



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

**Enforcement Order under section 23 of Pakistan Telecommunication (Re-organization)
Act, 1996 against Wi-Tribe Pakistan Limited**

No: PTA/Finance/WLL/BURRAQ/114/2006/256/355

Show Cause Notice:	30 th September, 2020
Venue of Hearing:	PTA HQs, Islamabad
Date of Hearings:	22 nd December, 2020
	1 st April, 2022,

Issue

“Non-payment of balance amount of ARDs
for financial year ended 31st December, 2019”

Decision of the Authority

1. Facts of the case:

1.1 Precisely stated facts of the case are that Wi-tribe Pakistan Limited (the “**licensee**”) is engaged in the business of telecommunication services in Pakistan pursuant to non-exclusive licenses No.WLL-02-2004 dated 1st November, 2004 (the “**license**”) issued by the Pakistan Telecommunication Authority (the “**Authority**”) to establish, maintain and operate telecommunication system and provide telecommunication services in Pakistan on the terms & conditions contained in the licenses.

1.2 The licensee under prevailing regulatory laws comprising Pakistan Telecommunication (Re-organization) Act, 1996 (the “**Act**”), the Pakistan Telecommunication Rules, 2000, (the “**Rules**”) the Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006 (the “**Regulations**”) and the terms and conditions of the license is under an obligation to comply with the same.

1.3 By virtue of license conditions No. 4.1.2 (a), 4.1.3, 4.2.1, 4.2.2, 4.2.3, 3.3 and 3.4 of the license read with sub-regulation (6) and (7) of regulation 23 of the Regulations, it is obligatory on the licensee to deposit Annual License Fee (ALF), Universal Service Fund (USF) & Research and Development (R &D) Fund Contributions within 120 days of the end of financial year to which such fees and contributions relate.

1.4 Pursuant to license conditions No. 4.2.4 and 6.4.3 of the license, the licensee is required to submit Annual Audited financial statements within 120 days of the close of financial year in support of its calculations of annual license fees and contributions (USF and R&D)

payable pursuant to article 4 of the license and the Authority shall have the right to audit such statements at any time.

1.5 The licensee, vide PTA's letter dated 22nd April, 2020, 13th April, 2020 and 25th March, 2020 was required to submit AAAs and Auditor's certificate for the year ended 31st December, 2019. However, instead of submitting AAAs and Auditor certificate, the licensee vide letter dated 29th April, 2020 and 22nd April, 2020 requested for extension of two (02) months. The Authority vide letter dated 14th May, 2020 graciously granted extension for two (02) months to the licensee subject to an undertaking to submit AAAs, auditors' certificate and deposit Annual Regulatory Dues (ARDs) till 30th June, 2020 along with applicable Late Payment Additional Fee (LPAF).

1.6 On the expiry of extension, the licensee vide letter dated 30th June, 2020 again requested for further extension of one (01) month till 31st July, 2020 for submission of AAAs and payment of ARDs for the year ended 31st December, 2019. In response, the licensee vide letter dated 2nd July, 2020 was requested to deposit ARDs based on its own calculation immediately. Accordingly, the licensee made provisional payment of Rs.9,293,507/- on account of ARDs including LPAF vide letter dated 17th July, 2020 based on its own calculations and submitted an undertaking stating that it shall make payment of any differential payment, if required, for demand calculated based on annual audited accounts. The licensee's request for another extension was also processed and the Authority vide letter dated 27th July, 2020 again approved the request to the extent of submission of AAAs subject to immediate payment of differential amount.

1.7 Despite repeated reminders issued to the licensee through letters dated 27th July, 2020, 22nd April, 2020, 13th April, 2020, the licensee failed to submit AAAs and Auditor's certificate. As a result, thereof, a Show Cause Notice (SCN) dated 30th September, 2020, *under section 23 of the Act*, was issued to the licensee requiring it to remedy the contravention by submitting AAAs along with Auditor's certificate within Seven (7) days.

1.8 Incompliance of the SCN, the licensee submitted interim reply vide letter dated 6th October, 2021 intimating therein that it is constrained from submitting the documents within given Seven (07) days for the following reasons not within its control.

- i. The auditor, M/s EY Ford Rhodes has confirmed that in the year 2020 the international accounting standards were changed by International Accounting Standards Board (IASB). Consequently, the delay has been accrued.
- ii. The licensee expressed that limitations in movement of personnel due to COVID-19 also resulted into delay for the submission of the required documents.

