



Enforcement order under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 read with rule 9(4) of the Pakistan Telecommunication Rules, 2000 against, Pakistan Telecommunication Company Limited

Date of Issuance of Show Cause Notice: 22nd June, 2011
Venue of Hearing: PTA HQs, Islamabad
Date of Hearing: 25th August, 2011

The Authority present:

Dr. Mohammad Yaseen: (Chairman)
Dr. Khawar Siddique Khokhar: Member (Technical)

The Issue:

“Non-payment of RBS Charges”

DECISION OF THE AUTHORITY

1. Briefly stated facts of the case are that Pakistan Telecommunication Company Limited (the “licensee”) pursuant to terms and conditions of license bearing No.PTA/M(T)-014/A dated 15th April, 1997 as modified on 13th June, 2005 (the “license”) is required to comply with the terms and conditions, rules, regulations and directions of the Authority.
2. Clause No.2.1 (a) of the license gives the right to continue operating and maintaining those telecommunication systems which have been operated by the Licensee at any time up to the modification date throughout the licensed territory. Clause No.2.1 (b) of the license, further provides that licensee may continue providing those telecommunication services which have been provided at any time up to the Modification Date, throughout the Licensed Territory.
3. In October, 1996 the licensee vide letter No.PTA/PWB/D-1/95 was allotted/assigned radio spectrum for operation of 9000 VHF links in 146-174 MHz on all Pakistan basis. The fee was calculated per year as under:
“No of Radio Links X Existing License Fee”
4. In accordance with the permission/assignment/authorization in 1996 which has been revalidated in 2005, the licensee did not pay spectrum charges for VHF links as per approval granted by Frequency Allocation Board (FAB) for 9000 VHF links. PTA issued demand note in 2010 to licensee for the amount of Rs.40M including all arrears (40,673,355). PTCL paid an amount of Rs.01M (1,007,680) on 30th Oct., 2010 and claimed that they have cleared their dues. The licensee was informed that PKR 39M are still outstanding, however the licensee on

one pretext or the other did not pay the said amount. To resolve the issue, a meeting was convened on 8th Feb 2011 wherein the licensee was directed to pay the amount as per its own calculations; surrender the unused frequency spectrum and to provide detail of operational links to the Authority. Accordingly, the licensee on 28th Feb 2011 paid an amount of Rs. 7.5 M (7,511,370) and provided the details as per the decision taken during the said meeting. In addition the licensee also surrendered 67 unused frequency spots on 11th Mar 2011.

5. It would be pertinent to mention here that amount paid by the licensee was not in accordance with the amount as had already been demanded and raised by the Authority and the licensee was required to further pay the remaining amount of Rs 32.154 M (32,154,305) as of 28th Feb 2011.

6. Due to non-payment of the 32.154 M , a Show Cause Notice (SCN) under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 (the “Act”) was issued on 22nd July, 2011 whereby the licensee was required to remedy the contravention by making the payment of Rs.32.154M within seven days and to explain in writing within thirty (30) days as to why the license/assigned spectrum should not be withdrawn, terminated or any other enforcement order may not be passed against the licensee under section 23 of the Act.

7. The licensee vide letter No.RA/RS-007/VHF dated 21st July, 2011 replied the SCN wherein it denied the allegation leveled in the SCN and prayed for withdrawal of SCN without any further action. Reply of the licensee was not found satisfactory; therefore, an opportunity of hearing was provided to the licensee on 25th August 2011.

8. In order to proceed further the matter was fixed for hearing on 25th August, 2011. Mr. Skindar Naqi along with his legal and technical team on behalf of the licensee attended the hearing on the said date and presented a cheque amounting to Rs.17.3M. The representative(s) of the licensee reiterated the same as asserted in the reply.

9. Matter was heard on the date of hearing. After perusal of record, the Authority is of the view that there is no dispute on allocation/assignment of spectrum for 9000 VHF links. The licensee stated that it has paid dues against operational VHF links for the year 1996-2005. The licensee took a plea that frequency spectrum allocated for 9000 links was not for commercial purpose but to uplift the rural areas by providing telecommunication facilities as per vision of Government of Pakistan. The stance of the licensee explicitly indicates that spectrum for 9000 VHF links was allocated however; the licensee has restricted itself with the payment of those links which were actually operational and not otherwise. On this issue, it may be concluded that spectrum is a scarce resources, as defined in section 2(qc) of the Act and must be used efficiently, if not used must be vacated. It may be noted that unused spectrum was surrendered by the licensee in 2011. Therefore, plea taken by the licensee on the operational, non-operational or commercial and non-commercial use of spectrum for the said links cannot be considered to hold any justification for escaping from financial obligation as laid down in the allocation/assignment unless specifically provided.

10. It may be noted that there is no distinction with regard to operational and non-operational links in the allocation/assignment of radio spectrum. Since, radio spectrum for operation of 9000 VHF links in 146-174MHz was assigned/allocated on all Pakistan basis with a condition of payment of fee calculated on yearly basis in accordance with formula, i.e., “No of Radio Links X Existing License Fee”, hence irrespective of its operational and non-operational links, amount for spectrum charges/fee has to be calculated and paid by the licensee in accordance with the above referred formula..

11. In light of what has been discussed above, the Authority reached at the conclusion that there is no dispute with regard to the allocation of spectrum for 9000 VHF links as well as calculation of fee as mentioned in the authorization/assignment issued vide letter No.PTA/PWB/D-1/95 dated October, 1996, hence, the licensee is liable to pay balance amount of Rs.14.8 M (32.154M–17.353M=14,800,970/-) accordingly. Therefore, the Authority hereby passes the following order:

- a) The licensee, i.e., Pakistan Telecommunication Company Limited pursuant to sub-rule 4 of rule 9 of the Pakistan Telecom Rules, 2000, is hereby directed to remedy the contravention by making remaining payment of Rs.14.8M/- on account of spectrums charges/fee as allocated to the licensee for 9000 VHF links; within fifteen (15) days from the date of issuance of this “Enforcement Order” and submit compliance report to the Authority, accordingly; and
- b) In case of the licensee’s failure to comply with Para 11 (a) above, further proceedings for a “Final Enforcement Order” under sub-rule (5) and (6) of Rule 9 of the Pakistan Telecom Rules, 2000 (without prejudice to any other action as per enabling provisions of law) shall be initiated against the licensee.

Dr. Mohammed Yaseen
(Chairman)

Dr. Khawar Siddique Khokhar
Member (Technical)

This order is signed on 03-5-2012 and comprises of 03 pages only.