



**PAKISTAN TELECOMMUNICATION AUTHORITY**  
**HEADQUARTERS, F-5/1, ISLAMABAD**

**Enforcement Order under sub-section 3 of section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 against Brain Telecommunication Limited for Non-Submission of AAAs and Auditors Certificate for financial Year 2020-21 & 2021-22 and Non-Payment of Annual Regulatory Dues (ARDs) for the Years 2019-20, 2020-21 and 2021-22**

No. PTA/Finance/LL/Brain Limited/600/2006/1/999

Show Cause Notice (2019-20 and 2020-21):	24 <sup>th</sup> May, 2022
Show Cause Notice (2021-22):	1 <sup>st</sup> August, 2023
Hearings held on:	4 <sup>th</sup> August, 2022, 29 <sup>th</sup> Dec, 2022 & 20 <sup>th</sup> March, 2024
Venue of Hearing:	PTA HQs. Islamabad

**Hearings Panel:**

Maj. Gen. Hafeez Ur Rehman (R)	Chairman
Dr. Khawar Siddique Khokhar	Member (Compliance & Enforcement)
Muhammad Naveed	Member (Finance)

**Issue:**

**“Non-Submission of AAAs and Auditors Certificate for Financial Year 2020-21 & 2021-22 and Non-Payment of Annual Regulatory Dues (ARDs) for the Years 2019-20, 2020-21 and 2021-22”**

**DECISION OF THE AUTHORITY**

**1. Brief facts of the case:**

1.1 Brain Telecommunication Limited (the “licensee”) was awarded non-exclusive Local Loop License No. LL-13-2004 dated July 19, 2004 and License No. LL-39-2004 dated 4<sup>th</sup> November, 2004 (the “license”) for the regions of LTR and KTR respectively by Pakistan Telecommunication Authority (the “Authority”) to establish, maintain and operate a Telecommunication System and provide Telecommunication Services, subject to the terms and conditions contained in the license.

1.2 The license clauses 4.1.2 (a), 4.1.3, 4.2.1, 4.2.2, 4.2.3, 3.3, 3.4 and sub-regulation (6) and (7) of regulation 23 of the PTA (Functions and Powers) Regulations, 2006 makes it obligatory upon the licensee to deposit Annual Regulatory Dues (“ARDs”) comprised of Annual License Fee (“ALF”), Research and Development Fund Contribution (“R&D”) and Universal Service Fund Contribution (“USF”) within 120 days of the end of financial year to which such fees and contributions relate. Moreover, license condition Nos. 4.2.4 and 6.4.3 of the license, also require the licensee to submit Annual Audited financial statements (“AAAs”) within 120 days of the close of financial year in support of its calculations of ARDs payable pursuant to Article 3 and 4

of the license and the Authority shall have the right to audit such statements at any time.

1.3 In accordance with clauses 3.3 and 3.4 of the license, the licensee is under an obligation to make contributions to Research and Development and Universal Service Funds in the amount calculated on the basis of 0.5% and 1.5% respectively of the licensee's annual gross revenue from the licensed services for the most recently completed financial year of the licensee. Additionally, the licensee shall pay Annual License Fee to the Authority calculated on the basis of 0.5% of the licensee's annual gross revenue from licensed services under clause 4.1.2 (a) of the license.

1.4 Clause 4.2.3 of the license and sub-regulation 7 of regulation 23 of the Regulation states that late payment of fees shall incur Late Payment Additional Fee ("LPAF") calculated at the rate of 2% per month on the outstanding amount, for each month or part thereof from the due date until paid.

1.5 The licensee vide letters dated 20<sup>th</sup> October, 2020, 13<sup>th</sup> November, 2020, 3<sup>rd</sup> December, 2020, 17<sup>th</sup> May, 2021, 28<sup>th</sup> September, 2021, 20<sup>th</sup> October, 2021, 12<sup>th</sup> November, 2021, 30<sup>th</sup> November, 2021, 8<sup>th</sup> December, 2021, 4<sup>th</sup> October, 2022, 10<sup>th</sup> November, 2022, 5<sup>th</sup> December, 2022 and emails dated 28<sup>th</sup> April, 2021, 31<sup>st</sup> October, 2021 and 5<sup>th</sup> November, 2021 was required to deposit the Annual Regulatory Dues for the financial years ended 30<sup>th</sup> June, 2020, 2021 & 2022 and submit AAAs and Auditor's certificate for the year ended 30<sup>th</sup> June, 2021 and 2022. However, the licensee neither deposited ARDs nor provided AAAs and auditors' certificate for the said years.

