



PAKISTAN TELECOMMUNICATION AUTHORITY  
HEADQUARTERS, F-5/1 ISLAMABAD  
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**Order of the Pakistan Telecommunication Authority under section 7(2) of the  
Pakistan Telecommunication (Re-organization) Act, 1996 in appeals filed by  
Worldcall Telecom Limited**

File No. PTA/Finance/WLL/Worldcall Telecom 112/2006/6

Appeal No.5/2018 dated: 5<sup>th</sup> Nov, 2018

Venue of Hearing:	PTA HQs, Islamabad
Date of Hearings:	29 <sup>th</sup> November, 2018
	2 <sup>nd</sup> May, 2019
	6 <sup>th</sup> May, 2019
	13 <sup>th</sup> August 2020

**Authority present in hearing**

Maj. Gen. Amir Azeem Bajwa (R)	Chairman
Muhammad Naveed	Member (Finance)
Dr. Khawar Siddique Khokhar	Member (Compliance & Enforcement)

The Issue:

**"Non-payment of Annual Radio Frequency Spectrum Fee (ARFSF) for the year 2015"**

1. This order will dispose of Appeal No. 5 of 2018 filed by Worldcall Telecom Limited (the "licensee") against order dated 7<sup>th</sup> June, 2017 on the issue of Non-Payment of Annual Radio Frequency Spectrum Fee (**ARFSF**) for the year 2015. Relevant facts of the case are that Pakistan Telecommunication Authority (the "**Authority**") issued Wireless Local Loop Licenses to the licensee for establishment, maintenance and operation of telecommunication system and provision of telecommunication services in Pakistan subject to terms and conditions contained in the license.

2. By virtue of license conditions 4.1.2 (b) and 4.2 read with, appendix-2 of the license and sub-regulation 6 and 7 of regulation 23 of the Pakistan Telecommunication Authority (Functions & powers) Regulations, 2006 (the "**Regulations**"), licensee is under an obligation to pay fee on account of ARFSF. Since, the licensee failed to make the payment for the Years 2015, therefore, as a consequences of this delay in making payments, the licensee is also

liable to pay Late Payment Additional Fee @2% in the manner as prescribed in license and Regulations.

3. Due to non-payment of outstanding dues on account of ARFSF, legal proceedings under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 (the "Act") were initiated and after providing fair opportunity of hearing, enforcement orders were passed by the officers under delegated powers of the Authority.

4. The licensee instead of availing remedy of filing an appeal under section 7(2) of the Act challenged the orders by filing Writ Petition No. 53092/2017 before the Hon'able Lahore High Court, Lahore. The Hon'able Lahore High Court vide its order dated 25-10-2018 dismissed the petition as being not pressed in the following terms:

"The Counsel for the Petitioner states that he does not wish to press this petition provided the petitioner may be allowed to avail remedy provided under section 7(2) of the Pakistan Telecommunication (Re-organization) Act, 1996. This petition is dismissed as not pressed. However, the petitioner is at liberty to avail the remedy available under law.

It is pertinent to note that the above referred statement was made in the background that the licensee had challenged a similar order by filing a WP no. 24071/2014 and the Hon'able Lahore High Court vide its order dated 21<sup>st</sup> March, 2018 dismissed Writ Petition No. 24071/2014 in the following manner:-

*"12. As the impugned Order is not a nullity, it can very well be challenged in appeal provided under section 7 of the Act in which proceedings the petitioner shall also have the opportunity to impugn the merits of the decision.*

*13. In the result this writ petition as well as connection writ petitions fails and both are dismissed being not maintainable."*

5. As per available record, the licensee also filed Civil Petition No.1646/2018 against judgment dated 21<sup>st</sup> March, 2018 of Lahore High Court passed in Writ Petition No. 24071/2014. The Hon'able Supreme Court vide its order dated 17<sup>th</sup> May, 2018 disposed of the said petition in the following manner.

