



PAKISTAN TELECOMMUNICATION AUTHORITY
HEADQUARTERS, F-5/1 ISLAMABAD
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Enforcement order under sub-section 3 of section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 against Warid Telecom (Pvt.) Limited

File no. PTA/Finance/Finance/Mobile/Warid7/2006/

Date of Issuance of Show Cause Notice: 2nd July, 2010

Venue of Hearing: PTA HQs, Islamabad
Date of Hearing: 31st August, 2010

The Authority present:

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

The Issue:

“Non payment of 2nd installment of Initial license fee of US\$ 14.55 million”

DECISION OF THE AUTHORITY

BRIEF FACTS

1. **Warid Telecom (Pvt.) Limited** (the “licensee”) is a public limited company incorporated under the Companies Ordinance, 1984 and is engaged in the business of cellular mobile services in Pakistan pursuant to non-exclusive license No.MCT-02/RBS/PTA/2004 dated 26th May, 2004 (the “license”) issued by the Pakistan Telecommunication Authority (the “Authority”) to establish, maintain and operate licensed system and to provide licensed cellular mobile services in Pakistan on the terms & conditions contained in the license.
2. As a licensee of the Authority, the licensee is required to comply with the provisions of prevailing regulatory laws comprising of the 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.

3. Clauses 4.1.1.2 read with clause 4.4.2 of the license and sub regulation (6) and (7) of regulation 23 of the Regulations make it obligatory on the licensee to pay remaining 50% of initial license fee in ten equal annual installments payable in US\$ or equivalent in Pakistan Rupees (*in accordance with the conversion formula provided in clause 4.1.1.2*) within due date, i.e., 26th May each year. In addition to any other remedies available, late payment of all fees including initial license fee shall incur an additional fee calculated at the rate of 2% per month or part thereof on the outstanding amount from the due date until paid.
4. The timeline for payment of ten annual installments of aforesaid remaining 50% of initial license fee was extended pursuant to Economic Coordination Committee's decision No.ECC-63/4/2005 dated 26th April, 2005 and was thus made effective from May, 2009 each year. The licensee was reminded and required vide PTA letter No.PTA/Finance/Mobile/Warid7/2006 dated 12th May, 2010 to pay 2nd Installment of US\$ 14.55 million by 21st May, 2010, on account of initial license fee, but in vain, hence, the licensee has contravened the aforesaid provisions.
5. Section 23 (1) of the Act empowers the Authority to issue show cause notice in case where a licensee contravenes any provision of the Act, the rules made thereunder or any term and condition of the license and in case it fails to satisfy the Authority or remedy the contravention, any of the punishments provided in sub-section (3) of section 23 of the Act may be imposed on it.
6. Since the licensee has not paid the aforesaid dues within the timelines, hence, it has contravened the aforesaid provisions, therefore, the Authority issued Show Cause Notice (the "Notice") dated 2nd July, 2010 under section 23 of the Act whereby required the licensee to remedy the contravention by making the aforesaid payments immediately 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.
7. The licensee submitted its reply to the aforesaid notice vide letter dated 19th July, 2010 and denied the allegations and took the stance that "*The 2nd installment of Initial License Fee was due on 26th May 2010. However as per clause 4.4.4 of the license, proceeding to suspend the license may only be initiated if the licensee fails to pay the installment of the remaining Initial License Fee within 180 days after the due date of payment of Initial License Fee, which period has yet not expired. Therefore the Notice cannot be issued under sub section (1) of section 23 of the Act before expiry of 180 days from the due date of payment of 2nd installment of remaining Initial License Fee.*" It further stated that "*The licensee is committed to make payment of 2nd installment of Initial License Fee within grace period provided under the license, as mentioned above.*", and on the basis of aforesaid reply it requested to withdraw the aforesaid show cause notice and drop the proceedings against it.
8. Since the reply was not satisfactory, therefore, before passing an enforcement order a Hearing Notice dated 16th August, 2010 was issued and served on the licensee whereby the licensee was informed to attend the hearing on 31st August, 2010.