1.6 Due to failure on the part of licensee to comply with the aforesaid directions of the Authority, a Show Cause Notices (SCN) dated 24<sup>th</sup> May, 2022 was issued requiring the licensee to remedy the contravention by depositing Rs.2,714,072/- on account of USF amounting to Rs. 2,035,554/- and on the account of R&D amounting to Rs. 678,518/- for the year ended 30<sup>th</sup> June, 2020 along with LPAF till the date of payment and by furnishing AAAs and Auditor's certificate for the year ended 30<sup>th</sup> June 2021 along with payment of applicable ARDs and related LPAF till date of payment within Seven (7) days and also to explain in writing within Thirty (30) days as to why an enforcement order should not be issued under section 23 of the Act.

1.7 Another SCN dated 1<sup>st</sup> August, 2023 was issued requiring the licensee to remedy the contravention by submitting AAAs and Auditor's certificate for the year ended 30<sup>th</sup> June 2022 along with the payment of applicable ARDs and related LPAF till date of payment within Seven (7) days and also to explain in writing within Thirty (30) days as to why an enforcement order should not be issued under section 23 of the Act.

1.8 In response to SCN dated 24<sup>th</sup> May, 2022, the licensee vide letter dated 2<sup>nd</sup> June 2022 submitted that it is arranging to submit the principal amount of regulatory dues till 30<sup>th</sup> June 2022. The relevant portion of the said letter is reproduced hereunder for ready reference:

*"..... This letter is in response of today online meeting with PTA official regarding clearance of regulatory dues mentioned in show cause notice dated 24<sup>th</sup> May 2022.*

*As per past record, Brain Telecom never made any illegal activity since its incorporation. Brain Telecom is law abiding and obedient operator, we regulatory and parental status of PTA, therefore, in good faith but under protest, with any prejudice, we are agreeing to submit our principle amount of regulatory dues till 30<sup>th</sup> June, 2022. However, upon your advice, we will visit you at your office for further resolution of financial observations in next week positively. We are also agree to submit late payment charges in July after final resolution.*

*Whereas, we have still the rights reserved to agitate this issue and also have rights to fight to prove ore point of view more effectively in future.....”*

1.9 Additionally, the licensee vide letter dated 6<sup>th</sup> June 2022 submitted AAAs for the financial year ended 30<sup>th</sup> June, 2021 along with auditors certified breakup of revenue. However, it was observed that the information provided in auditors certificate were incomplete nor did the licensee deposited ARDs for the financial year ended 30<sup>th</sup> June, 2020 and 2021 despite its commitment shared with the Authority in response to the SCN. Pursuant to that and for purpose of concluding ARDs for the financial year ended 30<sup>th</sup> June 2021, the licensee vide letter dated 9<sup>th</sup> June 2022 was requested to provide auditors certified having nature wise breakup of all revenue stream including nature wise breakup of interconnect cost latest by 20<sup>th</sup> June 2022. Moreover, the licensee was also required to explain the party wise and nature wise detail of O&M Services and share the underlying agreements with customers along with at least five invoices issued to each customer against O&M Services. The licensee didn't response to the requirement.

1.10 The matter of SCN dated 24<sup>th</sup> May 2022 for the years ending 30<sup>th</sup> June 2020 and 2021 was fixed for hearing before the Authority on 4<sup>th</sup> August, 2022. Mr. Amjad Farooq Alvi (Director) and Mr. Basit Farooq Alvi (Director) attended the hearing in person on behalf of the licensee on the said date. The licensee contesting the demand raised concern on categorization of certain services as licensed and related raising demand of ARDs for the same. In response to query whether the licensee can substantiate its stance through any document, the licensee offered to furnish relevant document in support of its claim and requested for additional time for arranging said information. The Authority while acceding the request instructed to furnish complete information and make the payment of ARDs.