*"The learned counsel submits that he does not want to press this petition in order to avail a remedy available to the petitioner under section 7(2) of the Pakistan Telecommunication (Re-organization) Act, 1996 before the Authority. Dismissed accordingly.*

*2. Let the appeal filed by the petitioner not be fixed before Directors who have previously decided the matter".*



6. Accordingly, after dismissal of WP no. 53092/2017, the licensee filed the instant Appeal on 5<sup>th</sup> November, 2018 against impugned orders passed by officers of the Authority on account of non-payment of ARFSF for the year 2015. Principal amount for the year 2015 is Rs. 35,863,333-.

Note: Late Payment Additional Fee will be calculated as per License Terms and conditions, and applicable Rules and Regulations.

7. In order to proceed further in the matter, the Appeal was fixed for hearings on 29<sup>th</sup> November, 2018, 2<sup>nd</sup> May, 2019, 6<sup>th</sup> May, 2019 and 13<sup>th</sup> August 2020. On 13<sup>th</sup> August 2020, Mr. Umar Durrani, Director (Regulatory Affairs), Mr. Malik Mushtaq Ahmad Senior Manager (Regulatory Affairs) along with its legal counsel Mian Abdul Bari Rashid attended hearing before the Authority and reiterated the same stance as stated in the appeals.

8. It is essential to note that the Pakistan Telecommunication (Re-Organization) Act, 1996 as amended up to date is a special law wherein the limitation for the purposes of filing an Appeal in accordance with Section 7 (2) of the Act, is provided in the Act, itself which is thirty days. For ready reference section 7 (2) of the Act is reproduced below:

" 7(2) Any person aggrieved by any decision or order of any officer of the Authority acting under the delegated powers of the Authority may, within thirty days of the receipt of the decision or order, appeal to the Authority in prescribed manner and the Authority shall decide such appeal within thirty days."

The date of the Impugned Order is 07-06-2017 and the instant Appeal has been filed on 05-11-2018, i.e. with a delay of more than one year and five months. The Appeal filed by the Licensee is therefore prima facie blatantly time barred. It is further pertinent to mention that the Licensee was specifically asked to address the issue of limitation during the course of the hearing. The Licensee miserably failed to satisfy the Authority on the point of limitation. Without prejudice to the legal position that no condonation of delay can be granted when the limitation is contained in a special law and by virtue of application of section 29(2) of the Limitation Act, 1908 in such situations, the application of provision of section 5 of the Limitation Act, 1908 is specifically excluded, it is pertinent to mention that the Licensee had admittedly not sought any condonation of delay in filing of the instant Appeal.

9. In the instant matter the Licensee, instead of availing remedy under the section 7(2) of the Act, filed a writ petition against the Impugned Order. Later on, the licensee after a lapse of almost one year and five months filed the instant Appeal. The question before the Authority is to determine whether filing of the writ petition stops limitation period i.e., 30 days as provided for filing appeal under section 7(2) of the Act or otherwise. Filing of writ petition does not extend or modify time lines for filing appeal as provided in the said section. The wrong choice of forum on the part of licensee availing constitutional jurisdiction instead of appellate jurisdiction of the Authority cannot be considered to condone limitation period

of filing of appeal. Guidance in this context can be solicited from the Judgment of the Apex Court reported as PLD 2016 SC 872.

10. After hearing and careful perusal of record, in addition to and without prejudice to the points noted in paragraphs no. 8 and 9, observations of the Authority on merits are as under:

11. Mainly, the licensee during its arguments contented that as a consequence auction of preoccupied frequency spectrum, the licensee suffered a huge loss in terms of revenue and repute for degraded service levels, the licensee despite being the first launched operations / services in the post de-regulation era lost the benefits of this initiate to the competition due to de-graded CDMA services caused by continuous interference in the auctioned frequency spectrum in major telecom regions like Lahore, Karachi, Multan, Gujrawala and Sialkot. The licensee further asserted that in reply to the SCNs, it has categorically denied any payment of ARFSF on the factum of frequency occupation and requested adjudication of the same before demanding any payment towards frequency spectrum. In the same sequence, the licensee demanded compensation amounting to Rs.5.326 Billion. In the impugned order, the officers of the Authority failed to appreciate that demand of ARFSF is meager to the compensation / loss claimed by the licensee. The licensee further stated that it has suffered huge losses for illegal actions of respondents whereby the sold frequency spectrums which were already used by other companies.

