



**PAKISTAN TELECOMMUNICATION AUTHORITY**  
**HEADQUARTERS, F-5/1 ISLAMABAD**  
**Ph: 051-9214243 Fax: 051-2878113**

**Enforcement order under sub-section 3 of section 23 of the Pakistan Telecommunication  
(Re-organization) Act, 1996 against World Call Telecom Limited**

File No. PTA/Commercial Affairs/World Call/International Agreement with World Call 116/2006/1

Date of Issuance of Show Cause Notice: 26<sup>th</sup> May, 2010  
Venue of Hearing: PTA HQs, Islamabad  
Date of Hearing: 17<sup>th</sup> September, 2010

The Authority Present:

Dr. Mohammed Yaseen:	Chairman.
S. Nasrul Karim Ghaznavi:	Member (Finance)
Dr. Khawar Siddique Khokhar	Member (Technical)

The Issue:

"Non-payment of APC for USF charges"

**DECISION OF THE AUTHORITY**

**1. BRIEF FACTS:**

1. World Call Telecom Limited (the "licensee") was awarded a non-exclusive Long Distance International license on 3<sup>rd</sup> August, 2004 bearing No. LDI-05 (10)-2004 (the "license") issued by the Pakistan Telecommunication Authority (the "Authority") to establish, maintain and operate Telecommunication System in Pakistan on the terms & conditions contained in the license.
2. Briefly stated that the licensee has failed to make the payments for the months of November and December, 2009 including late payment charges thereon amounting to Rs 293,728,414/- (Rs.149,864,775/-+ Rs.136,459,349/- and late payment charges thereon Rs.7,404,290/- calculated upto 30<sup>th</sup> April, 2010) on account of APC for USF Contribution (calculated on the basis of traffic data submitted by the licensee for the

aforesaid months only), despite repeated demands of the Authority in contravention of the AP Rules, the AP Regulations, condition of the license and directives of the Authority, therefore, the licensee was issued show cause notice vide No. PTA/Commercial Affairs/World Call/International Agreement with World Call 116/2006/1/385 dated 26<sup>th</sup> May, 2010 under section 23 of the Act whereby required the licensee to remedy the contravention by making the payments of Rs.293,728,414/- immediately of receiving the aforesaid notice and also submit written reply to the Notice within thirty (30) days of the issuance of the Notice and explain as to why the license should not be suspended, terminated or any other enforcement order should not be passed under section 23 of the Act against the licensee.

3. The licensee replied the aforesaid notice vide its letter No.WTL-05/4-1/778 dated 25<sup>th</sup> June, 2010 and denied the allegations leveled in the aforesaid notice in the following terms:

- (a) In earlier round of litigation the Hon'ble High court held that non-payment of APC for USF within ninety days is not a violation of the Act, the rules and Regulations vide judgment dated 05-03-2010 passed in WP.No.3349/2009. The allegations made in the instant notice are in negation of High court decision. PTA is barred to raise legal and factual questions which have already been settled. PTA, if at all, has jurisdiction regarding facts and applicable law, could only adjudicate on issues which are not part of judicial determinations of the High court, thus, the notice is liable to be amended to that extent.
- (b) For the purpose of the instant reply, it highlighted facts related to previous show cause notice dated 22-02-2010. The license of the company was suspended vide PTA determination dated 7<sup>th</sup> May, 2010 which was challenged before the court. The court vide order dated 8<sup>th</sup> May, 2010 granted interim relief, which still holds the field.
- (c) Besides the aforesaid writ petition, it also filed appeal and raised the following grounds which are pending for determination by the court:
  - (i). that contribution of APC for USF is neither tax nor fee, therefore, liability if any only arises in case of receipt of payment from international clients;
  - (ii). that the nature of demand is of 'contribution' therefore it cannot be recovered under coercion;
  - (iii). that the licensees circumstances are covered under clause 12.2.1 of the license, Force Majeure, and as such the licensee cannot be obliged to pay this contribution;
  - (iv). that penal consequences as provided under section 23 of the act cannot be invoked for non-payment of this contribution;
  - (v). that there is no charging section nor any recovery mechanism provided in the Act, Rules and Regulations.
  - (vi). that penalty cannot be imposed for non-payment of this contribution as the relevant regulation, i.e., 10 (6) is *ultra vires* the Act.
  - (vii). That the aforesaid question of law are pending before the court and the same question emanates to the instant show cause notice. The Hon'ble court shall take up the matter and will deliver its judgment in due course of time.

