



PAKISTAN TELECOMMUNICATION AUTHORITY
HEADQUARTERS, F-5/1 ISLAMABAD
Ph: 051-9225328 Fax: 051-9225338

Re:
Wateen Telecom (Pvt.) Limited

Enforcement Order under Section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 read with sub-rule (4) of Rule 9 of the Telecom Rules, 2000

File No. PTA/Finance/LDI/Wateen 102/2006

Date of Issuance of Show Cause Notice: 28th January, 2010
Date of Hearing: Venue of Hearing: 1st April, 2010
PTA H/Qs, Islamabad

The Authority:

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

The Issue:

Non payment of outstanding dues of Rs. 2,498,323/- for the year ended June 30, 2009

Decision by the Authority

1. Brief Facts:

1.1. Wateen Telecom (Pvt) Limited" (the "licensee") was awarded non-exclusive Long Distance and International Services License No. LDI-10-(17)-2004 dated 26th July, 2004 [transferred from Warid Telecom (Pvt) Limited to Wateen Telecom (Pvt) Limited on 26th October, 2005] by Pakistan Telecommunication Authority (the "Authority") to establish, maintain and operate a Telecommunication System and to provide licensed services in Pakistan subject to the terms and conditions contained in the license.

1.2. As a licensee of the Authority, the licensee i.e. Wateen Telecom (Pvt.) Limited is required to comply with the provisions of prevailing regulatory laws comprising of 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.

1.3. Clauses 4.1.2 (a), 4.1.3, 4.2.1, 4.2.2 and 4.2.3 of the LDI License read with clause 8.1 of the Appendix B of the Rules, and sub-regulation (6) and (7) of regulation 23 of the Regulations obliged the licensee to make payments of all regulatory dues, i.e., annual license fee, USF and R&D contributions within 120 days of the close of each financial year.

1.4. Clause 4.2.1 and 4.2.4 of the LDI license obliged it to submit annual audited financial statements and pay all annual fees to the Authority within the said period of 120 days of the end of the financial each year.

1.5. The licensee i.e. Wateen Telecom (Pvt.) Limited failed to submit its annual audited accounts and to make the payment of Annual Regulatory fees and contributions (i.e., annual license fee, USF and R&D contributions) for the year ended 30th June, 2009 within specified time of 120 days of the close of financial year. However, later on it submitted its annual audited accounts on 16th December, 2009. Hence, demand note dated 17th December, 2009 was issued for payment of aforesaid annual regulatory fees and contribution, but in vain. Hence, a Show Cause Notice (the "Notice") under section 23 of the Act was issued to the licensee on 28th January, 2010 requiring it to make the payment of Rs. 184,884,202 (i.e., ALF Rs.30,813,867/-, R&D Rs. 61,627,734/- and USF Rs.92,441,601/- including late payment additional fee @ 2% per month up to January, 2010) for the year ended on 30th June, 2009 within seven days of the issuance of notice and also to submit reply to the notice within thirty days, hi response to aforesaid notice the licensee made the payment of Rs. 187,625,9247- in the form of fifteen post dated cheques dated March 15, 2010 (three in favour of PTA and twelve in favour of MOIT) vide its letter dated 6th February, 2010. Further vide its letter dated 8th February, 2010 in the following terms and requested for withdrawal of the aforesaid notice:

Subject: Show cause notice under section 23 of the Pakistan Telecommunication (Re-Organization) Act-1996 (The Act)

Reference PTA letter PTA/Finance/LDI/Wateen-102/2006/821 dated January 28, 2010.

It is submitted that in the past, Wateen Telecom has never denied or avoided payments of the mandated fees and contributions under the law. We are still committed to pay our outstanding dues towards PTA. It may be pointed out that a little delay in making the payments as per subject show cause notice is due to a financial crunch being faced by the Company as a result of overall worldwide recession and its impact on the Telecom industry of Pakistan as well. However, we plan to make this payment by March 2010 along with permitted penalty as reflected in the attached documents.

In this connection the cheques as per attached details have already been handed over to Mr. Imran Younas, PTA on Feb 6, 2010. Prior to this, scanned copies of these cheques were also sent to you by Mr. Amer Salam vide his e-mail dated Feb 4, 2010. In view of the aforesaid it is requested that your aforementioned show cause notice may kindly be disposed off accordingly.

