



Government of Pakistan
PAKISTAN TELECOMMUNICATION AUTHORITY
HEADQUARTERS, F-5/1, ISLAMABAD
http://www.pta.gov.pk

Appeal before the Authority under sub-section 2 of Section 7 of the Pakistan Telecommunication (Re-organization) Act, 1996 in the matter of M/S. AMTECH INTERNATIONAL (PVT.) LIMITED

File No.DIR(CVL/PTA/286/2001

Date of impugned order:	7 th October 2008 17 th March, 2009
Date of Appeal:	6 th November 2008 24 th March 2009
Date of Hearing:	24 th November 2008 11 th November, 2009
Venue of Hearing:	PTA HQs, Islamabad

The Authority present:

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

The Issue:

"Non payment of license fee and imposition of terminal charges"

Decision of the Authority

1. Brief Facts:

1.1. M/s. **Amtech International (Pvt.) Limited** (the "Appellant") is a private limited company incorporated under the Companies Ordinance, 1984 and is engaged in the business of Vehicle Tracking Services pursuant to the non-exclusive licence No.DIR(C)/L/PTA/289/2001

dated 16th October, 2001 which was later on converted into non-exclusive Data Class Value Added Service License vide No.DIR(L)/CVAS-270/2007 dated 18th August, 2008 (the "license"), issued by the Pakistan Telecommunication Authority (the "Authority") to establish, maintain and operate Data Class Value Added Services in Pakistan on terms and conditions contained in the license.

1.2. Brief facts of the case are that the licensee was required vide letter No.F.I 2-342/99/Pagassus/RBS dated 7th October, 2008 (the "1st impugned demand note") by Director (Finance) (the "Officer of the Authority") to deposit Rs.95,472,500/-on account of wireless license fee calculated on the basis of Base Stations and Mobile Stations installed and operated by the licensee for the period starting from 1st January, 2007 to 30th June, 2009. The 1st impugned demand note is reproduced hereunder:

"Subject: Payment of Wireless License Fee

According to our record following amount (s) are outstanding against you:

Sr	Equipm ent	Year	Quantit y	Quenci es	Rate	Amou nt	Rebate	Balance Payable
<i>Network: VHP Issued On: 1 Jan 2007</i>								
1	Base Station	2007	5	2	10,0 00/-	100,00 0/-	0%	100,000/-
2	Mobile Station	2007	8459	2	2,50 0/-	42,295 ,000/-	0%	42,295,000 /-
<i>Network: VHP Issued On: 1 Jan 2008</i>								
3	Base Station	Jan 2008- Jun 2008	5	2	10,0 00/-	100,00 0/-	0%	50,000/-
4	Base Station	2008- 2009	5	2	10,0 00/-	100,00 0/-	0%	100,000/-
5	Mobile Station	Jan 2008- Jun 2008	7057	2	2,50 0/-	35,285 ,000/-	0%	17,642,500 /-
6	Mobile Station	2008- 2009	7057	2	2,50 0/-	35,285 ,000/-	0%	35,285,000 /-
<i>Up to 2007 billing was carried on Calendar Year basis which has been changed to Financial Year from 2008. This Bill is For the period ending 30th June 2009.</i>								
<i>License is no more required for endorsement and only payment acknowledgement will be issued for the year.</i>								
Total Amount							95,472,5007-	

2. You are requested to make the payment of Rs. 95,472,50077- through bank draft/pay order only in the name of Pakistan Telecommunication Authority latest by October 27, 2008, addressed to Director (Finance), PTA HQ, Islamabad.

3. *If the said amount is not cleared by the due date, PTA reserves the rights to take action under Act, Rules, Regulations which may lead to cancellation of your license. "*

1.3. Being aggrieved of the 1st impugned demand note, the Appellant filed the appeal under sub-section (2) of Section 7 of the Pakistan Telecommunication (Re-organization) Act, 1996 (the "Act"). vide its letter dated 6th November, 2008 The Appellant's contention in the appeal is that the first and last bill it received on account of wireless license fee was of Rs.36,0007- for the period from January, 2001 to December, 2006 which was duly paid by him, whereas the next bill is of Rs.95,472,5007-, which is horrifying in the context that suddenly the amount has been increased from Rs.36,0007- (for six years) to Rs.95,472,5007- (for 2.5 years). The Appellant further stated that it is a small company and its total gross revenue for the year is much less than this amount. It neither has kept any provision for this, nor has the capability to pay this, as it has provision for wireless license fee based on the previous billing, which for six years was Rs.36,0007-.

