



PAKISTAN TELECOMMUNICATION AUTHORITY
HEADQUARTERS, F-5/1 ISLAMABAD
<http://www.pta.gov.pk>

Enforcement Order under Section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 against Multinet Pakistan (Pvt.) Limited

No.PTA/Finance/WLL/Multinet Pakistan/503/2006

Date of Issuance of Show-Cause Notice: 3rd June, 2010
Date of Hearing: 7th October, 2010
Venue of Hearing: PTA HQs, Islamabad

The Authority Present:

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

The Issue:

“Failure to submit Annual Audit Accounts and payment of Annual Regulatory dues”

Decision of the Authority

1. Brief Facts

1.1. **Multinet Pakistan (Pvt.) Limited** (the “licensee”) was awarded non-exclusive license No. LL-32-2004 dated 24th September, 2004 for KTR Region and No.LL-22-2004 dated 16th July, 2004 for ITR,NTR-I, NTR-II, RTR, HTR, GTR, LTR, CTR, FTR, MTR, STR-I, STR-V and WTR Regions (collectively the “license”) by Pakistan Telecommunication Authority (the “Authority”), to establish, maintain and operate Telecommunication system and to provide Telecommunication services in the licensed regions subject to the terms and conditions contained in the license.

1.2. As a licensee of the Authority, Multinet Pakistan (Pvt.) limited was required to comply with the provisions of the prevailing regulatory laws comprising of the Pakistan Telecommunication Authority (Re-organization) Act 1996 (the “Act”), the Pakistan Telecommunication Rules, 2000 (the “Rules”), the Pakistan Telecommunication Authority (Function & Powers) Regulations, 2006, and the terms & conditions of the license. Whereas in this case the licensee has violated condition 4.1.2 (a), 4.1.3, 4.2.1, 4.2.2, 4.2.4, 6.4.3 and 4.2.3 read with clauses 3.4 and 3.6 of its license, sub-regulation (6) and (7) of regulation 23 of the Pakistan Telecommunication Authority (Function & Powers) Regulations, 2006, by failure in submitting annual audited accounts and paying annual license fee and contributions (i.e. ALF, R&D and USF) within 120 days of the end of financial year to which such fees and contributions relates.

1.3. Since the licensee has failed to submit its annual audited accounts alongwith annual regulatory fees and contributions (ALF, R&D and USF) for the years ended on 31st December, 2009 including late payment charges till date, despite repeated demands of the Authority, but all in vain. Hence, the Authority issued Show Cause Notice (the "Notice") dated 3rd June, 2010 under section 23 of the Act whereby required the licensee to remedy the contravention by submitting annual audited accounts alongwith payment of annual regulatory fees and contribution (ALF, R&D and USF) including late payment charges (@2% per month or part thereof) for the years ended on 31st December, 2009 within seven days and also to 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.

1.4. In response to aforesaid notice the licensee vide its letter dated 8th June, 2010 submitted its annual audited accounts for the year ended on 31st December, 2010. The Finance Division of PTA calculated the annual regulatory dues and contributions for the year ended on 31st December, 2009 on the basis of aforesaid annual audited accounts, which arrived at Rs.6,009,236/-, hence, the licensee was required vide letter No. PTA/Finance/LDI/Multinet Pakistan/575/2006 dated 21st September, 2010 and corrigendum vide letter No. PTA/Finance/LDI/Multinet Pakistan/575/2006 dated 19th October 2010 to make the payment of aforesaid dues immediately. The licensee made the partial payment of Rs.2,652,243/- vide its letter dated 5th October, 2010 and disputed the remaining amount on the ground of IRU and O&M related services for which it stated no license fee is required, which fact was clarified vide PTA letter dated 12-10-2010 and requested it to clear the remaining outstanding dues.

1.5. Since the licensee has not deposited the remaining amount of outstanding dues despite clarification in the matter, therefore, before passing an enforcement order a Hearing Notice dated 27th September, 2010 was issued and served on the licensee whereby informed the licensee to attend the hearing dated 20th October, 2010.

1.6. Mr. Enver A Ferzan, Director (Finance), representative of the licensee, appeared before the Authority on the said date. During the hearing the licensee reiterated the same position as was communicated earlier vide its letter dated 5th October, 2010. The Authority clarified that since it is earning revenue under the license, hence, the entire revenue shall be considered for the purpose of regulatory dues less inter operator and PTA/FAB mandated payments. When the licensee was confronted that when it is making the remaining payments it stated that it will approach its management and let the Authority know about the payments. The Authority directed the licensee to submit its reply within seven days. In response to aforesaid directions the licensee submitted its reply vide letter dated 26th October, 2010 in the following terms:

"Subject:- PAYMENT OF ANNUAL REGULATORY DUES FOR THE YEAR ENDED DECEMBER 31, 2009"

