The representative of Appellant informed that the said license has already been changed/transferred in the name of M/s. TF Payphone (Pvt) Ltd in 1994 by Ministry of Communication. In support of their stance they provided a copy of the license. Perusal of the said change reveals that it was not a proper permission rather the name of TF Payphone (Pvt) Ltd has been written by cutting the name of M/s. Telecom Foundation (Pvt) Ltd alongwith endorsement to that extent and signature of some officer from Ministry of Communication. Secondly, after promulgation of Pakistan Telecommunication (Re-organization) Act, 1996 the licensee was obliged under sub-section (6) of section 21 of the Act to supply within three months full details of his authorization, license or permit, as the case may be, and apply for continuance of the license under the Act. But the Appellant has neither informed the full details nor applied for continuance of the license, which is sheer disregard to the provision of the

Act. The Appellant regretted this mistake of not fulfilling the statutory requirements. The Advocate of the Appellant also raised the objection that the Authority is not complete in the hearing, which has been ruled out by the Authority by replying that decision of majority of the Authority is binding and majority of the Authority is present in the hearing. The Appellant reiterated that PTA while calculating annual license fee has included the income earned from distribution of PTCL calling cards, which they are doing after entering O&M Agreement with PTCL and the amount earned on account of 'non-refundable securities'. The Appellant further reiterated the same facts, which are already mentioned in Para 2.4 (c) above.

4. As there are issues, which need to be discussed in detail with the Appellant, therefore, a committee has been constituted to discuss the controversies and resolve the same after consultation with the Managing Director of the Appellant. Accordingly a meeting was arranged on 9th August, 2006 in the office of Director General (Regulatory Affairs) which was attended by Mr. Ikram Khan Managing Director. In the meeting all the issues were discussed and deliberated upon and formal minutes of the meeting were issued on 25th August, 2006. The minutes of the meeting are reproduced hereunder:

Subject: **MINUTES OF THE MEETING WITH TF PAYPHONE**

1. A meeting to resolve outstanding issues with company was held in the office of Director General (Regulatory Studies) on August 09, 2006 and was attended by:

- a. Director General (Regulatory Studies), PTA.
- b. Deputy Director (Finance), PTA.
- c. Assistant Director (Finance), PTA.
- d. Assistant Director (Law), PTA.
- e. Managing Director, TF Payphone.

2. **Following issues were decided during the meeting:**

a. **Issue:**

Annual audited accounts for the year ended June 30, 2005.

Decision:

Company will provide its AAA for the year immediately for final reconciliation of dues.

b. **Issue:**

Sales from distribution of calling cards.

Decision:

Issue will be settled in light of the decision of the Authority. For the time being, amount under the head shall be excluded from calculation.

c. Issue:

Income from non-refundable securities.

Decision:

To be included in revenues for calculation of annual license fee.

d. Issue:

Deduction of taxes paid by the company for the year ended June 30, 2004.

Decision:

If the company provided evidence of payment of the taxes duly certified by its auditors, these will be deducted for calculation of annual license fee.

e. Issue:

Penalty for late payments for the year ended June 30, 2004.

Decision:

Company was required to clear its dues for the year by October 31, 2004, whereas its first cheque for payment was received in February-2005. 10% penalty on outstanding dues is applicable on the outstanding amount from November 1, 2004.

f. Issue:

Services provided by TF in AJK and license fee paid to SCO. SCO cannot charge license fee.

Decision:

License fee is payable on the revenues generated by TF from its operations in AJK. Regarding license fee paid to SCO, TF will submit a separate application to the Authority so that the matter is investigated at a proper level.

g. Issue:

License fee paid by TF for the period before 1996.

Decision:

Issue was explained to the company and it agreed to the applicability of the fee for the periods before 1996. Company has already cleared its dues for that period.

5. The Appellant provided the requisite documents pursuant to the aforesaid minutes of the meeting and its payable dues were revised which arrived at Rs. 839,638/- PTA issued Revised Demand note dated 25th September, 2006 to be paid by the Appellant within ten days of issuance. The contents of the letter are reproduced here:

Subject: **ANNUAL LICENSE FEE TO PTA FOR CPPS LICENSE/SERVICES FOR THE YEAR END JUNE 30, 2005**

This is with reference to Authority hearing dated July 18, 2006, meeting of August 09, 2006, Certificate of tax provided by your Auditors and Audited Accounts provided for the year-end June 30, 2005 in Mid August 2006.