12. In addition to the contentions with regard to interference of frequency, the licensee also raised the issue of imposition of Late Payment Additional Fee (LPAF) as against the law. The licensee also informed that it has raised its claim in Suit instituted in the learned Civil Court, Lahore and the court has granted stay order.

**13. Findings of the Authority: -**

Matter heard and record perused. After careful examination of the record, the findings of the Authority are as under: -

13.1 At the very outset, it is clarified that by virtue of license terms and conditions, licensee is bound to pay its outstanding dues. Since, the licensee has not paid dues on account of ARFSF, therefore, legal proceedings against the licensee under section 3 of the Act were initiated and enforcement orders were issued after providing a fair opportunity of hearing to the licensee.

13.2 It is also to note that Annual Fees relate to Radio Frequency Spectrum which is a scarce resource and being used for provision of telecom services by the licensee in accordance with terms and conditions of the license. As for as the licensee's contentions with regard to preoccupation / interference in frequency is concerned, it is clarified that the matter has already been adjudicated upon and no such report of interference / preoccupation for the year ended 31<sup>st</sup> December, 2015 to which the amounts relate have been received, therefore,



the licensee's contentions / submissions with regard to non-payment of dues on ground of preoccupied frequency of Radio Spectrum Frequency is not tenable. The fixed amount on account of ARFSF has already been provided in the license awarded to the licensee in Appendix-2 to the license. The amount already provided in the license is payable as per terms and conditions of the license within the time.

13.3 It would not be out of context to mention here that the issue of preoccupation / interference in radio frequency spectrum has already been decided by the Authority through its order dated 28<sup>th</sup> March, 2008. In accordance with para 6 of the said order, the issue of interference of frequency was addressed in the following manner.

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 cannot 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 license and 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, licensee can agitate the same with the Authority / Member (Technical) separately for resolution.*

7. *If the licensee has any issue of spectrum / frequency interference, the licensee can agitate the same with the Authority / Member (Technical) for resolution.*

13.4 As per Authority's directions in its order dated 28<sup>th</sup> March, 2008, no such request for resolution of the same has been received. More so, instead of taking up the matter in accordance with the said order, the licensee preferred to file an appeal under section 7 of the Act before the Honorable Islamabad High Court, Islamabad. The licensee in its FAO No.10/2008 made the following prayers: -

- a. *That the order and show cause notice may be set aside;*
- b. *That such further or better relief as may be deemed appropriate may be granted;*
- c. *That cost of this Appeal may be granted in favour of appellant.*

However, in accordance with court order dated 23<sup>rd</sup> April, 2009 the matter was dismissed in the following manner: -

*"The case was earlier called for hearing at 8:45 a.m. It has been re-called at 10:30 a.m. Nobody has entered appearance on behalf of the appellant. Learned counsel for*

*the respondents states that the amount subject matter of the appeal has been deposited by the appellant. In view of the deposit made, it appears that the appellant lost interest. Dismissed for non-prosecution”.*

13.5 In addition, the licensee also move an Application No.660-C/2009 in FAO No.10/2018 on 18<sup>th</sup> November, 2009 under Order 41, Rule 19 read with section 151 of CPC before the Honorable Lahore High Court, Rawalpindi Bench for restoration / re-admission of the Appeal mentioning the facts that as the learned counsel for the applicant / appellant was based at Lahore, therefore, no intimation was received from the office of erstwhile Islamabad High Court regarding fixation of appeal on 23.4.2009. The Honorable Court vide its order dated 26<sup>th</sup> March, 2010 dismissed the petition being time barred. Relevant para 9 of the said order is reproduced below: -

*“9. In the circumstances, when this petition is hopelessly, barred by time while replying on the judgments cited by the learned counsel for the respondent no grounds are made for restoration of the appeal which is hereby dismissed”.*