1.9 The licensee vide letter dated 29th October, 2020 submitted reply to the SCN. The main contention(s) of the licensee in reply to SCN are as under:

Dated: 31st October, 2022

- a. The licensee submitted that due to reasons beyond its control such as COVID-19 and introduction of the new international accounting standards, the licensee was unable to comply with the SCN.
- b. The licensee further stated that currently it is under the process of appointing new auditors so that the required documents could be prepared as soon as possible.
- c. All elements related to clause 12.2.1 of the its license presently exist which are preventing it from fulfilling its obligations with respect to submission of required documents. The licensee further intimated that the submission of the documents is only required for the purpose of calculating the payable amount of ARDs which the licensee has already done, along with LPAF, on provisional basis as per its financial report for the year 2019, within the extension period granted by the Authority.
- d. The licensee assured that upon conclusion of the documents, any remaining part or due amount of the required fee shall be immediately paid.

1.10 In order to proceed further, the matter was fixed for hearing on 15th December, 2020. During the hearing, the licensee requested for additional time for submission of AAAs and Auditor's certificate on the ground of non-completion of audit. Pursuant to the hearing, the licensee vide letter dated 15th January, 2021 submitted management review/ special purpose accounts. Based on additional information provided by the licensee along with special purpose accounts, the licensee vide PTA's letter dated 2nd February, 2021 was required to pay Rs.336,156/- (provisional basis). In addition, the licensee was intimated that demand shall be finalized upon submission of AAAs. The licensee deposited the provisionally demanded amount on 12th February, 2022. Subsequently, PTA vide letters dated 24th February, 2021, 16th June, 2021 and email dated 15th July, 2021 required the licensee to submit AAAs, instead of management review accounts, along with independent auditor's report, including nature wise and license wise revenue and cost breakups. Subsequently, AAAs were submitted with significant delay on 8th July, 2021 and auditors' certificate was furnished on 11th August, 2021.

1.11 While examining the AAAs, Auditor's certificate and other breakups provided by the licensee, it was observed that the licensee in its calculation of ARDs had claimed various expenses, on account of inter-operator costs, mainly comprised of security, power, fuel, site, rent costs etc., paid to non-licensees of PTA, hence, were not considered for deduction. Consequently, the demand of Rs. 2,477,020/-, Rs. 7,432,865/- and Rs. 2,475,161/- under the heads of ALF, USF & R&D respectively for the financial year ended 31st December, 2019 was raised vide letter 23rd August, 2021, followed by reminder dated 10th September, 2021. It is also pertinent to mention here that the licensee had undertaken to make the payment of any differential amount, if required, that could arise upon final calculation based on annual audited accounts.

Dated: 31st October, 2022

1.12 Further, PTA vide letter dated 30th September, 2021 clarified its point of view about non-deductibility of passive infrastructure sharing (tower rental etc.) costs and required the licensee to clarify its point of view and supporting documents in support of claiming such costs as deduction for calculation of ARDs. In addition, the licensee was directed to deposit the differential amount of ARDs along with LPAF immediately.

1.13 Upon failure to deposit the differential amount of ARDs, the matter was re-fixed for hearing before the Authority on 1st April, 2022. Admiral (R) Shahid Farooq (Group Chairman), Syed Imran Abbas Bukhari (CEO), Syed Sajjad (CFO), Syed Hasnain Ibrahim Kazmi (Legal Counsel), Mr. Fahim Khan (Head of Legal & Regulatory), Mr. Shakir Hussain (Manager Finance) and Mr. Asad Khan (Senior Executive legal & Regulatory) attended the hearing on the said date. During the hearing, the licensee was directed to share additional information and relevant documents to substantiate its claim regarding allowable deduction as inter-operator payments that was allowed by the Authority. Pursuant to the hearing, the licensee vide PTA's letter dated 6th April, 2022 was required to provide the following details along with documentary evidences in relation to deductions claimed as "inter-operator" payments within ten (10) days of receipt of the said letter:

- i. Copy of all agreements with Edotco (Tanzanite) and other licensees with regard to tower sharing cost and other infrastructure facilities.
- ii. The analysis of licensee's liabilities shows that licensee has not made significant payment to the counter parties as the liabilities are constantly piling up over the past many years. In this regard, the licensee is required to share the breakup of actual payments that relates to the year under observation i.e. financial year ended 31-12-2019 along with vendor invoices and documentary proof of said payments.
- iii. Review of payments breakups provided by the licensee shows that significant amount is related to counter parties which are not PTA's licensees. Licensee is required to share underlying documentary evidences as basis for classifying such cost as inter-operator cost.