2. *As per annual audited accounts, certificate provided & mutually decided in the meeting of August 09, 2006 and communicated to you via minutes of the meeting sent vide letter no. PTA/Finance/CPPS/TF31/2006 dated August 25, 2006 & reconciliation made, **TF Payphones Limited** is liable to pay PTA an amount of **Rs.839,638/-** on account of Annual License Fee (ALF) for the year-end June 30, 2005, details calculations are attached at **Annexure-A**.*

3. *You are kindly requested to treat this matter as urgent and make payments with in **ten (10) days** from the date of this letter to avoid any inconvenience.*

6. In the meantime the Authority conducted a meeting with the Association of Card Payphone Operators held on 12th September, 2006 wherein different issues of the companies were discussed and some decisions were taken including granting permission to all payphone operators to deposit outstanding arrears due upto 30th June, 2005 in installments. Therefore, pursuant to this decision of the Authority the Appellant vide letter dated 2nd October, 2006 applied to avail relaxation in payment of Annual license fee in installments which are effective from 16th December, 2006. But case of this company cannot be accommodated 100% in accordance with the decision owing to particular circumstances of the company that include recovery process was already initiated against this company and secondly its license is going to expire on 8th July, 2007.

THE AUTHORITY'S DECISION:

7. Keeping in view the above mentioned facts and circumstances mentioned during the hearing and on perusal of the record, the Authority hereby dispose of the instant appeal by passing the following enforcement order:

- (a) M/s. Telecom Foundation (pvt) Ltd has been awarded Card Payphone License No. 7(96)/90-P&T on 9th July, 1992 by Ministry of Communication. Later on, the Government of Pakistan promulgated Pakistan Telecommunication (Re-organization) Act, 1996 whereby established PTA as the Regulator. Under sub-section (5) of section 21 of the Act, all existing licensees were deemed to be licensees under the Act for a period of 12 months and they were required under sub-section (6) to apply to the Authority for continuance of such license. But in the instant case these statutory provisions have not been observed by the licensee. However M/s. TF Payphone (Pvt) Ltd informed during the meeting that Ministry of Communication transferred the license of M/s. Telecom

Foundation to M/s. TF Payphone (Pvt) Ltd (a subsidiary of Telecom Foundation) in 1994 before establishment of PTA but this fact was not brought in the knowledge of PTA either by the Ministry of Communication or the licensee, that is why, name of the licensee with PTA is M/s. Telecom Foundation (Pvt) Ltd, and PTA modified the license in 2002 in the name of M/s. Telecom Foundation (Pvt) Ltd while in actual the license is being operated by M/s. TF Payphone (Pvt) Ltd and also TF Payphone(Pvt) Ltd is in contact with PTA, attending meetings, paying license fee to the Authority and controlling and managing all affairs of the company. M/s. TF payphone (Pvt) Ltd has also deposited license fee for the years from 1992 to 2004 to PTA after detailed meetings and detailed correspondence starting from 1999, therefore, the Authority hereby deemed M/s/ TF Payphone (Pvt) Ltd as lawful licensee of PTA under the Act by treating through this determination the license No.7 (96)/90-P&T dated 9th July, 1992 as license of M/s. TF Payphone (Pvt) Ltd.

- (b) As all issues of the company regarding calculation of payable dues have been resolved vide meeting dated 9th August, 2006 and in the light of that meeting payable dues have been revised, i.e., Rs.839,638/-. Therefore, the licensee, i.e., M/s. TF Payphone (Pvt) Ltd is hereby directed to deposit 30% of the total payable dues within seven days of this decision and rest of the 70% dues -(ALF upto 30th June, 2005) shall be deposited in installments as per the schedule approved by the Authority vide directive No. DIR (C)/PTA/656/2006 dated 28th September, 2006 starting from 16th December, 2006. The licensee has to clear all PTA dues on or before 8th July, 2007.
- (c) In case of failure to deposit PTA dues as provided in Para 7 (b) above, license of the company No. 7(96)/90-P&T dated 9th July, 1992 shall stand terminated and shall not be renewed thereafter and recovery proceedings under section 30 of the Act shall be initiated by the Authority against the company for recovery of dues as land revenue.

(S. Nasrul Karim Ghaznavi)
Member (Finance)

(Dr. Muhammad Yasin)
Member (Technical)

8. This order/judgment is issued today and comprises 07 pages.