13.6 Being aggrieved by the court order dated 26<sup>th</sup> March, 2010 passed by the Honorable Lahore High Court, Rawalpindi Bench, the licensee also filed Civil Petition No.1098/2010 before the August Supreme Court of Pakistan. The same was also dismissed on 1<sup>st</sup> July, 2010. For ready reference, relevant part of the judgment as mentioned in para 4 is reproduced below: -

*“Para 4 ..... Facts noted hereinbefore reveals that the petitioner has not been pursuing the remedy diligently as no immediate steps were taken for getting the appeal re-admitted after obtaining the certified copy on 28<sup>th</sup> October, 2009. As far as the judgment learned counsel relied by learned counsel, same is distinguishable on fact. It is also well settled that so far the limitation is concerned it creates right in favour of the other side and law always favours those who are vigilant and not those who are negligent in pursuing their remedy, therefore we are of the considered opinion, that no exception can be taken against the order of the learned High Court.*

*Thus, for the foregoing reasons, we see no merit in this petition which is dismissed and leave declined”.*

13.7 In addition to the aforementioned, the licensee has also referred PTA enforcement order dated 31<sup>st</sup> August, 2009 issued to Amtech International (Pvt.) Limited, a CVAS License Holder with regard to removal of equipment causing interference in the spectrum frequency allocated to Worldcall Telecom Limited. The same was rectified and the said company was directed to abide by the technical parameters as specified by Frequency Allocation Board (FAB) in the assigned radio frequency spectrum. After issuance of the said order, no such report with regard to interference in the frequency assigned to the licensee has been received in PTA. Thus, the licensee's assertion for not making payments of outstanding dues on account of ARFSF on the premise of interference is not correct and justifiable.



13.8 It is an admitted and legal position that frequency is a scarce resource and still under the possession and in use of the licensee. The licensee is an under obligation to provide licensed services by using the assigned radio frequency spectrum in accordance with terms and conditions of the license. Mere on the assumptions of the interference in frequency, which has already been resolved, the licensee's plea for not discharging its financial liability arises as per agreed terms and conditions is not sustainable in the eye of law. Therefore, in light of the aforementioned decisions passed by the Honorable Courts and action taken on the part of the Authority, it is the licensee who has to clear its outstanding dues without any delay.

13.9 Due to failure on the part of the licensee with regard to not fulfillment of its financial obligations arising out of the terms and conditions of the license and enabling provision of the regulations, a huge amount has been piled up which lead to initiate recovery proceedings including all other legal remedies available under the law to ensure payment of outstanding dues.

13.10 The aforementioned court proceedings clearly stipulates that the issue related to spectrum charges has attained the finality as determined by the Authority in its order dated 28<sup>th</sup> March, 2008. Similarly, in accordance with terms and conditions of the license, the licensee is under obligation to comply with the same.

13.11 On the other hand, as far as the licensee's observation with regard to imposition of LPAF, it is clarified that section 5 (2)(a) of the Act provides that the Authority shall grant and renew licenses for any telecommunication system and any telecommunication services on payment of such fee as it may from time to time specify. In addition to section 5 (2)(p) regarding power to levy fee and other charges. Section 21 (4) of the Act further provides that every license under this Act, *inter alia*, contain conditions:

- a. conditions requiring the licensee to adhere to the provisions of this Act and the rules and regulations made thereunder;
- b. conditions requiring the licensee to pay the fees for grant or renewal of the license;
- c. ....
- d. ....
- e. ....
- m. conditions requiring the licenses to contribute to Research and Development Fund and Universal Service Fund; and
- n. ....

