



Government of Pakistan
PAKISTAN TELECOMMUNICATION AUTHORITY
HEADQUARTERS, F-5/1, ISLAMABAD

Decision of the Authority in Appeal No.08 /2023 filed by Phonecast (Private) Limited

No. PTA/Services/Numbering/382/2024/93.

Appeal No.08 /2023:	26 th August, 2023
Venue of Hearing:	PTA HQs, Islamabad
Date of Hearing:	22 nd May, 2024

Authority present in hearing:

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

The Issue:

“Appeal against order dated 27th July, 2023 regarding Reconciliation of outstanding ANC against PRS block 0900-111xx and Toll Free No. 0800-11121”

1. This order will dispose of Appeal No. 08/2023 dated 26th August, 2023 filed by Phonecast (Private) Limited (the “**Appellant**”). The Appellant being aggrieved from the order dated 27th July, 2023 (the “**Impugned Order**”) passed by the officers of the Authority pursuant to order dated 25th August, 2021 issued by Assistant Commissioner (Revenue) Collector Grade-1, South, Karachi regarding reconciliation of the outstanding dues on the account of Annual Numbering Charges (ANC) filed the instant appeal under section 7(2) of the Pakistan Telecommunication (Re-organization) Act, 1996 (the “**Act**”) before Pakistan Telecommunication Authority (the “**Authority**”).
2. Relevant facts of the case are that the Appellant was granted a non-exclusive license No Dir(c)/L/PTA/691/2004 dated Sep 27, 2004 to operate Audiotex Service in Pakistan and the same license was converted into CVAS Voice License No. Dir (L)/CVAS-87/PTA/2006 dated 24th March, 2006 (the “**license**”) by the Authority to establish, maintain and operate Premium Rate Services in Pakistan subject to the terms and conditions contained in the license and the provisions of the existing enactments, rules and regulations made by the Authority including new enactments. In accordance with regulation 18 (1) of Numbering Allocation and Administration Regulations, 2005, regulation 19 (2) of Numbering Allocation and Administration Regulation, 2011 (“**the Numbering Regulations**”), regulation 12 of the Class Licensing and Registration Regulation 2007 (the “**CLR Regulations**”) and sub-regulations (1) (k) of regulation 23 of the Pakistan Telecommunication Authority (Function & Powers) Regulations, 2006 (the “**Regulations**”), it is obligatory upon the Appellant to pay numbering allocation and usage charges.
3. Due to failure to deposit ANC on the account of PRS numbers from 2005 to 2013, a Show Cause Notice dated 26th July, 2013 was issued requiring the Appellant to pay the outstanding dues. However, the Appellant did not clear the outstanding dues rather surrendered its license vide letter dated 29th September, 2013. In pursuance thereof, the license was surrendered vide letter dated 1st January, 2015 and PRS numbers were withdrawn. However, due to non-payment of numbering charges the Appellant through

notice dated 3rd March, 2017 on the account of PRS number charges and notice dated 7th November, 2017 for Toll Free number charges was required to pay the outstanding dues. As a result of non-payment of outstanding dues, recovery petition dated 4th April, 2018 under section 30 of the Act was filed before District Collector, Karachi for recovery of total outstanding dues of **Rs. 3,624,700/-** (Rs. 3,505,200/- for PRS) + Rs. 119,500/- for Toll Free).

