



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 against World Call Telecom Limited

File No. PTA/Commercial Affairs/World Call/International Agreement with World Call 116/2006

Date of Issuance of Show Cause Notice:	22 nd February, 2010
Venue of Hearing:	PTA HQs, Islamabad
Date of Hearing:	05 th May, 2010

The Authority Present:

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

The Issue:

"Non-payment of APC for USF charges"

DECISION OF THE AUTHORITY

1. BRIEF FACTS:

1. World Call Telecom Limited (the "licensee") was awarded a non-exclusive Long Distance International license on 3rd August, 2004 bearing No. LDI-05 (10)-2004 (the "license") issued by the Pakistan Telecommunication Authority (the "Authority") to establish, maintain and operate Telecommunication System in Pakistan on the terms & conditions contained in the license.

2. Briefly stated that the licensee has failed to make the payments for the months of August, September, and October, 2009 including late payment charges thereon amounting to Rs 396,157,944/- (Rs.90,785,902/-+ Rs.108,296,090/-+ Rs. 191,727,9347/- and late payment charges thereon Rs.5,348,018/- calculated upto 31st January, 2010) on account of APC for USF Contribution (calculated on the basis of traffic data submitted by the licensee for the aforesaid months only), despite repeated demands of the Authority in contravention of the AP Rules, the AP Regulations, condition of the license and directives of the Authority, therefore, the licensee was issued show cause notice vide No. PTA/Commercial Affairs/World Call7International Agreement with World Call 116/2006 dated 22nd February, 2010 under section 23 of the Act

whereby required the licensee to remedy the contravention by making the payments of Rs.396,157,944/- immediately of receiving the aforesaid notice and also submit written reply to the Notice within thirty (30) days of the issuance of the Notice and explain as to why the license should not be suspended, terminated or any other enforcement order should not be passed under section 23 of the Act against the licensee. The licensee replied the notice vide its letter No.WTL-05/4-1/741 dated 18th March, 2010 in the following terms:

Re: Show Cause Notice under Section 23 of the Pakistan Telecommunication (Re-Organization) Act, 1996 (the "Act")

Reference: Your letter # P7'A/Commercial Affairs/Worldcall/International Agreement with Worldcall 116/2006/864 dated February 22, 2010

Dear Sir,

This is in response to the Show Cause Notice dated 22.02.2010 (the "Notice") issued by your office whereby Worldcall Telecom Limited ("WTL") has been alleged to have contravened provisions of the Pakistan Telecommunication (Re-Organization) Act 1996 (the "Act") and Rules and Regulations framed thereunder as well as License terms and conditions. Based on the allegations WTL has been required to remedy the contravention by making payment of ARC for USF amounting to PKR 390,809,926/- (the "Amount") for the period August, September and October 2009 along with the late payment charges of PKR 5,348,018 (the "Fine")

Our reply to the Notice, which shall also serve as an explanation as sought in the Notice, is as follows,

- 1. It is, respectfully, submitted that allegations as leveled in the Notice are not valid. The same are rebutted.*
- 2. The Authority is well aware of the fact that WTL, along with certain other companies, filed a writ petition no. 3349/1 2009 before the honourable Lahore High Court, Rawalpindi Bench wherein certain directives of the Authority, with respect to the Amount, were assailed for being contrary to the provisions of the Act, Rules and Regulations. WTL raised a substantial question of law before the honourable High Court and the honourable Court was pleased to issue interim injunctive order dated 11.11.2009 (copy enclosed).*
- 3. The honourable Court was apprised of the fact that notwithstanding proceedings regarding the legality of APC for USF before the honourable Supreme Court of Pakistan WTL always complied with its obligations under the law. The honourable Court during the hearing on petition, required WTL to show bonafide by paying certain portion of the demand of APC for USF. WTL, in compliance, paid an amount of Rs.84,000,000/- (Rupee Eighty Four Million) however remaining amount was held in order to keep the cause of action alive before the honourable Court. It is relevant to point out that at no point of time WTL, without prejudice to proceedings before the honourable Supreme Court of Pakistan, denied and or avoided payment of ARC for USF however going to the Court in*

order to get interpretation of a substantial question of law required a cause to initiate proceedings. The proof of payment of aforesaid amount is enclosed herewith and amount in the Notice needs to be revised accordingly.