13.12 In light of the provisions of the Act, it transpires that the license conditions are consistent with the provision of the Act and the licensee is under obligation to comply with the same and clear its outstanding dues. As far as Late Payment Additional Fee is concerned, it would not be out of context to mention here that the licensee filed a Writ Petition No.2553/2011 before Islamabad High Court, Islamabad wherein the licensee challenged the vires of Regulations and license conditions for demand and imposition of LPAF. For ready reference, prayers are as under: -

- a) *the demands and imposition by the Respondent of late payment charges, Additional Fee and penalties other than penalties provided under Section 23 of the Act of 1996 be declared as void and illegal;*
- b) *the Regulation 23(7) of the PTA (Functions & Powers) Regulations 2006, and Regulation 10(6) of AP Regulations 2005, Regulation 19(4) of the NAAR 2011 and clause 4.2.3 of the Petitioner's LDI license, being ultra vires the Pakistan Telecommunication (Re-organization) Act, 1996 and the Constitution of the Islamic Republic of Pakistan, 1973 and hence being without due authority be declared void ab initio and without legal effect.*

13.13 The Honorable Islamabad High dismissed the Writ Petition No.2553/2011 vide Order dated 6<sup>th</sup> October, 2016 due to non-prosecution with all CMs and injunctive order. As a consequence thereof, the licensee's contention with regard to demand and imposition of LPAF is not correct. Accordingly, the licensee is under an obligation to make payments in accordance with terms and conditions of the license and regulations issued by the Authority from time to time. In addition, issue of late payment additional fee has already been decided and adjudicated upon by the Hon'ble Islamabad High Court in various other telecom related matters. The same issue has been discussed in detail in FAO No.22/2015 titled "DV Com Data Vs PTA & Another" (PLD 2017 Islamabad 177). For ready reference, relevant paras of the said reported case are reproduced below: -

. In so far as the nature of obligation *viz-a-viz* the payment of Late Payment Additional Fee is concerned, the same was held to be payable since part of contract between the parties by this Court in case 'Great Bear International Services Pvt. Ltd. Vs. Pakistan Telecommunication Authority (FAO No.33-2012) vide judgment dated 29.05.2015 in the following terms: -

9. *It is settled law that liabilities under an instrument, being in the nature of a contract, cannot be avoided when it has been entered into voluntarily, and out of the free will of the parties thereto. In the instant case, Clause 4.2.3 of the licence as reproduced above, clearly provides that the late payment of fee shall incur additional fee calculation @ 2 % per month on the outstanding part thereof. This being part of the consensual instrument i.e., the licence, is binding on the appellant. The argument advanced by the learned counsel for*



*the appellant relating to Regulation 23(3) of the Regulations of 2006 is not relevant in the instant case. The appellant, being bound by obligations accepted pursuant to clause 4.2.3 of the licence, cannot turn around and disown the unequivocal commitment to pay the late payment additional fee @ 2 % per month on the outstanding amount for each month thereof. The payment of the late additional fee is, therefore, not pursuant to Regulation 27(3) of Regulations 2006 but clause 4.2.3 of the license, and consequently the Regulations are not relevant in the instant case. The late payment fee is, therefore, liable to be paid by the appellant”*

17. Similar view was taken by this Court in case titled ‘Telecard Limited Vs. Pakistan Telecommunication Authority’ (FAO No.33-2012) & (FAO No.51-2012) vide judgement dated 24.05.2015 in the following terms: -

*“8. The question before this Court is regarding the legality of imposing upon the appellant “Late Payment Additional Fee” at the rate of 2% per month of outstanding dues. Liability to pay “Annual Radio Frequency Spectrum Fee” and “Annual Regulatory Dues” is admitted and the learned counsel at the very outset has stated that the said fees have already paid. The question is, therefore, essentially restricted to the late payment fee. The Act of 1996 has established the respondent authority. Chapter-II relates to licence; Section 21 provides that the issuance of licence under the Act of 1996 shall exclusively vest in the respondent authority. Sub-section (4) of Section 21 specifies as to what terms and conditions may be included in the licence. Sub-section (a) & (b) of Section 21(4) are reproduced as follows.-*

*“21. Exclusive power of the Authority to grant licenses.-*

*(4) Every licence granted under this Act may, inter alia, contain-*

*(a) conditions requiring the licensee to adhere to the provisions of this Act and the rules and regulations made thereunder;*

*(b) conditions requiring the licensee to pay the fees for grant or renewal of the license;”*