1.11 The licensee vide letter dated 12<sup>th</sup> August, 2022 reiterated its stance that it is rendering O&M Services to few selected corporate customers only and detail/agreement of the same will be provided after compilation of the required documents. In addition, the licensee communicated that it is pursuing its Auditors for issuance of Certificate of cost for the financial year 2019-20 and 2020-21 and will provide the same once received. Furthermore, the licensee vide letter dated 20<sup>th</sup> December, 2022 informed that audit for the year 2021-22 has not been initiated due to up-gradation and implementation of its financial software and that the audit will be completed within in couple of months and payment of ARDs will be made accordingly. The licensee also furnished a letter issued by its external auditor dated 16<sup>th</sup> December, 2022 wherein it was informed that the audit will be completed by the end of January, 2023 subject to provision of information. It has been observed that the licensee failed to provide required certified information despite lapse of considerable time.

1.12 Another hearing before the Authority was fixed on 29<sup>th</sup> December 2022 in the matter of SCN dated 24<sup>th</sup> May 2022. The hearing was attended by Mr. Amjad Farooq Alvi (Director) in person on behalf of the licensee. The licensee before attending the hearing, informed vide letter dated 28<sup>th</sup> December 2022 that it has filed an appeal for the years ending 30<sup>th</sup> June 2018 and 2019 before honorable High Court, therefore, request to adjourn the hearing till final decision of the court for said years. Further, the licensee also informed vide the same letter that it has deposited an amount of Rs.228,969/- (on account of ALF amounting to Rs.45,794/-, R&D amounting to 45,794/- and USF amounting to Rs.137,381/-) pertaining to year ended 30<sup>th</sup> June, 2020 and an amount of Rs.146,515/- (on account of ALF amounting to Rs.29,303/-, R&D amounting to Rs.29,303/- and USF amounting to Rs.87,909/-) pertaining to year ended 30<sup>th</sup> June, 2021 based on its own calculation.

1.13 The licensee during the hearing reiterated its stance that interconnect services and O&M services are non-license services and offered PTA to conduct its ground check/ physical inspection to review the factual position of the said services offered to customers. Accordingly, inspection was carried out by the Authority through zonal office Lahore.

1.14 Subsequently, the licensee vide letter 4<sup>th</sup> August, 2023 submitted AAAs for financial year ended 30<sup>th</sup> June, 2022 along with auditor certified breakup. However, it was observed that the breakup provided therein were incomplete and not tallying with the corresponding AAAs. In response vide letter dated 10<sup>th</sup> November, 2023 requested the licensee to submit the complete underlying breakups tallying with the AAAs for the said year. The licensee vide letter dated 26<sup>th</sup> December, 2023 deposited a provisional amount of ARDs for year ended 30<sup>th</sup> June 2022 and also submitted the revised breakup of revenue and costs vide letter dated 29<sup>th</sup> February, 2024.

1.15 With regard to inspection as mentioned at para 1.13 above with specific reference to **“Interconnect Services”** and **“O&M Services”** to be included as licensed services or otherwise, a thorough analysis of licensee’s business has been conducted with following observation:

i. The license has been providing various non-licensed services including:

- ERP Services
- Cloud Server, Hosting, Domain Name
- Cyber Security
- Digital Services like, Graphic Design, Web Development, Social Media & Email Marketing

ii. It has also been found during the ground check that the following services rendered by the licensee fall under the scope of licensed services;

- Interconnect Services
- Internet/Data Services
- Voice Telephony

- iii. Furthermore, it has been observed that the licensee has been providing data services to its customers using its own deployed fiber/media and is entirely responsible for maintaining said infrastructure. The licensee is not charging "operations and maintenance charges" for the maintenance of fiber/media being used for provision of data services, whether they are residential or corporate clients. The primary assertion made by the licensee, pertains to an extra charge category known as "**O&M or Network Management charges.**" According to the licensee, these charges correspond to the maintenance of "**LAN Maintenance**" services for some of their corporate clients, which is reflected in the invoice. However, the claim of the licensee was found inaccurate by sample based survey of its customers, where none of the customers were found to be utilizing the Network Management Services (LAN Maintenance). These customers have exclusively procured data services from the licensee and are paying their monthly bills for data service and bandwidth charges.