4. During recovery proceedings and on the request of the learned counsel for the Appellant, Assistant Commissioner (Revenue), Collector Grade-1, South, Karachi referred the matter to the Authority for reconciliation of outstanding dues. Accordingly, reconciliation proceeding were carried out and the matter was fixed for hearing on 29th September, 2022, 1st March, 2023 and 24th May, 2023 before the Officers of the Authority. Mr. Abdullah Butt (CEO) and Mr. Masood Ahmed Bhatti, Advocate High Court represented the appellant on the said dates. After hearing the Appellant and due deliberation, the matter was decided on 27th July, 2023 (the "**Impugned Order**"). For ready reference, the relevant para of the impugned order is reproduced below:

"8 Order:

Foregoing in view the above-mentioned facts coupled with the available record, it is concluded that the outstanding dues on account of Toll Free Number have been reconciled and reduced from Rs. 119,500/- to Rs. 79,000/- Whereas, despite extending all possible timeframe, the Applicant failed to prove its stance with regard to its liability on account of PRS numbers, no change is considered for the amount demanded for PRS numbers as mentioned in the Recovery Petition pending before the Assistant Commissioner (Revenue), Collector Grade-1, South, Karachi"

5. Being aggrieved from the Impugned Order, the Appellant filed the instant appeal before the Authority. The main assertions are reproduced hereunder;

- 5.1 *That M/s Phonecast (Pvt.) Ltd. was granted Audiotex license on 27-09-2004 vide No. DIR (C)/L/PTA/691/2004. An interconnect agreement for Audiotex service was signed with M/s PTCL on 10-10-2006 vide No. PSP/Tech-049/Phonecast. As per clause 3.7 of the said license, the distribution of revenue was to be shared between M/s Phonecast (Pvt.) Ltd. & PTCL @ 60:40 and under clause 7.4, it was obligatory duty of PTA to settle the dispute between both the parties. M/s PTCL as per clause 11 of the said agreement was bound to pay 60% share of the revenue within 15 days of the collection and in case the Authority has granted compensation/waiver to the customer, the such shall be shared 60% by M/s Phonecast (Pvt.) Ltd. The right of recovery under clause 18 of the said agreement was a surviving accrued right and obligation on the part of M/s PTCL.*
- 5.2 *M/s Phonecast (Pvt.) Ltd. did not commence service as per CVAS license which is admitted fact substantiated with the fact that neither commencement inspection was carried out by PTA nor commencement certificate*
- 5.3 *That the officers of the Authority also issued notices in person to all ex-directors as well as the present directors at their residential address.*

Copies of such notices are annexed as Mr. Kaleem Ullah Tareen Assistant Director (Law) with mala-fide intentions issued such invalid notices to other legal persons instead of the said Company to fraudulently fasten the liability if any of the said company upon ex-directors as well as the present directors. He has fraudulently attempted to recover alleged outstanding amount of Rs. 3,624,700/- from each director.

- 5.4 That we contested the issue of notices before the revenue authority and after remand back of case before the officers of the Authority. The officers of the Authority have neither brought on record our said submission nor discussed nor passed any order in this respect which reflects their mala fides.
- 5.5 Whether any number **in** use of Ms. Phonecast (Pvt.) Ltd. was allocated/assigned under NAAR-2005? M/s Phonecast (Pvt.) Ltd did not apply for any number allocation under the NAAR-2005, PTA claims numbering allocation was transferred to PTA in February 2004 but never communicated any directives related to numbers allocated by M/s PTCL. PTCL continued charging on monthly basis for such numbers till 27.06.2011 which were paid accordingly. Neither there is any clause that ceases numbering allocation power from PTCL nor M/s Phonecast (Pvt.) Ltd applied to PTA for any number nor signed any contract with PTA. PTA first time raised the claim amounting to Rs. 4.55 million under NAAR-2005 on 11.07.2011 vide No. N&TA/ Services Div/PTA after about 7 years and 5 months. There was such **no condition** under NAAR-2005 as "For each number in use whether allocated/assigned to a person on or before the promulgation of these regulations, the annual charges payable in advance by 31st July each year on such terms and conditions as determined the Authority from time to time". It was mandatory upon PTA under clause 19 (d) of NAAR-2005 "if the dues payable to the Authority on account of annual number allocation fee including penalty, if any, are not cleared within a period of one year from the due date⁹ to withdraw such, allocated numbers. The Authority in exercise of its powers under section 23 of the Pakistan Telecommunication (Reorganization) Act, 1996 (the "Act") to issue show cause notice has **limitation of within thirty days** as to why an enforcement order may not be issued. The Authority has no jurisdiction to proceed in **past and closed** transaction of 30 days under Section 23 of the Act.
- 5.6 The officer of the Authority has altered and modified the section 23 of the Act without jurisdiction by colorable exercise of the executive which is illegal, unconstitutional and ultra vires the power of the Authority. This legal aspect of case has not been considered by the officers of the Authority while passing the said order. PTA has neither communicated ownership under NAAR-2005 of any number in use nor claimed any charges from M/s Phonecast (Pvt.) Ltd. for about 7 years and 5 months. Accordingly, M/s Phonecast is not liable to pay annual or other charges in respect of numbers in use not allocated/assigned by PTA under NAAR-