Dear Sir,

Further to our hearing against PTA letter No. PTA/Finance/WLL/Multinet Pakistan/503/2006/1111 dt. September 27, 2010 on the subject matter held on October 20, 2010 in PTA Headquarters, we are of the view that:

- 1. the revenue generated on the licensed services whereby such services are rendered to another licensed operator who is under the obligation of same license conditions, then the first party who furnishes the services may not be*

subject to license regulatory fee on the revenue of such services as the same is chargeable from the second party who utilizes these services;
(2). the revenue generated from the Operations Maintenance (O&M) of /and Dark Fiber core(s) does not fall under the specified licensed services and therefore may not be subject to any regulatory fee;

We therefore, pray to the authority that in the light of the above, Multinet may be exempted from the regulatory fee on the services mentioned above (2).”

2. Findings of the Authority:

- (i). the arguments contained in its letter dated 26th October, 2010 “(1) the revenue generated on the licensed services whereby such services are rendered to another licensed operator who is under the obligation of same license conditions, then the first party who furnishes the services may not be subject to license regulatory fee on the revenue of such services as the same is chargeable from the second party who utilizes these services; (2) the revenue generated from the Operations Maintenance (O&M) of /and Dark Fiber core(s) does not fall under the specified licensed services and therefore may not be subject to any regulatory fee” are based on incorrect information and misunderstanding of the license conditions and the provisions of the Act, hence, are not acceptable to the Authority. The Authority has already clarified during hearing that since it is earning revenue under the license, therefore, the entire revenue earned under the license shall be considered for the purpose of regulatory dues less inter operator and PTA/FAB mandated payments. Under condition 4.1.2 (a) of the license, the licensee is obliged to pay the following annual regulatory fees to the Authority:
- (a). *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 Licensee 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.*
- 4.1.3. *In addition to the fees payable hereunder, the Licensee shall pay to the Authority all fees required to be paid under the Act, Rules and Regulations including without limitation, under the Access Promotion Rules, 2004.*
- iii. Under clause 4.2 of the LDI license the licensee was required as under:
- 4.2.1. *The Licensee shall pay all annual fees to the Authority and make contributions to the Funds within 120 days of the end of the Financial Year to which such fees relate.*
- 4.2.2. *The Licensee shall make all contributions referred to in sections 3.3.1 and 3.4.1 within 120 days of the end of the Financial Year to which such contributions relate.*

4.2.3. *In addition to any other remedies available to the Authority, late payment of fees shall incur an additional fee calculated at the rate of 2% per month on the outstanding amount, for each month or part thereof from the due date until paid.*

iv. *under clause 3.5 of the LDI license, In any Financial Year of the Licensee shall make contribution to the Research and Development Fund established by the Federal Government in the amount calculated on the basis of 1% of the Licensee's annual gross revenue from Licensed Services for the most recently completed Financial Year of the Licensee 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.*

v. *under clause 3.6 of the LDI license, the Licensee shall contribute to the Universal Service Fund in the amount calculated on the basis of 1.5%(or such lesser amount as determined by the Rules) of the Licensee's annual gross revenue from Licensed Services for the most recently completed Financial Year of the Licensee 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.*

(ii). Since, the licensee is earning revenue by furnishing its services to another licensee who is utilizing the same services and both are enjoying the said services under the scope of their licenses, therefore, both are obliged to pay the annual regulatory fees and contributions as per the percentage given in their licenses according to the formulas given in the license.

(iii). the revenue earned on the services related to Dark Fiber Core (s) and Operations and Maintenance thereof are very much covered under the license. Licensed services means all mandatory services and other telecommunication services not prohibited under the license. Under the Act no one can establish, maintain or operate any telecommunication system or to provide any telecommunication services without a license issued by the Authority. Dark Fiber Core(s) falls within the definition of "Telecommunication system" which cannot be established, maintained or operated without a valid license otherwise it would constitute an offence under section 31 of the Act, therefore, earning of any revenue from rendering the services of dark fibre core(s) to other operators/users falls within the definition of gross revenue.

3. ORDER

3.1. Keeping in view the above mentioned facts coupled with the available record, the Authority hereby dispose of the subject Show Cause Notice in the following terms:

(i). The licensee, Multinet Pakistan (Pvt.) Limited is hereby directed to pay the balance outstanding dues of **Rs.3,608,900/-** on account of annual regulatory fees and contributions (ALF, R&D and USF Contributions including additional fee @2% per month or part thereof upto 31st December, 2010) for the year ended

on 31st December, 2009, within thirty days of the issuance of this order. In case of failure strict legal action shall be initiated against the licensee.

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

(Dr. Khawar Siddique Khokhar)
Member (Technical)

Signed on 10-01-2011 and comprises 04 pages