1.14 In response, the licensee vide letter dated 14th April, 2022 provided the requisite information. As per response, the licensee, in addition to providing certain information also asserted that matter of payment of the additional demand of ARDs is not clubbed with instant proceedings. As the SCN was related to the submission of Annual Audited Accounts and Auditor's Certificate which were submitted in January, 2021, hence SCN is now ready to be recalled and be declared of no further effect under the law. In this regard, it is clarified that as per SCN the licensee was required to remedy the contravention by submitting AAAs along with Auditor Certificate for the year ended 2019, however, the same was not been submitted within the time lines. In addition, as para 5 of the SCN, detail of payment has also been provided. In context of licensee's contention, it is considered that the demand is determined and demanded based upon the AAAs and Auditor Certificate amounts, therefore, calculation

Dated: 31st October, 2022

of dues are an integral part of SCN proceedings. Thus, in order to resolve the issue holistically with regard to clearance of outstanding dues, the licensee was given another opportunity of hearing with regard to non-payment of outstanding dues calculated in light of AAAs and Auditor Certificate.

1.15 On the other hand as far as issue of payments made on account of inter-operator is concerned, the licensee at para(s) "c" and "d" of the letter dated 14th April, 2020 stated as under:

- "c. As informed earlier, the payments referred in your letter were made to the parties which were not PTA licensees made on behalf of Edotco as their cost, that is adjusted against their tower sharing monthly rentals. It is neither expense of Wi-tribe Pakistan nor is claimed in our account as our cost. It has been clarified that these payments were made on the request of Edotco, which was subsequently adjusted against their tower sharing invoices as per agreed terms in line with the Agreement signed with them. We attach herewith the requests of Edotco asking us to make payments on their behalf in the year 2019, as Annex C".
- d. This payment arrangement of the cost of Edotco (Tanzanite) is also acknowledged and in pursuance of their letter dated 3rd August, 2017 issued by their CTO Mr. Jones Theseen."

1.16 While examining the detail of payments made to different organization, it has been found that in addition to the payment made to operators, the licensee on behalf of Edotco made payment to various non-licensees e.g., **the cooperative Model Town Society Ltd., Sui Northern Officers Co-operative Housing Society Ltd., LESCO, DHA Lahore, IESCO etc on account of security, fuel, electricity, site rental site etc.** Since the above stated organizations are non-licensee(s) and such payments made on behalf of another licensee on account of non-licensed services cannot be considered or treated as inter-operator payments. More so, the licensee could not provide any material evidence substantiating its claim to avail the benefit of allowable deduction as provided in the license.

1.17 In this regard, the agreement titled "Amended and Restated Tower Space Master License Agreement (MLA)" dated 24th March, 2016 along with Amendment No. 1 dated 31st July, 2017 has also been examined wherein it has been observed that clause 11.1 of the MLA has been modified and Annex C attached to MLA was also replaced with new conditions. For ready reference clause 11.1 of the amended agreement is reproduced below:

"11.1 As a consideration for the License granted for each Tower Facility and any other Service provided by TS to the Operator in accordance with this Agreement and the relevant License Schedule, the Operator shall pay TS the fees and charge set forth in Annex C as set forth in the applicable License Schedule in relation to each Tower Facility (the "Service Fee")."

Dated: 31st October, 2022

1.18 The amount against “**Service Fee**” as provided in **Annex “C”** is fixed amount of Rs.59,400/- per Tower Facility. In addition, the formula for power charges has also been provided in the said Annex, however, the same does not indicate that payment made on account of powers charges will be counted as rental price of Tower Facility or Service Fee.

