



Enforcement of order under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 against M/s Wateen Telecom Limited.

Date of Issuance of Show Cause Notice: 16th August 2011
Venue of Hearing: PTA HQs, Islamabad
Date of Hearing: 1st December 2011

The Authority present:

Dr. Mohammad Yaseen: Chairman
Dr. Khawar Siddique Khokhar: Member (Technical)

The Issue:

“Non-Payment of APC for USF Contribution”

DECISION OF THE AUTHORITY

BRIEF FACTS:

1.1 Precisely stated facts leading to initiate legal proceedings under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 (the “Act”) against Wateen Telecom Limited (the “licensee”) are that the licensee pursuant to its license bearing No.LDI-10(17)-2004 dated 26th July 2004 was mandated to establish, maintain and operate telecommunication system and provides telecommunication services in Pakistan subject to the terms and conditions contained in the license. The licensee is required to comply with the prevailing telecom regulatory laws time being in force however the licensee has failed to comply with its regulatory obligations with regard to making payment on account of APC for USF contribution which led to initiation of the said proceeding under the Act.

1.2 Under section 4(1)(k) of the Act, the Pakistan Telecommunication Authority (PTA) has been assigned a function of regulating Access Promotion Contribution (APC). In accordance with sub-rule 2 of rule 5 of Access Promotion Rules, 2004 (AP Rules) and sub-regulations (3) and (4) of regulation 6 and sub-regulation (2) of regulation 10 of Access Promotion Regulations, 2005, read with license condition 4.1.3 and 9.1.3 of the license, the licensee is obliged to deposit APC for USF contribution (the “Contribution”) within ninety (90) days after the end of the calendar month for which the payment obligation arises.

1.3 In performance of statutory functions, PTA demanded and required APC for USF contribution from the licensee for the months of December 2010 (Rs.15,143,346/-) and January 2011 (Rs.34,269,137/-). Despite various letters for making payment of the Contribution, the licensee did not pay the APC for USF contribution as stated above. Subsequently, PTA proceeded under section 23 of the Act by issuing Show Cause Notice (SCN) on 16th August 2011 requiring licensee to pay the outstanding contribution of the said months. The licensee replied the SCN wherein it stated that the matter is pending before Singh High Court and Supreme Court impugning APC regime including demand for APC for USF and APCL. The licensee further submitted that it is committed to act in accordance with

the applicable laws at all time and will comply the Authority's legitimate demand. Thus, requested not to take any action against the licensee till final decision of the case.

1.4 In order to proceed further, the matter was fixed for hearing on 1st December 2011 before the Authority. Mr. Mazahar Butt, GM CA and Mr. Sajid Hashim, Company Secretary attended the hearing on the said date. The representatives of the licensee reiterated the same point as stated in the SCN reply.

1.5 Matter heard and record perused. Scrutiny of record reveals that three court cases pending adjudication in various courts i.e. Wateen Telecom C.P.L.A 1432 of 2011 in Supreme Court of Pakistan, Wateen Telecom Vs. PTA Civil Suit No.46/2011 in Islamabad High Court and Suit No.915 of 2011 Wateen Telecom Vs. Fed of Pakistan & others in Sindh High Court. In the aforesaid litigation, the honorable courts have not stopped/ restrained the licensee from making the payment in accordance with the provisions of Access Promotion Rules/Regulation and license conditions. The Authority is of the considered view that the licensee is under an obligation to pay the contribution by virtue of license conditions, AP Rules and AP Regulations. Sub-rule 2 of rule 5 of AP Rules, sub-regulations (3) and (4) of regulation 6, and sub-regulation (2) of regulation 10 of the AP Regulations make it obligatory on the licensee to deposit APC for USF contribution within ninety (90) days after the end of calendar month for which the payment obligation arises.

1.6. The licensee was obliged to make the payment on account of APC for USF contribution but it has failed to make the payment within the given time mentioned in the AP Rules and AP Regulations, hence, charge of contravention of the provision of the license, AP Rules, and AP Regulations have been established. However, penal action cannot be taken in respectful compliance of the orders passed by honorable Sindh High court in the matter.

2. ORDER:

2.1 In view of the aforementioned, the Authority is of the view that the licensee is under an obligation to make payments of outstanding dues of Rs.49,412,483/- on account of APC for USF for the months of December 2010 and January 2011 and require the licensee to make the aforesaid payment IMMEDIATELY without any further delay.

2.2 However, the issue related to imposition of fine under regulation 10 (6) of the AP Regulations for the defaulted period shall be decided after recalling of restraining orders/disposal of the case, whichever is earlier.

2.3 In case of non-payment of the aforesaid dues as per Para 2.1 above, the matter shall be further processed as per applicable laws.

(Dr. Khawar Siddique Khokhar)
Member (Technical)

(Dr. Mohammad Yaseen)
Chairman

This order is signed on _____ and comprises 02 pages.