



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 in the matter of
M/s WORLDCALL TELECOM LIMITED**

File No.PTA/Finance/WLL/WorldCall/112

Date of Issuance of Show-cause Notice: 18th May, 2007
Date of Hearing: 25th February, 2008
Venue of Hearing: PTA HQs, Islamabad

The Authority Present:

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

The Issue:

“Non-payment of Annual Spectrum Fee under the terms and conditions of licence”

Decision of the Authority:

1. M/s WorldCall Telecom Limited (the “licensee”) was awarded non-exclusive Wireless Local Loop (WLL) Licence No.WLL-09-2004 dated 12th November, 2004 (the “licence”) by the Pakistan Telecommunication Authority (the “Authority”) to provide the licenced services in fourteen (14) Licensed Regions and to establish, maintain and operate a Telecommunication System on the terms and conditions contained in the licence. As a licensee of the Authority, M/s WorldCall Telecom Limited was required to comply with the provisions of prevailing regulatory laws comprising the Pakistan Telecommunication (Re-organization) Act, 1996 (the “Act”), the Pakistan Telecommunication Rules, 2000 (the “Rules”), the Pakistan Telecom Authority (Functions & Powers) Regulations, 2004 (the “Regulations”) and the terms and conditions of the licence.

2. Briefly stated facts of the case are that a Show-cause Notice vide No.PTA/Finance/WLL/WorldCall/ 112//2006/1168 dated 18th May, 2007 (the “notice”) was issued to the licensee on account of non-payment of Annual Spectrum Fee (ASF/charges) of **Rs.34,558,333/-** for the year ended 30th June 2006, requiring it to remedy the contravention by paying the said amount immediately and to show cause and explain, in writing, within thirty days of the date of issuance of the notice as to why the licence should not be suspended, terminated or any other enforcement order should not be passed under section 23 of the Act against the licensee.

3. Under clause 4.1.2(b) and 1.3.2 of Appendix-2 of the licence, the licensee was obliged to pay ASF/charges for the licenced frequencies within 120 days of the end of the financial year. The ASF/charges for the year ended on 30th June, 2006 were calculated which arrived at Rs.34,558,333/- and were communicated to the licensee for payment vide letter dated 17th July, 2006 but the licensee failed to make the payment on one pretext or the other despite repeated directions of the Authority i.e. 15th September 2006, 18th October, 2006 and 5th March 2007 and finally the instant notice as referred at para (2) above. The notice was replied by the licensee vide its letter dated 9th June, 2007. In its reply, the licensee admitted the fact that it has been directed to pay ASF/charges of Rs.34,558,333/-, however, it contested the obligation to pay the aforementioned fee in its totality while putting forth the ground/plea of interference in the spectrum/frequencies allocated to it and alleged the Authority's failure to take any remedial action in this regard. The licensee also requested for a discount in the spectrum fee. The licensee further alleged that non-payment of an amount, which is disputed, couldn't constitute a grave and persistent violation entitling the Authority to proceed under section 23 of the Act. As the reply was not satisfactory, the case was fixed for hearing before the Authority on 25th February, 2008 vide letter dated 14th February, 2008.

4. The licensee, on the date of hearing, appeared before us through Ahmad Hosain (Legal Counsel) alongwith Mr. Sohail Qadir (COO), while DG (Wireless), DG (Finance) and Director (Law) PTA also attended the hearing. At the very outset, the licensee's legal counsel opposed the issuance of the notice and started elaborating his same arguments as referred at para (3) above. Concerning its plea of interference in the spectrum/frequency allocated to the licensee, the counsel presented his affidavit during the hearing which however, the Authority refused to entertain and returned the same to licensee's counsel as being vague in nature failing to mention about the interference in specific and clear terms with regard to areas and frequencies where such interference was faced, if any. The licensee maintained that under the licence it is bound to provide standard quality of service to the customers, which in the presence of such interference could have not been possible. Fee in no terms whatsoever is synonymous to that of tax. Fee is to be paid for the service so provided and we could not get that service from you as we faced interference at Narrowal, Bahawalpur, Hyderabad and Karachi etc in 1900 and 450 MHz due to PTCL's DRS Link and jammers issue as the fee is thus not payable. The counsel stated further that this also adversely affected business and customer base of the licensee; therefore, it must be given compensation in terms of waiver in fee. However, upon requiring by the Authority, the licensee failed to produce any documentary evidence in support of its stance particularly regarding the alleged loss of business, if any, for any interference in the spectrum.

5. We have heard the licensee at length and are of the view that though there was some interference but the same could not be termed as "harmful interference" and any concession in ASF/charges can be justifiably claimed only if there is harmful interference. The licensee, as observed above, has failed to establish its case

of harmful interference. Secondly, the interference for the period of 2007 was resolved and duly confirmed by Mr. Umar Durrani of the licensee in his e-mail dated 30th June,

2007 addressed to Zonal Director PTA, Lahore and, finally, the interference, if any, is not related to the period which is subject matter of the instant notice i.e. financial year ending on 30th June, 2006, hence, we are not inclined to consider the arguments/points raised by the licensee today before us.

6. More importantly, the frequency/spectrum for which fee/charges are being claimed by the Authority has been allocated to the licensee and is in the possession of the licensee ever since its allocation. We, therefore, understand that charges/fee for allocation and retaining the spectrum can not be withheld on the ground of any interference in it. Not a single case/event has been reported to us showing the licensee's inability to provide its licensed services for the reason of any interference in the frequencies/spectrum. We therefore, hold that the licensee has contravened the terms and conditions of the licence and the provisions of the rules and regulations and has failed to show cause as to why an enforcement order may not be passed against it for the said contravention. If the licensee has any issue of spectrum/frequencies interference, the licensee can agitate the same with the Authority/member (Technical) separately for resolution.

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Order of the Authority:

8. Based on our findings mentioned above, the licensee is directed as under:
- a). to make payment of all the amounts outstanding on account of ASF/charges, i.e. **Rs.34,558,333/-**, by 20th April, 2008;
 - c). in case of failure to comply with the above direction, licence No.WLL-09-2004 dated 12th November, 2004 shall stand **SUSPENDED** and shall be restored subject to making of the payment aforementioned within thirty days commencing from 20th April, 2008; and
 - d). in case of failure to make the payment within thirty days after suspension as aforesaid, proceedings/action under rule 9 of the Rules shall be initiated for termination of the licence on the expiry of 30th day as given in para (c), above.

Dr. Muhammad Yaseen
Member (Technical)

S. Nasrul Karim Ghaznavi
Member (Finance)

Signed on 28th March, 2008 and comprises 3 pages.