



Enforcement order under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 against M/s ADG LDI (Pvt.) Ltd.

Date of Issuance of Show Cause Notice: 17th January 2011, 8th June 2011, 10th August 2011, 9th September 2011, 14th October 2011, 3rd November 2011, 9th December 2011, 13th March 2012 and 16th April 2012
Venue of Hearing: PTA HQs, Islamabad
Date of Hearing: 13th October 2011 and 29th May 2012

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 ADG LDI (Pvt.) Limited” (the "licensee") is a private limited company incorporated under the Companies Ordinance, 1984 and is engaged in the business of operating telecommunication system as a Long Distance International (LDI) Operator pursuant to the non-exclusive License No. LDI-08(08)-2004 dated 12th August 2004 (the “License”) issued by Pakistan Telecommunication Authority (the “Authority”) to establish, maintain and operate a Telecommunication System and provides the licensed services in Pakistan subject to the terms and conditions contained in the license.

1.2 Under section 4(1)(k) of the Pakistan Telecommunication (Re-organization) Act, 1996 (the “Act”), the Pakistan Telecommunication Authority (PTA) is mandated to regulate 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 conditions No.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 for the months August 2010 (Rs.42,680,348/-), September 2010 (Rs.23,806,915/-), January 2011 (Rs.245,008/-), March 2011 (Rs.11,215,795/-), April 2011 (Rs.51,488,923), May 2011 (Rs.8,742,019), June 2011 (Rs.16,333,676), July 2011 (Rs.3,778,816), August 2011 (Rs.40), September 2011 (Rs.492,340), October 2011 (Rs.6,611,546) and November 2011 (Rs.1,695,746). Despite various letters for making payment of the Contribution, the licensee only paid Rs 2,500,000 against the dues of August 2010 and did not pay the rest of amount of the APC for USF contribution as stated above. Subsequently, due to contravention, the Authority under section 23 of the Act issued nine (9) Show Cause Notices (SCN) on 17th January 2011, 8th June 2011, 10th August 2011, 9th September 2011, 14th October 2011, 3rd November 2011, 9th December 2011, 13th March 2012 and 16th April 2012 to the licensee requiring it to pay the outstanding Contribution of the said months.

1.4 It would be pertinent to mention here that the licensee out of nine (09) SCNs issued to it has replied only two SCNs issued on 17th January 2011 and 9th December 2011 respectively. Crux of the SCNs reply filed by the licensee against two SCNs are that the licensee has paid Rs.120,133,301/-for change of management as decided in WP No.29/2009. The licensee has filed Suit No.144/2011 for recovery of aforesaid amount and Suit No.145/2011 for rendition of accounts wherein status-quo has been granted by Islamabad High Court. The licensee further stated that it has also filed a WP No.8716/2011 before Lahore High Court wherein it has challenged APCL Contribution and APC for USF Contribution wherein the Hon'ble Lahore High Court has issued restraining order. The licensee further submitted that it has also challenged order dated 2nd June, 2011 in FAO No.272-11 which is pending in Lahore High Court. A WP No.8001/11 before Lahore High Court has also been filed by the licensee wherein recovery proceedings have been challenged.

1.5 In order to proceed further the matter was fixed for hearing on 13th October 2011, before the Authority. Mr. Mian Irfan Akram, Advocate on 13th October 2011 and Mr. Abdul Sattar Chief Finance Officer on 29th May 2012, on behalf of the licensee attended hearing on the said dates. The learned counsel submitted that a civil suit for rendition of accounts has been filed in Islamabad High Court wherein the court has granted interim relief to the effect that "status quo" be observed by the PTA. The licensee requested PTA to withdraw the notice, cancel hearing schedule for 13th October 2011 and abstain from carrying out any further proceeding in the matter.

1.6 Matter heard and record perused. After scrutiny of record and court order the Authority is of the view that the licensee in accordance with clause 8.1 of the Appendix B of the Rules and condition 3.1 of the license is also obliged to observe the provisions of the Act, the Rules and Regulations. Sub-rule 2 of rule 5 of AP Rules and sub-regulations (3) and (4) of regulation 6, and sub-regulation (2) of regulation 10 of the AP Regulations read with license condition 9.1.3 and 4.1.3 of the license 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.

1.7 The licensee has not challenged any of the aforesaid show cause notices, hence, there is no restraining order against the aforesaid notices, therefore, the Authority can proceed under the law with show cause notices. The "status quo" order is limited to the extent of the

prayers of the licensee in the said civil suit, wherein the licensee never denied the demand of APC for USF, which is calculated/ determined in accordance with AP rules/regulations, therefore, the said amounts can be calculated and demanded in accordance with law. Moreover the scope of the order dated June 9, 2011 cannot be enlarged or extended on the outstanding payments which are outside the purview of aforesaid civil suit. In such circumstances, the Authority has power to enforce the terms and conditions of license, rules, regulation and under the Act. Moreover, determining of payable dues after granting opportunity of hearing and demands thereof do not fall under the preview of coercive measures.

1.8 The licensee by virtue of license condition, Rules, Regulations is under an obligation to make the payment on account of APC for USF contribution but it has failed to make the payment within the given time as mentioned in the AP Rules and AP Regulations, hence, charges of contravention of the provision of the license, AP Rules, and AP Regulations have been established and therefore, in such circumstances, the Authority under section 23 of the Act is empowered to take action as per applicable special law on the subject.

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.164,591,172/- on account of APC for USF for the months of August 2010, September 2010, January 2011, March 2011, April 2011, May 2011, June 2011, July 2011, August 2011, September 2011, October 2011 and November 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 enforcement order is signed on _____ and comprises 03 pages.