Keeping in view the aforesaid, it requested to keep the proceedings of the said show cause notice in abeyance and legal opinion may be obtained from Ministry of Law.

4. However, prior to disposing of the aforesaid show cause notice, the licensee was given opportunity of personal hearing and was required vide letter to appear before the Authority on 17<sup>th</sup> September, 2010.

5. Mr. Umar Durrani, Director (RA), Mr. Abdul Bari Rashid (Internal counsel), Mr. Abu Zar, Director (Ops), Mr. Aamir Gulzar, Director (Engineering & Planning) and Mr. Kamil Khan, Director (GR) attended the hearing before the Authority on behalf of the licensee on the said date. The representatives of the licensee took the plea that they have already requested the Authority for permission to make the payment in installment vide letter dated 16<sup>th</sup> August, 2010, hence, donot want to defend the said show cause notice rather to seek approval of the Authority for the aforesaid payment plan, hence, the he licensee was required to withdraw all its court cases relating to APC for USF payments and submit undertaking duly notarized alongwith post dated cheques.

6. The Authority in pursuance of the request of the licensee conveyed its permission to the licensee vide PTA letter dated 22<sup>nd</sup> September, 2010 to make the payment of Rs.1,425,915,742/- on account of outstanding payments relating to APC for USF contribution for the period from July, 2009 to June, 2010 subject to following conditions:

- An upfront amount of Rs.250 million will be paid immediately;
- Remaining dues will be cleared in 10 equal monthly installments of Rs.117,591,574/- each starting from November, 2010 and ending in August, 2011;
- The installments will be subject to late payment charges;
- World Call will take back all its cases against PTA relating to payment of APC for USF dues; and
- An undertaking to the above conditions alongwith post dated cheques will be submitted by Worldcall immediately.

7. Pursuant to aforesaid direction the licensee submitted the post dated cheques alongwith under taking vide its letter dated 28<sup>th</sup> September, 2010, which are reproduced below:

*“Re: Installment Request from Worldcall Telecom Limited*

*Dear Sir,*

*This is with reference to your letter No. 04-01/2010/(AP/CA)PTA dated September 23, 2010 and our hearing before the Authority dated September 17,2010 and the subsequent meeting in your office after the hearing to finalize the plan for payment of APC for USF dues. We thank you for confirming acceptance of our request for staggering the payment of our APC for USF dues for the period from Jul/2009 to June'2010 amounting to Rs. 1,425,915,742/-. We are particularly indebted to the Authority who, during hearing had*

*listened to us with utmost consideration .and sympathy and had graciously allowed us staggered payment as per our convenience over a period of one year with an instant Initial payment of Rs. 2SOM commencing from September 20, 2010 and ending on September 20, 2011. The payment schedule extended to us is in line with the payment schedule allowed to other operator namely Wateen Telecom Limited. On the contrary in the payment plan received with your above referred letter the payment period has been reduced to eleven months commencing from September 20, 2010 and ending on August 20, 2010.*

*In light of the Authority's verdict, our consequent agreed payment schedule with your good self in your office soon after the hearing and the subsequent email dated September 24, 2010 from the honorable Member (Finance) in which he has very kindly accorded a principle endorsement to accommodate our request to follow the agreed payment Schedule we are making payment of Rs. 1,425,915,742/- through the enclosed cheques (eleven in number). Also enclosed is our undertaking as agreed.*

*We request you to please reconcile and acknowledgement of the cheques as per the above schedule of payment.*

*Thank you for your kind understanding and extended support please.*

*Without Prejudice*

#### **UNDERTAKING**

*M/s Worldcall Telecom limjted ("Worldcall"), bearing License no. LDI-02 (01)-2004 dated July 14, 2004 duly issued by/transferred by the Pakistan Telecommunication Authority' (PTA), hereby solemnly affirm and declare as under:*