This conclusion is further supported by the rates provided by the licensee to their corporate customers for CIR bandwidth. The rates are notably lower compared to the market rates. For instance, the average rate for a 1Mbps CIR is Rs. 1000/-, while the licensee's data charges show different rates for bandwidth as low as Rs. 150/- per 1Mbps, which appears to be a mere facade. As per the list, the licensee has managed the invoices by splitting data charges into 3 x categories:

- Internet charges
- Network Management
- IP address

The network management charges essentially appear to be a splitting of data charges, as the verified customers have confirmed that they have no distinct agreement or arrangement with the licensee regarding network management nor they are availing any such type of service by the licensee.

Hence, the licensee's assertion that they are providing O&M services as part of their non-licensed service category could not be substantiated. It is evident that they are exclusively providing data services to their data users.

1.16 In order to provide another hearing opportunity, the matter was fixed for hearing on 20<sup>th</sup> March, 2024 before the Authority. Mr. Amjad Farooq Alvi (Director), Mr. Basit Alvi (Director) and Dr. Shahid Farooq Alvi (CEO) attended the hearing on the said date on the behalf of licensee, During hearing all pending issues of non-provision of information related to the two SCNs under consideration, outcome of inspection/survey conducted by PTA was discussed. The licensee didn't agree to the findings of the ground check report and requested for provision of copy of the same for its review and record. As regard pendency of information, the licensee requested additional time for arranging the desired underlying record. The licensee once again was graciously granted the opportunity to submit the record in support of its contentions/ submission made during hearing.

1.17 In order to facilitate, the licensee vide letter dated 25<sup>th</sup> March, 2024 was explained about definite required information in the following manner and requested to provide the information latest by 10<sup>th</sup> April, 2024:

Year	Description	Requirement
2021-22	Complete breakup of Licensed and Non-licensed Services	The provided breakup is not certified by the Auditors. Therefore, licensee is required to provide the complete breakup certified by the Auditor.
	Email Charges <b>Revenue</b> : Rs.14,750,640/-	The licensee is required to provide <b>“Invoices”</b> and <b>“underlying agreements”</b> that covers at least 80% of the amount of each category.
	Colocation Services Charges <b>Revenue</b> : Rs.16,375,700	
	Oper and Maint Noc/Techno Services <b>Revenue</b> : Rs.34,900,990/-	
	Business Management Services <b>Revenue</b> : Rs.13,392,410/-	
	Interconnect Charges <b>Cost</b> : Rs.4,059,214/-	The licensee is required to provide all relevant vendors <b>“Invoices”</b> and <b>“underlying agreements”</b> .
	Internet Charges <b>Cost</b> : 11,754,626/-	
2020-21	Complete breakup of Licensed and Non-licensed Services	Complete breakup of license and non-license services as required for year 2021-22
	Interconnect Services <b>Revenue</b> : Rs.36,845,951/-	The licensee is required to provide <b>“Invoices”</b> and <b>“underlying agreements”</b> that covers at least 80% of the amount of each category.
	O & M Services <b>Revenue</b> : Rs.62,420,542/-	
	Installation Services <b>Revenue</b> : Rs.35,401,263	
	Business Management Services Revenue: Rs.2,572,829/-	The licensee is required to provide all relevant vendors <b>“Invoices”</b> and <b>“underlying agreements”</b> .
	Interconnect Charges Cost: Rs.7,015,723/-	
Internet Charges Cos: Rs.9,566,124/-		
2019-20	Complete breakup of Licensed and Non-licensed Services	Complete breakup of license and non-license services as required for year 2021-22
	Interconnect Services Revenue: Rs.79,476,977/-	The licensee is required to provide <b>“Invoices”</b> and <b>“underlying agreements”</b>

Year	Description	Requirement
	O & M Services Revenue: Rs.27,927,010/-	that covers at least 80% of the amount of each category.
	Installation Services Revenue: Rs.26,601,741/-	
	Business Management Services Revenue: Rs.4,497,326/-	
	Interconnect Charges Cost: Rs.4,500,159/-	The licensee is required to provide all relevant vendors "Invoices" and "underlying agreements".
	Internet Charges Cos: Rs.10,685,292/-	