1.4. Furthermore, the Appellant informed that (i) it charges a maximum of Rs.50007- per annum, as service charges from its customers; and 40% of such customers do not pay the following year despite repeated verbal as well as written reminders (ii) its business model is based on recurring revenue/volume and not margins. As a result of the above it has incurred loss of Rs.99,214,3097- (as is reflected in its audited accounts for the year ending 30th June, 2007 already submitted) (iii) it has been ordered by PTA to change the UHF frequency previously allocated to a newly allocated frequency. It is already taking steps to conform to the order of PTA. It is pertinent to mention that this will cost the company about Rs.180 to 200 Millions due to the following reasons: (a) each new VLU will cost more than Rs.20,0007-; (b) there will be an additional logistic and administrative cost of more than Rs.50007- per customers to recall and do the change. On the basis of aforesaid reasons it requested the Authority to withdraw the impugned demand note and to bill it according to previous regime which was up to December, 2006.

1.5. The matter was, therefore, fixed for hearing on 24th November, 2008. Mr. Ch. Nasir Mahmood (CEO) of the licensee attended the hearing and reiterated the same facts as mentioned at Para 1.3 and 1.4 above. In addition to that the licensee informed the Authority that the compliance with its determination dated 15th October, 2008 concerning frequency retuning at Karachi is already in progress and has, thus, shut down three base-stations while rest will be completed in three months. The department concerned assisted the Authority regarding the impugned demand note stating that it is for the period from 1st January, 2007 to 30th June, 2009 and is calculated and demanded according to the approved rates effective from 1st January, 2001. On a query raised by the Authority as to the regime forming the basis of said calculations the Licensing Division informed that it has been based on VHP regime as approved by the Authority. The Authority constituted a committee comprising of officers of the Authority from Licensing and Finance Divisions of the Authority to look into the matter and report payable dues of the licensee.

1.6. The payable dues of the licensee were reviewed by the committee in the light of prevailing regulatory regime for UHF band for vehicle tracking services and are recalculated on

the basis of rates approved by the Authority for wireless license vide decisions dated 25th February, 2009 keeping in view two components: (i) spectrum fee, (ii) Per Terminal Charges, therefore, annual payable dues for the period from 1st January, 2007 to 30th June, 2009 are arrived at Rs.3,996,713/-, which were communicated to the licensee vide letter dated 17th March, 2009 (the 2nd impugned demand note) for payment within fifteen days. The detail of the formula and calculations are given below:

Spectrum:	455.300 MHz /465.300 MHz (old)
	458.660 MHz/ 468.650 MHz (new)
Total Bandwidth:	50 KHz
Spectrum fee:	Rs. 74125/year @ 1482.51/- per KHz per year
Per terminal Charges:	Rs.200 7-

From 1st January, 2007 to 31st December, 2007:

No. of Terminals for the year 2007:	8464
Terminal Charges:	Rs. 16928007-
<u>Spectrum charges:</u>	<u>Rs. 74125/-</u>
Total:	Rs. 17669257-

11. From 1st January, 2008 to 30th June, 2008:

No. of Terminals for the year:	7062
Terminals Charges:	Rs. 7062007-
<u>Spectrum charges</u>	<u>Rs. 37063/-</u>
Total:	Rs. 7432637-

iii. From 1st July, 2008 to 30th June, 2009:

No. of Terminals for the year:	7062
Terminal Charge:	Rs. 14124007-
<u>Spectrum charges:</u>	<u>Rs. 741257-</u>
Total:	Rs. 14865257-

Grand Total charges (i+ii+iii):Rs.39967137-

↗nd

1.7. The licensee in response to the 2 Impugned demand note deposited Rs. 185,3137- against spectrum charges, however, it requested vide letter dated 24th March, 2009 to waive off per terminal charges @ Rs.200/-. The said letter of request by the licensee is reproduced hereunder *in verbatim*:

"Subject: 1. Appeal filled by M/s Amtech Int. (Pvt.) Ltd before the Authority under sub Section 2 of section 7 of the Pakistan telecommunication (Re-organization) Act, 1996, being aggrieved of demand note dated 7th October, 2008 of Rs.95,472.500/-

2. Request of M/s Amtech Int. (Pvt.) Ltd for waiving of per terminal charges of Rs.200/- by PTA against our company.

Respected Sir,

We most respectfully take this opportunity to refer to letter No. F.I 2-34299/Pagassus/RBS/2 dated 17 March, 2009 received from Director RBS & Director Finance PTA HQs Islamabad on the subject noted above.

In this connection, we would like to intimate your kind honour and goodself that in compliance with some partial directions contained in the PTA letter referred to above, we are forwarding herewith our Pay Order No. 1771 109 dated 24 March 2009, for Rs. 185,3131- (One Lac Eighty Five Thousand Three Hundred & Thirteen Only) with regard to spectrum charges (for the period from 1st January, 2007 to 30th June, 2009) to be drawn from the Standard Chartered, LDA Plaza branch, Lahore in favour of Pakistan Telecommunication Authority, Islamabad, which is shown against our company and may also be considered as full & final payment ending up to 30th June, 2009.

As regards, per terminal charges of Rs. 200/- which have been demanded from our company to be deposited in PTA above referred letter, is concerned we would also like to state as under:

- 1. That no such terminal charges have been imposed to any other company which is dealing with the same business like our company.*
- 2. That no such imposition of terminal charges has been mentioned in the terms and conditions of our Company's License No. DIR (L) CVAS-270/2007 dated 18th August, 2008 granted by Pakistan Telecommunication Authority.*
- 3. Moreover, it is also worth-mentioning that our company M/s Amtech Int. (Pvt) Limited has never received terminal charges from any of our customer. As such imposing of terminal charges against our company is quite unlawful, unjustified, unreasonable and inappropriate which needs to be waived straightway by your kind honour.*
- 4. It is also pertinent to mention here that we had forwarded city wise list/details of number of vehicles/customers to Mr. Ahmed Shahmim Pirzada (Director RBS), PTA Islamabad on 3rd July, 2008 (copy enclosed for ready reference) which were not exact figures/details as it was submitted on the basis of approximation/guess. In the said list 40% terminals were disconnected due to non-payment before this date. Moreover, we change the VLL'/terminal 25% to 30% per month on GSM base.*

5. *It is further submitted that we charge a maximum of Rs.5,000/- per annum, as service charges from our customers, 40% of such customers don not pay the following year despite repeated verbal as well as written reminders.*

In the light of above, we therefore, approach and make following request your gracious honour:

- i. To reconsider and review decision of imposition of unjustified per terminal charges ofRs. 200/- by PTA against our company immediately.*
- ii. That the unlawful and unjustified imposition per terminal charges of Rs. 200/-as shown against our company in the aforementioned PTA 's letter may very kindly be waived keeping in view above, mentioned, cogent reasons at the earliest to save our company from unnecessary financial big loss.*
- Hi. It would not be out of place to bring to your kind notice again that, we have already borne/will bear huge Financial burden of Rs. 180 to 200 millions cost of change the frequencies as each new VLU will cost us more than Rs. 20,000/- each and thereof will be additional logistic and administrative cost of Rs. 5, 000/- per customer to recall and necessary change and enabling our company to continue our business activities/affairs in a best possible manner.*
- iv. It is also pertinent to mention here that if (God Forbid) we are unsuccessful in changing our present system to the new frequency due to hardware/software issues, then our company will have to suffer even greater Financial loss (4 to 5 Million USD) to replace the existing system with altogether new system.*

Thanking you in anticipation and assuring you as always of our best corporation in this regards. "

1.8 During the pendency of said proceedings the license of the company was terminated vide letter dated 17th March, 2009 due to non-compliance of determinations dated 15th October, 2008 and 13th January, 2009 passed by the Authority under section 23 of the Act which was later on restored vide determination dated 2nd September, 2009 in furtherance of court orders.