2005 for charges have been already paid to PTCL; the observations in the para under comment are extraneous, unwarranted and superfluous.

- 5.7 PTA issued Show Cause Notice (SCN) dated 26-07-2013 was issued to the Company in utter violation of section 23 of the Act, 1996. The said SCN was issued to pay annual numbering charges amounting to Rs. **6,850,000/-** within 7 days without affording fair opportunity to contest such alleged claim without passing any enforcement order in accordance with section 23 of the Act, 1996. The officers of the Authority have committed **non reading** of reply dated 05-08-2013 to the said notice denying PTA claim. **No enforcement order was passed by the Authority against the said SCN.** The Authority has not dilated upon the settlement of the amount of **Rs. 6,850,000/-** in the impugned order. The Authority has not passed speaking order giving reasons for taking very belated action after about 15 months in response to surrendering the license vide letter dated 29-09-2013.
- 5.8 The official of Authority has violated the public policy issued vide No. 6-2/2003-DT dated 26-01-2006 by Ministry of Information Technology (IT & Telecom Division) the Government of Pakistan. As per the said policy, PTA cannot charge any fees to the users of such services directly. Even then, as per our record, outstanding dues amounting to Rs. 5,000/- is pending that has to be made subject to verification by M/s PTCL as well as by the bank which the Authority has noted in para #4 of the impugned order. We will pay immediately after said verification. PTA has unilaterally claimed an amount of Rs. 119,500/-, thereafter gave arguments against such claim passed judgment reducing such alleged claim to Rs. 79,000/- without affording fair opportunity to contest such claim denying due process of law under section 23 of the Act, 1996 and right of appeal granted under section 6 of the Act, 1996 thus ceasing the fundamental rights enshrined under Arts. 4, 10-A and 25 of the Constitution. The observation in the para under comment are flimsy, unwarranted and superfluous thus fails the test of sound legal reasoning and is based on conjectures and surmises.
- 5.9 The Authority neither notified transferring of numbering allocation from PTCL as mentioned in the para under comment nor any contract for any number was signed by M/s Phonecast (Pvt.) Ltd. with PTA. There is no clause mentioned in NAAR-2005 that automatically transfer PTCL allocated numbers to PTA. Any such unilaterally change jeopardizes fundamental rights enshrined under Art. 18 of the Constitution. It is on record that M/s Phonecast (Pvt.) Ltd. did not sign any contract of numbering allocation with PTA, On the contrary, PTCL continued numbering allocation and charging.
- 5.10 M/s Phonecast (Pvt.) Ltd. closed its operation on 27-06-2011 thus no number was in use when the NAAR-2011 was notified by the Gazette of Pakistan on 20-07-2011. Therefore, regulation 19 of NAAR-2011 is not applicable in this case as there was no number in use of M/s Phonecast (Pvt.) Ltd.

