



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

Enforcement Order under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 against WorldCall Telecom Limited

PTA/Finance/LDI/World Call Telecom LDI/134/2006/2/1

Show Cause Notice:	3 rd January, 2011
Venue of Hearing:	PTA HQs. Islamabad
Hearings Date	21 st June, 2011, 6 th May, 2019, 21 st August, 2023 and 7 th March, 2024

Hearings Panel:

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

Issue:

“Non-Payment of Annual Regulatory Dues and Contributions for the Six (6) months period ended 31st December, 2008 and year ended 31st December, 2009”

DECISION OF THE AUTHORITY

1. Brief Facts of the Case:

1.1 WorldCall Telecom Limited (the “licensee”) is engaged in the business of operating telecommunication system as Long Distance and International (LDI) operator pursuant to non-exclusive license No. LDI-02(01)-2004 dated 14th July 2004 (the “license”) granted by Pakistan Telecommunication Authority (the “Authority”) to establish, maintain and operate a Telecommunication System, subject to the terms and conditions contained in the licenses.

1.2 By virtue of license conditions 4.1.2 (a), 4.1.3, 4.2.1, 4.2.2 and 4.2.3 read with clause 3.3, 3.4 and 3.6 and sub-regulation (6) and (7) of regulation 23 of the Pakistan Telecommunication Authority (Functions and Powers) Regulations, 2006 (the “Regulations”), it is 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 conditions 4.2.4 and 6.4.3 of the license, also require the licensee to submit Annual Audited Accounts (“AAAs”) within 120 days of the close of financial year in support of its calculation of ARDs payable pursuant to Article 3 and 4 of the licenses and the Authority shall have the right to audit such statements at any time.

1.3 The licensee vide letters dated 15th October, 2009, 1st April, 2010, 17th June, 2010, 21st September, 2010 and 28th October, 2010 was required to submit AAAs and auditors certified

breakup of revenue and costs and pay ARDs for the period six (6) months period ended 31st December, 2008 ("2008") and year ended 31st December, 2009 ("2009").

1.4 Despite lapse of considerable time and multiple reminders, the licensee didn't pay any heed to submit AAAs and auditors certified breakup nor made any payment of ARDs. Subsequently, a copy of AAAs was obtained from website of the licensee on the basis of which provisional demand of ARDs amounting to Rs. 77,645,442/- and Rs. 60,836,335/- for 2008 and 2009, respectively, was calculated requiring the licensee to deposit the ARDs and submit complete information in order to finalize the demand of ARDs. The licensee didn't deposit the demanded amount of ARDs nor submitted the required information for finalization of demand.

1.5 As a consequence thereof, a show cause notice dated 3rd January, 2011 was issued under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996, wherein the licensee was required to remedy the contravention by submitting AAAs and auditors certified breakup of revenue and costs and make payment of ARDs for the period 2008 and year 2009 within seven (07) days of issuance of show cause notice and also to explain in writing within thirty (30) days, as to why any enforcement order should not be passed under section 23 of the Act.

1.6 In response, licensee vide letter dated 3rd February, 2011, while referring to multiple other matters including issues pending before honorable Courts and its apprehension involving incurring of loss due to interrupted frequencies assigned to it and its contention that the delay in payment was not willful default, mentioned that PTA has no power to levy late payment additional fee per month under the Act.

1.7 Hearing of the SCN was held on 21st June, 2011, during which representatives of the licensee reiterated its stance as mentioned in its above referred letter. Pursuant to provision of complete information by licensee, the demand of ARDs was finalized by reducing it downward to the tune of around Rs. 40 Million on the premise of additional information substantiating the licensee's claim. Considering that apart from ARDs for 2008 and 2009 ARDs and RBS charges for other years were also pending, licensee deposited payment of Rs. 156 million in three (3) tranches vide letter No. WTL-05/4-1/888 dated 6th May, 2011, WTL-05/4-1/895 dated 31st May, 2011 and letter No. WTL-05/4-1/913 dated 13th July, 2011, in settlement of balance outstanding principal amount of ARDs for the period 2008 and year 2009 along with the RBS charges and ARDs for another year i.e. year ended 31st December, 2010, that is not part of this SCN.

1.8 The allocation of deposited amount was made according to WTL's advice received vide above referred letters. After affecting the adjustments, it transpires that ARDs for the period 2008 were paid with delay of more than two (2) years and for the year 2009 were paid with delay of more than one (1) year. Therefore, as per terms and conditions of the licenses, such delayed deposit of ARDs is subject to application of Late Payment Additional Fee (LPAF) on the basis of number of days principal amount of ARDs remained unpaid after due date, i.e. 30th April, 2009 for the period 2008 and 30th April, 2010 for the year 2009.