1.9 Subsequently the request dated 24th March 2009 was taken up treating it as continuation of appeal proceedings which could not be culminated due to termination of license of the licensee. A hearing was fixed on 11th November, 2009 vide hearing notice dated 27th October 2009. Mr.Nasir Mehmood Bhattar, CEO, along with Mr Tahir Saleem (Director) appeared before the Authority on the fixed date and reiterated the same position as was communicated vide their letter dated 24th March, 2009. Keeping in view the arguments of the licensee the Authority again constituted a committee comprising officers from Licensing and Law Division to analyse the matter and put recommendations to the Authority.

2. Findings of the Authority:

2.1. Since the first impugned demand note issued by the officer of the Authority was based on VHP regime which was not applicable on vehicle tracking services, therefore, the Authority hereby accept the instant appeal and set aside the 1st impugned demand note.

2.2. Subsequently the officers of the Authority issued a second impugned demand note based on UHF regime and recalculated the payable dues of the licensee on the basis of rates approved by the Authority for wireless license vide decisions dated 25th February, 2009. Since the decision of the Authority has to be implemented prospectively hence the Authority hereby set aside the 2nd impugned demand note too as it applied the decision retrospectively when the regime was not in vogue.

2.3. The Authority being cognizant of the fact that spectrum is a scarce resource and must be utilized by the licensee efficiently, and in case of non-usage and underusage of the spectrum the Authority reserves the right to withdraw the same. Based on this fact the Authority has devised and implemented across the board a new regime for UHF frequency spots to be utilized for Vehicle Tracking Service while considering two components: spectrum charges and terminal charges for calculation of Wireless License fee for VTS, which is to be implemented from 25th February 2009 onwards. However per terminal charges shall be applicable in case the terminals are connected or operated by using the assigned UHF spectrum.

2.4. Under Section (4) (d) of the Pakistan Telecommunication (Re-Organization) Act 1996 one of the functions of the Authority is to promote the availability of a wide range of high quality, efficient, cost effective and competitive telecommunication services throughout Pakistan. Inline with foregoing since Vehicle Tracking Services can be provided by using other cheap and cost effective technologies such as GSM, therefore prior to establishing the aforesaid regime for UHF services Authority has considered the component of terminal charges keeping in view the value of spectrum and its efficient use so that such valuable scarce resource can not be let unused or underused.

2.5. Keeping in view the prevailing regulatory regime, decision of the Authority dated 25th February 2009, the annual license fee for the period from 1st January, 2007 to 31st December, 2008 have been calculated which arrived at Rs.12000/- @ Rs 6000 per annum. The licensee has already paid a sum of Rs. 1,853,137/-, after deducting Rs 12000/- the balance of Rs 173,313/-remains with the Authority to be adjusted against the future liability of the licensee in accordance with new charging regime which is effective from 25th February, 2009.

3. Order of the Authority:

3.1 Foregoing in view your appeal stands disposed off in terms of findings of the Authority and impugned demand notes dated 7th October 2008 and 17th March, 2009 issued by the officers of the Authority are hereby set aside.

3.2. The licensee is hereby directed to provide the exact number of vehicle tracking units working on allocated spectrum as well as on GSM technology along with the documentary evidence including but not limiting to audited accounts, agreement with GSM operators,

payment made to GSM operators etc in support of his claim regarding number of vehicles on UHF/GSM based network within fifteen (15) days of this order.

3.3. The RBS Directorate is instructed to issue the revise demand note for the period from 1st July 2009 to 30th June 2010 in accordance with the approved UHF regime which is effective from 25th February 2009.

3.4. Incase of non-compliance of Para 3.2 above, the action under Pakistan Telecommunication (Re-Organization) Act 1996 will be initiated.

(S. Nasrul Karim A. Ghaznavi)
Member (Finance)

Dr. Khawar Siddique KhokharJ
Member (Technical)

(Dr. Mohammed Yaseen)
Chairman

Signed on 20th day February, 2010 and comprises of (8) pages.