- 5.11 That the Authority neither circulated the decision dated nil September 2010 regarding waiving off dues nor issued any demand notes to us. Moreover, under financial constraint due to increasing receivables from PTCL and no action from PTA forced us to either curtail or stop our services.
- 5.12 The Authority with mala fide intention has attempted implicate the ex-director as well present directors to fasten responsibility of the company if any without due process of law. Invalid notices were issued in person to the directors as mentioned above in para # 6 to 8. None of the directors has given any guarantee/surety/undertaking to be held responsible in case of any default of the company. Only person authorized on behalf of the company could legally be representative in the matter there any notice issued by name is invalid in such cases. PTA has filed a case against each director claiming 3,624,700/- which makes a total amounting to Rs. 18,123,500/-. As per law the notice has to be to the company which is a separately legal person.
- 5.13 That PTA without jurisdiction altered/modified section 23 of the Act, 1996. The DG (Services) PTA travelling outside the ambit of section penalized amounting to Rs. 6,850,000/- directing to pay within 07 and why not an order be passed in terms of section 23 of the Act, 1996. The Act, 1996 does not confer on the DG (Services) PTA the power to impose penalty without due process. The ambit of show cause notice is limited as to why an enforcement order may not be issued affording 30 days to confront the same. The said show cause notice was issued with mala fide intentions to M/s Phonecast (Pvt.) Ltd., through Mr. Abdullah Butt, addressed 88 L/2, PECHS, Karachi vide No. N&TA/Services Division / 2240 dated 26-07-2013 for payment amounting to **Rs. 6,850,000/-** which was replied within the stipulated on time i.e. 05-08-2013 as per available record. PTA did not initiate further action which by conduct means accepting which substantiated by the fact that PTA did not pass any enforcement order in the matter. After about 17 month, PTA vide letter No. N&TA/Services Divisions/2240 dated 01-01-2015 requested for payment amounting to **Rs. 8,970,000/-** with due process of law. That Authority without show cause notice, without due enforcement order and without due determination raised claims against M/S Phonecast (Pvt) after lapse of several years of the forced closure of our business operation which has caused serious prejudice with us and undue favour to M/s PTCL.
- 5.14 M/s PTCL did not pay M/s Phonecast (Pvt.) Ltd's huge share amounting to **Rs. 12,010,073/=**. This issue of default of payment by PTCL was raised several times before the Authority but failed to obtain any relief. It was also published in "the NEWS" dated 21.04.2008 & "JANG" Karachi dated 22.04.2008 are appended here for your ready reference. The Association of Call Center Operators also brought the same issue on record. The Authority has obligatory responsibilities as suggested and defined under section 6 of the P.T. (Re-organization) Act, 1996. PTA functionaries deliberately did not initiate investigation timely under clause (1) of 5.4 of the license agreement issued vide License No. DIR/(CJ)/L/PTA/691/2004 dated 27.2004. The Authority has not yet fulfilled its obligatory responsibilities as per clause 7.6.4 of the said license. PTA management functionaries never bothered to

*resolve such issues but acted as post office. Mr. Adil Khalil, Deputy Director (Tariff) took an eyewash action vide letter No. 15-9/08(CA)/PTA dated 26.09.2008 and similar formality was performed by Mr. Zccshan Gul, Director (Commercial Affairs) vide even number letters dated 08.10.2008 & 10.11.2008. This all caused total loss of physical assets as well as market goodwill amounting to Rs. 50.000 million. M/s Phonecast (Pvt) has now only appreciable receivable asset amounting to **Rs, 12,010,073/** from M/s PTCL at compound market lending markup rate.*

6. In order to proceed further in the instant matter, the appeal was fixed for hearing on 22nd May, 2024. Mr. Abdullah Butt and Mr. Masood Ahmed Bhatti (Legal Counsel) attended the hearing on the said date. Legal counsel appeared on behalf of the Appellant reiterated the same as contended in the Appeal.