1.9 Another hearing before the Authority was held on 6th May, 2019. Mr. Umar Durrani (Director RA), Mr. Abdul Bari & Mian Abdual Bari Rashid (Legal Counsels) attended the hearing on the said date on the behalf on licensee. During the hearing, the licensee reiterated the same stance as provided in its reply to SCN and did not pay the amount of outstanding LPAF for 2008 and 2009.

1.10 Pursuant to final reminder of PTA vide letter dated 20th June, 2022, to pay the outstanding amount of LPAF for the period 2008 and year 2009, the license vide letter No. WTL-05/4-1/1401 dated 4th July, 2022 requested for re-hearing of the matter before the Authority.

1.11 As per the request of the licensee, the matter was fixed for re-hearing on 21st August, 2023. Mr. Abdul Bari Rashid (Legal Counsel), Mr. Shahzad Saleem (CFO) and Mr. Muhammad Ashfaq (Head of Financial Planning) attended the hearing on the said date on the behalf of licensee. During the hearing, licensee requested for calculation of LPAF on the premise that due to significant time lapse it is unable to retrieve its data. Accordingly, the calculation was shared vide letter dated 25th August, 2023. In response, licensee vide email dated 30th August, 2023 requested to share license-wise breakup of LPAF, the same was additionally provided vide letter dated 4th September, 2023.

1.12 In response, licensee vide letter dated 7th September, 2023 mentioned that it has already paid Rs. 156 million against the amount of Rs. 139 million mentioned in the SCN. Further, licensee stated that a reconciliation with the Authority was in process, since the demand was not finalized till then, therefore, it did not pay the amount till due date. Therefore, licensee requested to waive off LPAF as the same cannot be imposed in mechanical manner. More so, the licensee offered to pay an amount Rs. 204,416 on account of LPAF based on its own understanding that LPAF shall be applicable from the date when reconciliation was finalized till payment date i.e. 17 days only.

1.13 To proceed further, the matter was re-fixed for hearing on 7th March, 2024. Mr. Abdul Bari (Legal Counsel), Mr. Saeb Zaidi (Director Regulatory), Mr. Gul Ahmed (Adviser), Muhammad Ashfaq (Head of Financial Planning) and Mr. Sami Alam (Manager Regulatory) attended the hearing on the said date on the behalf of licensee. During the hearing, licensee mentioned that its response dated 7th September, 2023 be considered.

2. Findings of the Authority

2.1 Submission of AAAs and payment of ARDs is a mandatory requirement for compliance within 120 days from close of financial year as per license terms and conditions. However, the licensee did not pay heed until issuance of SCN dated 3rd January, 2011 for the period 2008 and year 2009. Therefore, licensee's contention that the delay in payment for the said period was not willful is not maintainable.

2.2 After issuance of SCN, licensee still kept on delaying the compliance by requesting adjournment of hearing. Finally, licensee provided the information required for finalization of demand of ARDs, consequent to which licensee itself agreed on the principal amount of ARDs vide letter No. WTL-05/4-1/913 dated 13th July, 2011.

2.3 The purported stance of licensee to give an impression that it has deposited Rs. 156 million against the amount of Rs. 139 million mentioned in SCN is incorrect on the following grounds:

- a) Subsequent to issuance of SCN, a reconciliation was carried out on licensee's request. Pursuant to additional information provided by the licensee during the reconciliation process in support of its claim, the demand in the SCN was revised downwards from Rs. 139 million to Rs. 99 million.
- b) The remaining amount of Rs. 57 million (Rs. 156 – 99 million) was deposited on account of RBS charges and ARDs for the year 2010 not covered in this SCN.

2.4 As regard Late Payment Additional Fee (LPAF), it is not a Penalty. LPAF is an additional fee imposed on principal outstanding amount as per license clause No.4.2.3 due to delay in payment of principal amount. Therefore, any precedence applicable in the matter of penalty cannot be generalized for application of any fee levied under the license.

2.5 In light of the available record and findings as mentioned herein above, calculation of LPAF is attached as "Annex-A" (as part of this order).

3. ORDER:

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

3.1 Since the licensee has failed to provide any cogent reason and justification to substantiate its claim, therefore, the licensee is hereby directed to make payment of outstanding ARDs on account of LPAF amounting to Rs 33,128,773/- (Rs.17,623,450/- for the six months period ended 2008 and Rs.15,505,323/- for the year ended 2009) within three (03) days from the date of receipt of this order.

3.2 In case of con-compliance of direction as mentioned at para 3.1 above, further legal action will be initiated against the licensee as per applicable law without any further notice.

Maj. Gen. Hafëz Ur Rehman (R)
Chairman

Muhammad Naveed
Member (Finance)

Dr. Khawar Siddique Khokhar
Member (Compliance & Enforcement)

Signed on 19th August, 2024 and comprised of (4) pages only.