4. *On 24.12.2009 the honourable High Court was pleased to reserve the judgment on the petition. The Notice was issued while the honourable Court was seized with the matter; the same, respectfully submitted, was unwarranted.*
5. *Be that as it may, the honourable High Court has now given its detailed judgment dated 05.03.2010 on the issues raised by WTL and certain other companies. The honourable High Court has been pleased to hold that;*
 - i. *Non-payment of ARC within 90 days by the LDI Licensee is not a violation of the provisions of the Act or the terms and conditions of the LDI License.*
 - ii. *Authority cannot suspend the international traffic under the Act, Rules and Regulations.*
 - iii. *Authority shall recover such dues (ARC for USF) by filing a civil suit before the competent court.*
6. *Analysis of the judgment of the honourable High Court manifests that Authority cannot invoke provisions of Section 23 of the Act for recovery of the Amount, thus, rendering the Notice without jurisdiction in this matter. If any LDI Licensee doesn't pay liability of ARC for USF, Authority shall seek to recover such dues by filing a civil suit.*
7. *Notwithstanding the judgment of the honourable Court, it has never been the intentions of WTL to indulge in litigation with the Authority and rather WTL has always ensured its compliance to Authority's directives, policies and instructions under the law. Now that questions of law stand answered by the honourable High Court vide its afore referred judgment, WTL is willing to pay the Amount, as adjusted, as there has never been any denial or discharge of liabilities on the part of WTL.*
8. *At this juncture it is imperative to draw kind attention of the Authority to the fact that WTL has not received payments from its international customers. At present total outstanding is standing at Rs. 1908 Million. In presence of these outstanding payments, which are the very constituent of the Amount, there prevails an immense financial crunch within WTL.*
9. *Having explained the current outstanding payments from the international customers, WTL is willing to pay the Amount however WTL seeks Authority's kind intervention and requests for 15 equal monthly installments.*
10. *With respect to late payment charges amounting to Rs.5,348,018/- it is respectfully submitted that the same cannot be imposed mechanically. Moreover*

imposition of late payment charges is utterly not justified when the matter was sub judice before the honourable High Court. The late payment of APC for USF was not willful but was result of the controversy being adjudicated before the honourable Court therefore for the time when writ petition was pending the imposition of fine is not justified.

11. Similarly, the word "fails" in the phrase "fails to make payment" in the Regulations refers to recourse to due process of adjudication wherein failure is established which must be willful and must not be beyond the control of the LD1 licensee. Unless and until it is proved that failure in discharge of liabilities and the delay in payment was willful, therefore, mala fide on the part of the Licensee; the imposition of fine is not sustainable in law. In presence of outstanding payments from international customers, which fact is established from the record, delay in payment cannot be termed willful and intentional. Indeed the existing circumstances are beyond the control of WTL and thus any mechanical imposition of penalty shall be against the law, equity and justice.

In light of the above stated facts, it is humbly requested that the Notice be withdrawn along with late payment charges in view of the findings of the honourable High Court in its judgment dated 05 March 2010 and circumstances beyond the control of WTL. It is further requested that Amount be allowed to be cleared in 15 equal monthly installments.

3. However, prior to disposing of the aforesaid show cause notice, the licensee was given opportunity of personal hearing vide letter dated 2nd April, 2010. The licensee vide its letter dated 7th April, 2010 requested for adjournment which was granted, hence, the licensee was required vide letter dated 22nd April, 2010 to appear before the Authority on 5th May, 2010. Mr. Sohail Qadir (CEO), Mr. Abdul Bari Rashid (Internal counsel) and Mr. Umar Durrani (GM-Operations) attended the hearing before the Authority on behalf of the licensee on the said date. The representatives of the licensee reiterated the same facts as mentioned in its reply to the show cause notice (referred in Para 2 above) and requested for permission to make the payments in installments. It further stated that it is neither discussing the recent judgment of Lahore High Court dated 5th March, 2010 here nor disputing the liability despite the fact that matter is *sub-judice* before Supreme Court. It has already been paying previous installments allowed by the Authority and at present only two installments are remaining which will be paid accordingly. It is making efforts to recover its outstanding dues from its clients and at present it is facing serious financial liquidity. In addition, it informed the Authority that one of its client, UK based company, has filed insolvency proceedings for which it is pursuing the same by engaging competent lawyer to win the case and requested the Authority either to defer the payment till the time it recover the same from its aforesaid client or allow it to make the payment in installment. Moreover, it also took the additional ground of *force majeure* pursuant to clause 12.2.1 of the license, but failed to satisfy the Authority of the existence of *force majeure*.