1.18 In response, the licensee vide email 8<sup>th</sup> April, 2024 requested for extension in time for submission of requisite information till 24<sup>th</sup> April, 2024, which was granted by the Authority. Further, PTA shared the copy of survey report with the licensee vide letter dated 29<sup>th</sup> April, 2024 as requested by the licensee during hearing. Later on, Mr. Amjad Farooq Alvi (Director) and Mr. Anjum Farooqi (Manager Legal & Regulatory Affairs) visited for meetings at PTA headquarters and furnished the record related to the three years under consideration in the two SCNs. However, upon scrutiny of records, it was observed that the record for the year ended 30<sup>th</sup> June 2020 was incomplete and not in consonance with the required information, therefore, the same fact was communicated to the licensee vide email dated 29<sup>th</sup> May 2024. The licensee in response again requested for grant of two weeks' time to submit the complete information for said year due to difficulty in arranging and retrieval of the same from legacy data of its previous accounting software.

1.19 Subsequently, Mr. Amjad Farooq Alvi (Director) again visited PTA Headquarters for meeting on 10<sup>th</sup> June, 2024 and requested to provide explanation and factual position that revenue reported under the head "**O&M Services**" in AAAs and auditors' certificate include some licensed services and accordingly billed to customer under the same head of account i.e. O&M Services, whereas, the remaining part of O&M services being basic IT services are non-licensed services. The licensee also informed, admitting the fact that a part of O&M revenue falls under the ambit of licensed services, that it shall pay the demand of ARDs related to licensed services clubbed in O&M services. In response to query as to how it can justify its stance, the licensee requested to allow another opportunity for provision of additional record with clear bifurcation of O&M revenue between licensed and non-licensed portions.

1.20 Pursuant to the meeting with the licensee, the licensee vide letter dated 11<sup>th</sup> June, 2024 was requested to provide related information latest by 14<sup>th</sup> June, 2024. In response, the licensee provided information for the three years under consideration vide emails dated 14<sup>th</sup> June, 2024 and 2<sup>nd</sup> July, 2024 and later revised the same vide email dated 9<sup>th</sup> July 2024 having bifurcation of O&M revenue between licensed and non-licensed part. Consequent to that, the licensee vide email dated 10<sup>th</sup> July 2024 was informed that latest version of the information provided by the licensee for the financial years 2019-20, 2020-21 and 2021-22 shall be considered final and accordingly the same

shall be analyzed and considered for the related calculation. The same was accordingly consented by the licensee vide email dated 11<sup>th</sup> July 2024.

**2. Findings of the Authority:**

2.1 Matter heard. Record perused. After careful examination of the available record, followings are the finding:

2.2 The licensee was initially of the view that following revenue on account of “interconnect services” for the three years being non-licensed revenue for the three years under consideration shouldn’t be considered for application of ARDs:

Particulars	(Rupees)		
	2019-20	2020-21	2021-22
Interconnect Services - Intranet	79,476,977	36,845,951	4,923,800

Whereas, as stated by the licensee, its revenue from following two revenue streams only being licensed services be considered for calculation of ARDs for the said three years:

Breakup of Revenue Streams Offered for Calculation of ARDs by licensee			
Revenue	(Rupees)		
	2019-20	2020-21	2021-22
Internet Services	10,571,012	9,907,703	35,474,633
Telecommunication Services - Voice Sales	4,551,746	2,968,620	2,756,137
<b>Licensed Revenue</b>	<b>15,122,758</b>	<b>12,876,323</b>	<b>38,230,770</b>

The licensee accordingly calculated the ARDs based on its own understanding and deposited following amount on account of ARDs for the three years under consideration in the two SCNs:

Breakup of amount of ARDs deposited by the licensee on its own calculation			
ARDs	Rupees		
	2019-20	2020-21	2021-22
ALF	45,794	29,303	142,529
R&D	45,794	29,303	142,529
USF	137,381	87,909	427,586
<b>Total</b>	<b>228,969</b>	<b>146,515</b>	<b>712,644</b>

Subsequently, the licensee vide auditors certificates dated 2<sup>nd</sup> May, 2024 (for the year 2021-22) and 9<sup>th</sup> May, 2024 (for the years 2019-20 and 2020-21) provided revised breakup of its all revenue streams. It has been observed that revenue from “interconnect services” previously categorized as non-licensed services in then provided auditors’ certificate have now been reported as licensed services in the revised auditors’ certificate. Considering that the licensee has admitted the fact that interconnect services are in essence licensed services and accordingly provided the revised auditors’ certificate, therefore, corresponding amount of revenue shall be subject to application of ARDs.