1.19 Further, the licensee also provided 2nd Amendment dated 1st September, 2018 made in the MLA wherein as per clause 7 of the 2nd Amendment, it has been provided that Annex C shall be deleted in its entirety and replaced with Annex C attached therewith. The said Annex “C” is reproduced below:

“Annex C

Purchased Tower Facilities	
License Term	7 year from the date on which Tanzanite takes physical possession of the Tower Facility under the terms of the MSA
Service Fee (applicable as of 1 st September 2018)	The Service Fee will be 62.5% of the Service Fee applicable on 1 January 2018
LTE Fee	PKR 5,000 Tower Facility for any period during which there is LTE and WIMAX equipment installed at the same time on such Tower Facility
Formula for Power Charges	To be agreed to between the Parties under a separate Letter Agreement
Escalation	The Service Fee shall be increased by 3.5% as of the 1 st of September of each year, starting from September, 2019
BTS Tower Facilities	
License Term	To be determined
Service Fee	Market Rate
Special Market Fee	In the event a Tower Facility is in a location identified on Exhibit B as a Hard Access Area or Security Challenged Area, an additional fee per month shall be added to the Service Fee
Existing Tower Facility	
License Term	To be determined
Service Fee	Market Rate
Special Market Fee	In the event a Tower Facility is in a location identified on Exhibit B as a Hard Access Area or Security Challenged Area, an additional fee per month shall be added to the Service Fee

1.20 The above referred table, specifically provides all components and consideration(s) against services / facilities to be paid by the licensee. More specifically, the formula for charging power charges has been provided separately and independently which has no nexus with regard to payment made on account of Service Fee and LTE Fee. In such circumstances, it is construed that the licensee has erred in understanding and computing charges i.e., power, security, fuel, site rentals charges under the category of inter-operator payments. It is clarified that all payment made by one operator to other operator, *per se*, cannot be

considered or treated as inter-operator payments. The nature of the charges paid or to be paid by one licensee to other licensee pursuant to any agreement will be read and considered in conjunction with the parameters as laid down the license condition(s).

1.21 For the purpose of clarity, it is relevant to point out that as per license condition No. No.4.1.2 of the license is required to pay annual license fee(s) to the Authority calculated on the basis of 0.5% (or such lesser amount as the Authority may, by Regulations, determine) of the Licensee's annual gross revenue from licensed services for the most recently completed Financial Year of the License minus inter-operator payments and related PTA/FAB mandated payments. However, initial license fee and initial spectrum fee shall not be deducted from the gross revenue. In addition, the term inter-operator as used in the said clause postulates that only payments made to other operator on account of provision of licensed services will be considered and treated as allowable deduction and not otherwise.

1.22 The core issue in the instant matter relates to understanding pertaining to payment made to various organizations on behalf of other operator(s) pursuant to agreement made by the licensee. The licensee in its letter dated 9th November, 2021 is of the view that PTA has not considered payment made on account of Tower sharing, domestic termination, and bandwidth charges as allowable deduction. Accordingly, the licensee again in its letter dated 14th April, 2022 reiterated that payment made on the request of Edotco were adjusted against tower sharing invoices as per agreed terms in line with the Agreement signed with them. Pursuant to licensee's request, the matter was again discussed in detail. However, the licensee vide its letters dated 25th August, 2022 reiterated its previous stance. It was also clarified that the deduction on account of allowable deductions including domestic termination and bandwidth charges have already been considered. Further, the licensee was again requested to reply to PTA query about outstanding liabilities involving inter-operator costs that have not been replied till date.

1.23 In this regard, the Authority is of the view that there is no dispute or issue pertaining to agreement made by the licensee with Edotco or any mechanism of payment made by the licensee. The only point of contention in the matter is to ascertain whether payment made by the licensee to non-operators falls under the category of inter-operator payments or otherwise. Since the licensee has not provided any material evidence substantiating its claim, thus in such circumstances payment made to non-operators on account of power charges, security, fuel, site rentals etc. on behalf of other operators cannot be considered or treated as inter-operator payments for the purpose of availing allowable deductions as provided in the license.

2 Order:

2.1 What has been discussed above, since the licensee could not provide any cogent reason(s) and valid justification(s) to substantiate its claim for availing allowable deduction under Inter-operator payments, therefore, the licensee is required to pay **Rs.14,723,738/-**

Dated: 31st October, 2022

including late payment additional fee on account of ARDs for the financial year ended 31st December, 2019 within fifteen (15) days from the date of receipt of this order.

2.2 In case of non-compliance of para 2.1 above, further legal action will be initiated under the applicable laws.

Maj. Gen. Amir Azeem Bajwa (R)
Chairman

Dr. Khawar Siddique Khokhar
Member (Compliance & Enforcement)

Signed on 31st day of October, 2022 and comprises of (08) pages only.