7. Findings of the Authority:

7.1. Matter heard and record perused. After careful examination of record, followings are the findings of the Authority:

7.1.1 At the very outset it is clarified that by virtue of provision(s) of the Act, the Authority is mandated to regulate the establishment, maintenance and operation of telecommunication system and provision of telecommunication services in Pakistan. Accordingly, the Authority granted license to the Appellant to establish, maintain and operate commercial Audiotex Services in Pakistan. In accordance with license condition No. 4.36, the Appellant was under an obligation to comply with all the provisions of the Act, Rules, Regulations and terms and conditions of the license.

7.1.2 More so, under section 5 (2) (k) of the Act, the Authority is empowered to develop national numbering plan. In addition, in exercise of its powers under section 5 (2)(o) of the Act, Numbering Regulations were promulgated. In accordance with regulation 19 (1) & (2) of Numbering Regulations promulgated in 2011 and sub-regulation (1) (k) of regulation 23 of the Pakistan Telecommunication Authority (Function & Powers) Regulations, 2006 (the "**Regulations**") the Appellant is required to pay numbering allocation and usage charges. Whereas, regulation 19 of the Numbering Regulation provides that for each number in use whether allocated to a person on or before the promulgation of these regulations, the annual charges payable in advance by 31st July each year and the licensee shall be liable to pay a penalty @2% per month or part thereof on the amount outstanding.

7.1.3 As far as contention of the Appellant with regard to non-applicability of PRS dues on the ground that the same were allocated by Pakistan Telecommunication Company Limited (PTCL) prior to promulgation of the Numbering Regulation is concerned, it is to highlight that as per record, initial allocation was made by PTCL and in Feb 2004 the same were transferred to PTA. Thus as per regulation 19 of the Numbering Regulation categorically provides that each number in use whether allocated to person on or before the promulgation of these regulations, shall be liable to annual charges payment.

7.1.5 The assertions of the Appellant that no determination was passed by the Authority for the outstanding dues is misconceived on the ground that PTA issued SCN dated 26th July, 2013 to pay the outstanding dues on the account of Toll Free and PRS numbers. However, the Appellant instead of clearing the outstanding dues surrendered its license. Accordingly, PRS numbers allocated to the Appellant were withdrawn vide letter 1st January, 2015 with direction to clear the outstanding dues. In addition, notice dated 3rd March, 2017 on account of PRS number charges and another notice dated 7th November, 2017 on account of Toll free number charges were also issued however, the Appellant did not pay the outstanding dues.

7.1.7 For the purpose of re-conciliation of the outstanding dues, the matter was also taken up with PTCL. As per available record provided by Appellant and PTCL it has been found that out of total 46 numbers, 09 PRS number were disconnected on the request of Appellant on 6th December, 2009, 8th December, 2009 and 25th May, 2010, whereas, remaining 37 numbers were disconnected on 4th November, 2010 and 27th June, 2011 on the request of the appellant. Thus till the usage of numbers the Appellant is required to pay numbering charges for the said period. Additionally, as far as Toll Free Number is concerned, this number is charged from July 2008 till 2016 as the said number was withdrawn by PTA on 27th June, 2016. Detail of outstanding is given below:

Numbering resource	Count	Duration	Amount (Rs)
PRS	9	2005 to 2010	1791000
	37	July 2010 to 2011	
TFN	1	July 08 to 2016	79000
Total (Rs.)			1870000

8. Order:

8.1 Keeping in view the above-mentioned facts coupled with the available record and a result of further reconciliation as carried out after hearing held on 22nd May, 2024, the Appellant is liable to pay an amount of **Rs.1,870,000** (including Rs.1,791,000 on account of PRS number and Rs.79,000 on account of Toll Free number). Accordingly, the instant appeal is hereby disposed of.

Maj. Gen. Hafēez Ur Rehman (R)
Chairman

Muhammad Naveed
Member (Finance)

Dr. Khawar Siddique Khokhar
Member (Compliance & Enforcement)

Signed on 25th day of October, 2024 and comprises of (07) pages only.