1.6. As the payment made by Wateen was late and short by Rs. 2,498,323/- and Wateen has not yet cleared the balance of Rs. 2,498,323/- , therefore, under the provisions of the Act, prior to passing any enforcement order, the licensee was required to appear before the Authority for personal hearing on 1st April, 2010, vide Hearing Notice dated 22nd March, 2010.

1.7. The licensee appeared before the Authority on 1st April, 2010 through its representatives namely Mr. Mazhar Qayyum Butt, GM (G&RA), Mr. Naseem Ahmed Vohra (Consultant),

Mr.Sajjad Aslam DGM (Finance), Syed Imam Zaigham, Manager Accounts, Amer Salam, Maniager (G&RA) who reiterated the same facts/position as stated in its reply to the notice. The licensee took the stance that it is a big name in the industry because of its operations in LDI and WLL and in terms of infrastructure. Previously it had paid all regulatory dues in time. However, after 2008-2009 it is facing some difficulties in finances due to financial crunch, even then it is making payment of annual regulatory fees and contribution alongwith late payment surcharge. It further stated that it has made the payment of Rs.187 million pursuant to PTA's demand letter dated 28th January, 2010 by adding late payment charges for the months of January and February, 2010 against both licenses of LDI and WLL. In addition, the licensee disputed the calculations of payable dues and requested the Authority for one week time to sit together with PTA Finance Team and reconcile the same as it intend to resolve the issue and not to defend the same. Keeping in view the foregoing statement, the Authority allowed the licensee to submit its reply and get the accounts reconciled with Finance Division of PTA within one week time.

1.8. Pursuant to directions given by the Authority during hearing dated 1st April, 2010, the licensee submitted its reply to the notice vide letter dated 7^l April, 2010 in the following terms. However, it admitted the liability of annual spectrum administrative fee which it requested to allow to clear in May, 2010. The same was analyzed by Finance Division of PTA.

Subject: Show Cause Notice Under Section 23 of Pakistan Telecommunication (Re-organization) Act, 1996

Yours References:

PTA/Finance/LDI/Wateen 102/2006/821 dated 28th January, 2010
PTA/Finance/WLL/Wateen WLL 88/2006/839 dated 9th February, 2010
PTA/Finance/LDI/Wateen 102/2006/957dated22ndMarch, 2010

With reference to above mentioned letters, Wateen Telecom submits the following:-

- 1. Wateen has made the total payment of PKR.187,625,924/- (Principal amount PKR.173,727,708/- and Surcharge for 4 months period Nov 2009-Feb 2010 PKR.13,898,217/-) the detailed breakup of the payment is attached as Annex-A. This payment is based on Audited Accounts (refnote 26 Audited Account Annex-E). Wateen statutory audit is conducted by Price Waterhouse coppers (A.F. Ferguson's) one of the world's most accredited audit firms.*
- 2. The above mentioned payment has been submitted to PTA and separate and email February 04, 2010 was sent to Director General (Law) Mr. Kamran Ali explaining the fact that this payment should settle Wateen 'sfee obligations under its LDI License, WLL licenses and DHA WLL license in full (Annex-F). During the hearing dated April 01, 2010 a separate calculation for each type of license was demanded by PTA and the same is duly attached as Annex-B for ready reference and proper realization against each license,*
- 3. Kindly note that Wateen always follows the best practices of accounting and complies with in a national Accounting Standards, International Financial Reporting Standards and local stance for at its financial reporting. These*

practices compliance and reports for external auditors proves case able assurance and reliance for all external stakeholders for financial affairs of the company. This also include the accounting treatment of expenses and admitted liabilities and their likelihood for subsequent settlements, revenue and assets and their reliability of subsequent recovery. This necessarily means that reasonable arrangements have been put in place by Wateen to discharge Wateen's obligations against all expenses accounted for whether paid or to be paid in future.