2. FINDINGS OF THE AUTHORITY:

i. Clause 8.1 of the Appendix B of the Rules and condition 3.1 of the license obliged the licensee to observe the provisions of the Act, the Rules and the Regulations and condition 9.3.1 of the license obliged the licensee to comply with AP Rules, 2004.

ii. Sub-rule 2 of rule 5 of AP Rules and sub-regulations (3) and (4) of regulation 6, and sub-regulation (2) of regulation 10 of the AP Regulations make it obligatory on the licensee to deposit APC for USF contribution within ninety (90) days after the end of calendar month for which the payment obligation arises.

iii. The licensee has failed to make the payment within the given time mentioned in the AP Rules and AP Regulations, hence, contravention of the provision of the license, AP Rules, and AP Regulations have been established. In addition, the arguments of the licensee relating to financial liquidity owing to hefty APC for USF payments is not accepted on the ground that the licensee itself failed to make the payments in time which accumulated.

iv. Section 23 (1) of the Act empower the Authority to issue show cause notice in case where a licensee contravenes any provision of the Act, the rules made there under or any term and condition of the license and in case it fails to satisfy the Authority or remedy the contravention, any of the punishments provided in sub-section (3) of section 23 of the Act may be imposed on it. In the instant case the licensee has contravened sub-rule (2) of rule 5 of AP Rules, sub-regulations (3) (4) of regulation 6 and sub-regulation (2) of regulation 10 of AP Regulations. Furthermore, it is required vide condition 9.3.1 of the license to comply with AP Rules and vide clause 3.1 of the license to observe the provisions of the Act, the Rules and the Regulations, which it contravened by not making the payments of APC for USF within ninety (90) days, hence, contravention of the provision of the rules, regulations and license condition is established for which action under section 23 of the Act can be rightly initiated and any of the punishments mentioned in the aforesaid section can be imposed after recording reasons.

v. As the court has not restrained the Authority for exercising its statutory powers under section 23 of the Act nor the licensee has disputed the financial liability, therefore, in case of non-compliance of rules/regulations and conditions of the license section 23 of the Act can be invoked.

vi. The merits of the case discussed in writ petitions No.2997, 3349, 3221, and 3211 of 2009 are entirely different as in those cases either the international incoming traffic of the licensees were suspended without issuing show cause notices or threatened to suspend the said traffic on the issue of non-payment. Even in judgment announced on 05-03-2010 the powers given under section 23 of the Act were neither discussed nor referred to, hence, the aforesaid judgment is not applicable in the instant case.

vii. the court has not restrained the licensee from discharging its liability which it has not disputed before the court, hence, late payment charges incurred due to delay of aforesaid payments were legally and validly levied and cannot be waived off.

3. ORDER:

3.1. Keeping in view the above mentioned facts and the relevant record, the Authority hereby dispose of the aforesaid show cause notice in the following terms:

(a). World Call Telecom Limited is directed to remedy the contravention by immediately making the payment of APC for USF Contribution of **Rs.396,157,944/-** for the months of

August, September, and October, 2009 including late payment charges calculated upto 31st January, 2010.

(b). The licence (bearing No.LDI-05 (10)-2004 dated 3rd August, 2004) **shall remain suspended** from today till complete realization of the amount mentioned in para 3.1(a), above.

S.Nasrul Karim A. Ghazanvi
Member (Finance)

Dr. Mohammed Yaseen
Member (Technical)

Dr. Mohammed Yaseen
Chairman

This determination is signed on 7th May 2010 and comprises 6 pages.