- i. That Worldcall undertakes to honour its commitments to make payments under the mutually agreed payment plan shared with Pakistan Telecommunication Authority (the " Authority") on September "17, 2010 (attached herewith as Annex "A") with regards to the outstanding A.PC for USF payment.*
- ii. That Worldcall further undertakes to accept any and all decisions taken by the Authority in accordance with applicable law, in case of any default by Worldcall in making the said payments as provided in the payment plan provided in Annex "A" attached hereto.*
- iii. That Worldcall ensures that it will not go to court of law if any action is taken by the Authority in, accordance with applicable law against Worldcall for any default in making the said payments as provided in the aforementioned payment plan provided in Annex "A" attached hereto.*
- iv. That Worldcall will abide by and comply with the aforementioned with true letter and spirit.*
- v. Notwithstanding anything contained, hereof this Undertaking shall be deemed to be effective upon the acceptance of the post dated cheques to be provided pursuant to this Undertaking and the determination by the Authority as per the mutually agreed payment plan reflected in Annex "A" attached hereto. The post dated cheques siiiagl only be used for the settlement of the amounts demanded by PTA pertaining to the A PC for the USF Contribution for the period*

starting from July 2009 to June 2010  
vi. Worldcall undertakes to withdraw its W.P.9578/2010 and K.A.O. 103/2010 pending adjudication in honorable Lahore High Court Lahore against the determination dated May 07, 2010.

Worldcall Telecom Limited

		Amount Due	Payments	Outstanding Due Date
<i>Monthly AFC Installments</i>				
September, 2010	<i>Initial Payment</i>	250,000,000.00		20-Sep-2010
October, 2010				
November, 2010				
December, 2010	<i>Installment 1</i>	117,591,574.00		20-Dec-2010
January, 2011	<i>Installment 2</i>	117,591,574.00		20-Jan-2011
February, 2011	<i>Installment 3</i>	117,591,574.00		20-Feb-2011
March, 2011	<i>Installment 4</i>	117,591,574.00		20-Mar-2011
April, 2011	<i>Installment 5</i>	117,591,574.00		20-Apr-2011
May, 2011	<i>Installment 6</i>	117,591,574.00		20-May-2011
June, 2011	<i>Installment 7</i>	117,591,574.00		20-Jun-2011
July, 2011	<i>Installment 8</i>	117,591,574.00		20-Jul-2011
August, 2011	<i>Installment 9</i>	117,591,574.00		20-Aug-2011
September, 2011	<i>Installment 10</i>	117,591,574.00		20-Sep-2011
		<i>Total: 1,425,915,740.00</i>		

8. Since the licensee has not opted to defend the show cause notice and accepted the liability by making request for installments, hence, there is no need to respond to the observations raised by it in its aforesaid reply, being a consent order.

9. Since late payment charges are not included in the aforesaid payment plan, late payment charges shall be paid regularly in addition to installment plan, in accordance with the Regulations.

#### **10. ORDER:**

10.1. Keeping in view the above mentioned facts, the written commitment, positive attitude and since the licensee has made the upfront payment of Rs.250 million out of Rs.1,425,915,742/- and deposited ten post dated cheques of the remaining amounts alongwith undertaking as per the requirements of the Authority communicated vide letter dated 22<sup>nd</sup> September, 2010 and also withdrew its Writ petition No.9578/2010 while its FAO.103/2010 is still pending adjudication before Lahore High Court, Lahore, hence, the subject show cause notice is disposed of with direction to withdraw the said FAO.103/2010 as per its commitment at the earliest and submit copy of the court orders accordingly.

10.2. However, in case of non-encashment/dishonoring/bouncing of any of the aforesaid cheque(s) along with late payment charges, its license No.LDI-10(17)-2004 dated 26<sup>th</sup> July, 2014 **shall stand suspended** from the date of occurrence of non-encashment/dishonouring/bouncing of each cheque alongwith non-payment of late payment charges thereon, without further notice,

which shall be restored on receiving the defaulted amount, whichever the case may be.

10.3. Without prejudice to the aforesaid the Authority, in case of dishonouring/bouncing of any of the cheques provided by the licensee vide its letter dated, also reserves the right to initiate proceedings under section 489 (F) of PPC and by filing suit for recovery under Order XXXVI of CPC or to recover the amount as arrears of land revenue under section 30 of the Act.

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S.Nasrul Karim A. Ghazanvi  
Member (Finance)

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Dr. Khawar Siddique Khokhar  
Member (Technical)

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Dr. Mohammed Yaseen  
Chairman

This determination is signed on \_\_\_\_\_ and comprises 06 pages.