9. From the above it is obvious that the respondent authority is conferred with the power to impose conditions requiring the licensee to pay fee for grant or renewal of licence. Moreover, the respondent authority has the power to include clauses in the licence whereby terms and conditions may be imposed requiring the licensee to adhere to the provision of the Act of 1996 and the Rules made there under. The terms and conditions which may be included in the license are not restricted to the clauses which are enumerated in clause ‘a’ to ‘n’ of sub Section 4 of Section 21. The expression “inter alia”

*used in subsection 4 of Section 21 makes it obvious that the legislature intended to keep the realm of terms and conditions, which may be included in a license as expansive i.e. beyond the clauses enumerated in subsection 4 of Section 21. The list provided in subsection 4 of Section 21 is not exhaustive. The terms and conditions of a license are essentially of a contractual nature. At the time of issuance of the license, the appellant obviously was aware of the terms and conditions expressly mentioned therein. The acceptance of the express terms and conditions becomes binding on the parties to a license. The licensee enters into a binding contractual relationship after it accepts the license and enjoys the benefits there under. Clause 4.2.3 relating to payment of late payment additional fee in both the licenses issued to and accepted by the appellant is not in dispute. The appellant is bound by the said clause. The arguments of the learned counsel relating to Regulation 23(7) of the Pakistan Telecommunication Authority (Functions and Powers) Regulation 2006 are misconceived and irrelevant in the instant appeals. The contentions may have been relevant if the respective licenses had not included clause 4.2.3. There is also no force in the argument that the said clause is void. The "late payment additional fee", as held in the impugned orders, is liable to be paid pursuant to clause 4.2.3 of the respective licenses rather than resorting to Regulation 23(7) of the Pakistan Telecommunication Authority (Functions and Powers) Regulation 2006"*

18. In case titled as 'Pakistan Telecommunication Company Ltd. Vs. Pakistan Telecommunication Authority (FAO No.17-2015), while elucidating the concept of Late Payment Additional Fee, this Court vide judgment dated 21.09.2015 observed as follows:-

*"12. Moreover in clause 6.6 of the license, it is specifically provided that in case of default in payment of fee (included Initial Spectrum Fee) Late Payment Additional Fee (LPAF) at the rate of 2% shall be attracted. In this behalf, the Hon'ble Supreme Court of Pakistan in case titled "Pakcom Limited Versus Federation Of Pakistan" reported as (PLD 2011 SC 44) has held that the licensee is bound by the terms of the license and no exception can be taken thereto, subsequently. It was further observed in the referred judgment that where all the terms and conditions of the contract have been accepted by the parties with free consent without coercion or undue influence, fraud or mis-representation the liability under the same cannot be avoided on the ground of mistake of fact or law. Clause 6.6 was all along in the knowledge of the appellant and at this stage no exception thereto can be taken on the premises with the term of Late Payment Additional Fee (LPAF) is in the form of a penalty. This Court in FAO 32/2012 titled Telecard Ltd. Vs Pakistan Telecommunication Authority held as follows:*



*“From the above it is obvious that the respondent authority is conferred with the powers to impose conditions requiring the licensee to pay fee for grant or renewal of license. Moreover, the respondent authority has the power to include clauses in the license whereby terms and conditions may be imposed requiring the licensee to adhere to the provisions of the Act of 1996 and the Rules made there under. The terms and conditions which may be included in the license are not restricted to the clauses which are enumerated in clause ‘a’ to ‘n’ of sub Section 4 of Section 21. The expression ‘inter alia’ used in in subsection 4 of Section 21 makes it obvious that the legislature intended to keep the realm of terms and conditions, which may be included in a license as expansive i.e. beyond the clauses enumerated in subsection 4 of Section 21. The list provided in subsection 4 of Section 21 is not exhaustive. The terms and conditions of a license are essentially of a contractual nature. At the time of issuance of the license, the appellant obviously was aware of the terms and conditions expressly mentioned therein. The acceptance of the express terms and conditions becomes binding on the parties to a license. The licensee enters into a binding contractual relationship after it accepts the license and enjoys the benefits there under. Clause 4.2.3 relating to payment of late payment additional fee in both the licenses issued to and accepted by the appellant is not in dispute. The appellant is bound by the said clause. The arguments of the learned counsel relating to Regulation 23(7) of the Pakistan Telecommunication Authority (Functions and Powers) Regulation 2006 are misconceived and irrelevant in the instant appeals. The contentions may have been relevant if the respective licenses had not included clause 4.2.3. There is also no force in the argument that the said clause is void. The “late payment additional fee”, as held in the impugned orders, is liable to be paid pursuant to clause 4.2.3 of the respective licenses rather than restoring to Regulation 23(7) of the Pakistan Telecommunication Authority (Functions and Powers) Regulation 2006.*