2.3 As regard revenue from "co-location services", the record comprising of agreements and related invoices as provided by the licensee reflect that the underlying services are related to data center services (i.e., Rack Space, lease web for colocation services). Considering that said services being non-licensed services shall not be subject to application of ARDs.

2.4 Revenue from O&M services as reported by the licensee in AAAs and Auditors certificate has been reviewed in detail. Besides review of the record provided by the licensee from time to time, PTA has carried out detailed ground check in which feedback of selected group of licensee's customers' has also been obtained. Based on review of information available on record, following aspects have been observed:

- Customer invoices having O&M charges billed to customers along with bandwidth are based on exactly same base unit e.g. Rs x for 10 MB bandwidth + Rs y for 10 units of O&M services. The notation of x & y have been used here for the purpose of generality.
- O&M services are mostly rendered to corporate customers. In comparison with retail customers and other corporate customers whom O&M services have not been billed, there is a significant different between the amount charged to said customers on account of bandwidth. As per record, it appears that a part of bandwidth amount usually applicable for its customers has been categorized under the head O&M services.
- In some customer billing, rental charges of last mile connectivity services (media services as named by the licensee) have been reported as O&M services, whereas, said services are telecom services.
- A group of 5x customers of the licensee (selected from the list provided by the licensee) have been visited and sought their feedback as to whether they are getting any O&M services (office internal network management services, LAN maintenance services as informed by the licensee) from the licensee. It has been observed that none of the said customers have obtained any such services from the licensee.

The above position has been discussed in various meetings and correspondence exchanged with the licensee. Subsequently, the licensee furnished a list of its customer invoices in which the licensee has admittedly revised its stance and provided breakup of its revenue from O&M services into licensed and non-licensed services. Based on this additional information furnished by the licensee, it is considered that the licensee has remedied the concern as to reporting of O&M services by bifurcating between licensed and non-licensed services.

2.5 Foregoing in view, it is admitted position that the licensee has furnished the required information for finalization of demand of ARDs for the three years under consideration in the two SCNs. The demand of ARDs for financial year ended 30<sup>th</sup> June, 2020, 2021 and 2022 have accordingly been finalized for all the relevant years under consideration that are also attached as **Annex-A**, **Annex-B**, **Annex-C** (as part of this order), the licensee is required to make the payment of ARDs for financial year 2019-20, 2020-21 and 2021-22 as per following breakup. (LPAF calculated till 31<sup>st</sup> July, 2024):

Description	2020		2021		2022		Total		Grand Total
	Principal	LPAF	Principal	LPAF	Principal	LPAF	Principal	LPAF	
ALF	-	56,578	23,717	24,158	11,915	45,079	35,632	125,814	161,447
R&D	378,947	369,940	313,512	218,127	11,915	45,079	704,374	633,146	1,337,519
USF	1,136,841	1,109,819	940,537	654,382	35,745	135,236	2,113,123	1,899,437	4,012,560
Total	1,515,787	1,536,337	1,277,767	896,667	59,574	225,394	2,853,129	2,658,397	5,511,526

### 3. Order:

Keeping in view the above-mentioned facts coupled with the available record, the Authority hereby decides as under:

3.2. The licensee has provided requisite information as required through SCNs dated 24<sup>th</sup> May, 2022 and 1<sup>st</sup> August, 2023. Based upon information provided by the licensee, Annual Regulatory Dues were re-calculated for the financial years 2020, 2021 and 2022. As result of re-calculation, the licensee is hereby directed to make the payment of **Rs. 5,511,526/-** on account of ARDs including applicable LPAF for financial year ended 30<sup>th</sup> June, 2020, 2021 and 2022 within seven (07) days of the receipt of this order.

2.2 In case of non-compliance of para 3.2 above, further legal action will be initiated in accordance with applicable law.      ∩ ∩ ∩

**Maj. Gen. Hafeez Ur Rehman (R)**  
Chairman

**Muhammad Naveed**  
Member (Finance)

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

Signed on 19<sup>th</sup> August, 2024 and comprises of (10) pages only.