4. *Following the above compliance and practices Wateen's annual license fees are separately reported and verified by Wateen auditor's in Note 26 of FY 09 audited accounts for clarity and better understanding:
Kindly note that departing from mandatory International Accounting Standards, International Financial Reporting Standards and Companies Ordinance 1984 will question the reliability of the Audited Accounts and open up each and every transaction for debate which will result in confusion and difference of opinion for all stakeholders.*
5. *The PTA demand of principal amount through its letter **PTA/Finance/LDI/Wateen 102/2006 along with Annex-I dated December 17, 2009, (Annex-C) ("Letter 4")** amounting to PKR. 174,418,115/- under Wateen's LKD license and PKR.21,486,383/- under Wateen's WLL licenses, making a total of PKR.195,904,498/- is based on calculations that are not in compliance with International Accounting Standards, International Financial Reporting Standards or the Companies Ordinance 1984 and does not adhere to figures disclosed in the Audited Accounts. The following deviations have been observed from the audited accounts, which is the reason for the difference in the ALF amount calculated by Wateen and the ALF calculated by PTA.*

In the calculation shown in Letter 4 all the interconnect charges (PKR 697,873,000/-) and APC (PKR.679,969,000/-), whether paid or payable, have been accounted for but the APC for USF related to MOIT is accounted for only to the extent of amount paid during the period and restricted to PKR.924,182,978/- instead of PKR.1,783,225,000/- depriving Wateen from a deductible charge of PKR.859,042,022/-.

Similarly the amount of annual license fee, Research & Development (R&D) and USF Contribution (Collectively the "ALF") deducted under the PTA calculation is based on the amount paid during the year ended June 30, 2009 accounting for an extra deduction of PKR.8,763,367/-.

A statement of difference with our comments is attached as Annex-D for further details.

6. *Wateen agrees to an amount of Rs.14,268,000/- payable as WLL annual Spectrum Fee for the year 2008-09 and undertakes to make this payment by 31st May 2010.*

Wateen Submission

7. *Audited Accounts of the company, being the reliable and dependable available source for financial information, may please be considered final for determination and*

calculations of annual license fee payments to avoid dispute and misunderstanding. Keeping in view our above submission, it is requested to please accept payments mentioned in point 1 as full and final discharge of our annual license fee for WLL, LDI and DHA joint venture and dispose of the said show cause notices and also the payment of Annual Spectrum Fee may please be allowed without surcharge.

- 1.9. Above mentioned show cause notice was issued for nonpayment of annual regulatory dues (ALF, R&D and USF contributions) for the year ended June 30, 2009. As per clause 3.6.1, 4.1.2 (A) and 4.2.1 *"the annual regulatory dues calculated on the annual gross revenue from licensed services for the most recently completed financial year of the licensee minus inter operator payments and related PTA / FAB mandated payments "*. While calculating the fees, only inter operator payments and PTA/FAB mandated payments can be deducted, not the accruals. PTA has calculated the annual regulatory dues as per said license terms and conditions. It is important to mention here that the only major difference in PTA and licensee's figures are in PTA mandated payments of Rs. 864,820,171/-.
- 1.10. PTA has incorporated the figures as PTA mandated payments which were received from the licensee during July 1, 2008 to June 30, 2009 i.e. Rs. 1,106,400,829/-, whereas the licensee has taken PTA mandated payments of Rs. 1,971,221,000/- reflected in Direct Cost in their accounts. As per our calculation company has to pay Rs. 2,498,323 against LDI license.
- 1.11. The calculation of PTA is based on the aforesaid license conditions. Quoting of International Accounting Standards and International best practices of accounting by the licensee is not relevant in this case, as, it is internationally recognized (and also stated in the International Accounting Standards), that wherever there is a conflict between the requirements of International Accounting Standards and the Country's own laws, the laws of the country take precedence. Since the license issued to the licensee is a legal document, the provisions of the license therefore take precedence over the requirements of International Accounting Standards.

2. Order of the Authority:

- 2.1. Keeping in view the above mentioned facts coupled with the available record, the Authority hereby disposes of the aforesaid show cause notice in the following terms:
 - (a). Under sub-rule 4 of rule 9 of the Telecommunication Rules, 2000, the licensee is directed to:
 - (i) Remedy the contravention by paying the balance amount of Rs. 2,498,323/-, on account of annual regulatory fees and contributions against LDI License No LDI-10-(17)-2004 dated 26th July, 2004 [transferred from Warid Telecom (Pvt) Limited to Wateen Telecom (Pvt) Limited on 26th October, 2005]. along with compliance report of such payments within **twenty five (25) days** of the issuance of this "Enforcement Order".

- (ii) In case of the licensee's failure to comply with Para 2.1 (a)(i), above, "Final Enforcement Order" under sub-rule (5) and (6) of Rule 9 of the Telecommunication Rules, 2000 read with section 23 of the Act shall be issued against the licensee.

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

(Dr. Khawar Siddique Khokhar)
Member (Technical)

Signed on 28th May,2010 and comprises 06 pages