9. Mr. Omer A. Haider, (GM), Mr. M. Naeem (Litigation Manager) and Mr. Amir Shahid, representatives of the licensee, appeared before the Authority on the said date. During the hearing the licensee reiterated the same facts as mentioned in Para 7, above, and again took the plea that it has not violated any provision of the law and the license on the ground that it has the option to pay within 180 days as per clause 4.4.4 of the license. The Authority did not accept the plea of the licensee that it has not contravened the license condition as it has the option to make the payment within 180 days as given in the license, hence, directed the representatives of the licensee to contact its management for seeking instructions on when it is going to make the payment and submit the reply within a period of seven days to PTA and they were informed that the decision will be passed on receiving the aforesaid reply. In response the licensee vide its letter dated 06-09-2010 requested for audience of Chairman by the Member of Board of Directors and CEO of the licensee instead of making the payment. The meeting was convened on 15th September, 2010. The licensee vide its letter dated 17th September, 2010 requested to make the payment of Initial License Fee of US\$14.55 million and outstanding regulatory fees in nine (9) installments, which was considered, but regretted by the Authority on the ground that the Initial License Fee is already payable in ten (10) equal annual installments , installments of the installments cannot be granted, which, if allowed, will be discriminatory and unfair to the other operators and will also deprive the national exchequer of the due amounts, therefore, the licensee was directed to clear the aforesaid dues immediately vide letter No. PTA/Finance/Warid7/2006 dated 24th September, 2010, but till date it failed to clear the aforesaid payable dues despite clear directions of the Authority.

10. Findings of the Authority:

- (i). Since the licensee has failed to make the payment of 2nd installment of initial license fee of US\$14.55 million within due date, i.e., on or before 26th May, 2010, despite directions of the Authority, hence, it contravened condition 4.1.1.2 read with clause 4.4.2 of the license and regulation 23 (6) (7) of the Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006, for which the subject show cause notice was rightly issued.
- (ii). Regarding Clause 4.4.4 of the license it is clarified that this clause provides a circumstance that the license may be suspended in case the licensee fails to pay initial license fee/annual license fee within 180 days of the due date for the payment, but it does not grant option to the licensee to keep the outstanding payment pending till lapse of 180 days and wait for suspension of its license by the Authority.
- (iii). Furthermore, under section 23 of the Act there are four kinds of punishments: (i) imposition of fine, (ii) suspension of license, (iii) termination of license, (iv) imposition of additional conditions, and (vi) appointment of administrator, and discretion lies with the Authority to pass any of the punishments after recording reasons in case the licensee is found contravening the license conditions.
- (iv). In its response to the notice and in hearing dated 31st August, 2010 it committed to pay the aforesaid amount within a period of 180 days from the due date alongwith additional fee @ 2% per month or part thereof, but contrary to the aforesaid commitment during its meeting with the Chairman dated 15th September 2010 and vide letter dated 17th

September, 2010 the licensee requested for permission to make the payment in nine (9) installments, which conduct of the licensee has shaken the confidence of the Authority in the licensee.

- (v). The aforesaid default of 2nd installment of initial license fee if remained continued after lapse of 180 days from the due date then it shall amount to persistent violation of not complying with the aforesaid provisions of the license as mentioned in 10 (i), above, for the purposes of section 23 of the Act.

11. ORDER

- 11.1. Keeping in view the above mentioned facts coupled with the available record and the fact that the period of 180 days has also lapsed on 21st November , 2010, therefore, the Authority hereby passes the following order:

(i). The licensee, Warid Telecom (Pvt.) Limited is hereby directed to pay the outstanding dues on account of 2nd installment of initial license fee of US\$14.55 million alongwith additional fee (@ 2% per month or part thereof) by **21st December, 2010** (within thirty (30) days from 21st November, 2010).

(ii). In case of failure of the licensee to pay the aforesaid amount of 2nd installment of initial license fee including additional fee (@2% per month of part thereof) as provided in Para 11.1 (i) above, taking it as persistent violation, the Authority will take strict legal action against the licensee under section 23 of the Act and the subject show cause notice will be disposed of accordingly.

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

(Dr. Khawar Siddique Khokhar)
Member (Technical)

(Dr. Mohammed Yaseen)
Chairman

12. This determination is signed on 22-11-2010 and comprises of 4 pages.