*13. Since the provision of Late Payment Additional Fee (LPAF) is specifically provided in the license, therefore, the appellant is bound to pay the same. The impugned Order is not contrary to facts and law and therefore no exception to the same can be taken”*

14. On the other hand, as far as, the licensee's contention with regard to court case pertaining to the issue of Late Payment Additional Fee (LPAF), it is relevant to point out that the licensee filed a Writ Petition No.2553/2011 before Islamabad High Court, Islamabad wherein the licensee challenged the vires of Regulations and license conditions for demand and imposition of LPAF. For ready reference, prayers are as under: -

- a) *the demands and imposition by the Respondent of late payment charges, Additional Fee and penalties other than penalties provided under Section 23 of the Act of 1996 be declared as void and illegal;*
- b) *the Regulation 23(7) of the PTA (Functions & Powers) Regulations 2006, and Regulation 10(6) of AP Regulations 2005, Regulation 19(4) of the NAAR 2011 and clause 4.2.3 of the Petitioner's LDI license, being ultra vires the Pakistan Telecommunication (Re-organization) Act, 1996 and the Constitution of the Islamic Republic of Pakistan, 1973 and hence being without due authority be declared void ab initio and without legal effect.*

The Honorable Islamabad High dismissed the Writ Petition No.2553/2011 vide Order dated 6<sup>th</sup> October, 2016 due to non-prosecution with all CMs and injunctive order. As a consequence thereof, the licensee's contention with regard to demand and imposition of LPAF is not correct. Accordingly, the licensee is under an obligation to make payments in accordance with terms and conditions of the license and regulations issued by the Authority from time to time.

15. It would not be out of context to mention here that on the one hand, the licensee has raised various technical and legal grounds to substantiate its assertions for not making outstanding dues, whereas on the other hand, the Licensee during the hearing offered to pay the dues from balance available in Escrow Account opened with National Bank of Pakistan.

16. For the purpose of clarity, on the offer made by the Licensee, it is necessary to point out that the amount available in the Escrow Account relates to APC for USF Contribution and not otherwise. The Licensee is a Long Distance and International (LDI) license holder and as per applicable licensing regime, the licensee is under obligation to make the contribution on account of APC for USF. Unfortunately, the licensee has also failed to make the payment in this regard and filed various court cases which are pending adjudication, therefore, the Authority considering all regulatory compliances on the part of the licensee is of the view that the said amount available in Escrow Account for APC for USF Contribution which relate to USF Fund and not a part of PTA Fund, therefore, licensee's offer for adjustment of its other liabilities cannot be considered. Accordingly the licensee vide PTA letter dated 8<sup>th</sup> October, 2020 was also intimated that the amount deposited in Escrow account can only be adjusted against APC for USF dues.

#### **17. Order:**

In light of the factual and legal position as stated above, the Authority in light of the contents of paragraphs no. 8 and 9 above, is of the considered opinion that the instant Appeal is blatantly time barred and is dismissed on that basis. However, the Authority in the interest of fairness has also examined and discussed the entire case of the Licensee on merits, but,



the Authority could not find any cogent reason and justification to interfere in the Impugned order which is well reasoned and is in accordance with law. Therefore, the Appeal being completely without any substance is also dismissed on merits.

  
**Maj. Gen. Amir Azeem Bajwa (R)**  
Chairman

**Muhammad Naveed**  
Member (Finance)

**Dr. Khawar Siddique Khokhar**  
Member (Compliance & Enforcement)

Signed on 15<sup>th</sup> day of December, 2020 and comprises of (13) pages only.