



PAKISTAN TELECOMMUNICATION AUTHORITY
HEADQUARTERS, F-5/1 ISLAMABAD
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**Order under section 23 of the Pakistan Telecommunication (Re-organization)
Act, 1996 against Worldcall Telecom Limited**

File No.PTA/Finance/Finance/WLL/WORLDCALL/112/2006

Show Cause Notices:	6 th September, 2012 and 7 th Feb., 2014
Venue of Hearing:	PTA HQs, Islamabad
Date of Hearings:	1 st November, 2012, 28 th Jan, 2014 and 16 th July, 2014

The officers of the Authority present:

Dr. Mohammed Saleem:	Director General (Finance)
Ali Asghar:	Director General (Law & Regulations)
Amjad Mustafa Malik:	Director (Wireless & Licensing)

The Issue:

**Non-payment of Annual Radio Frequency Spectrum Fee (ARFSF) of Rs.34,558,333
for the year ended 31st December, 2011 and Rs. 34,558,333/- for the year ended 31st
December, 2012**

1. Considering the same question of fact and law, Show Cause Notices dated 6th September, 2012 and 7th Feb., 2014 issued to the World Call Telecom Limited (the "licensee") on non-payment of Annual Radio Frequency Spectrum Fee (ARFSF) of Rs. 34,558,333 for the year ended 31st December, 2011 and Rs.34,558,333 for the year ended 31st December, 2012, are hereby decided through this enforcement order. Facts of the case, necessary for adjudication of the instant matter are that the licensee i.e., World Call Telecom Limited was awarded wireless local loop licenses WLL-09-2004 dated 12th November, 2004 (the "license") by the Pakistan Telecommunication Authority (the "Authority") to provide the licensed services in the fourteen (14) licensed regions subject to the terms and conditions contained in the licenses.

2. The licensee under license conditions No(s) 4.1.2 (a)(b), and 4.2 read with clause 1.3.2 of Appendix 2 of the license read with sub-regulation (6) and (7) of regulation 23 of the Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006 (the

“Regulations”) is obliged to deposit Annual Radio Frequency Spectrum Fee (ARFSF) within 120 days of the end of financial year to which such fees and contributions relate.

2. The licensee was required vide letters dated 16th April, 2012 and 9th April, 2013 to pay ARFSF for the years ended 31st December, 2011 and 31st December, 2012 respectively. However, neither the licensee responded to these letters nor deposited the amount due on its part.

3. Due to non-compliance of the aforementioned license terms and conditions, two Show Cause Notices (SCNs) dated 6th September, 2012 and 7th Feb., 2014 under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 (the “Act”) were issued to the licensee wherein the licensee was required to remedy the contravention by paying Rs.34,558,833 for the year 31st December, 2011 and Rs.35,863,333 for the year ended 31st December, 2012 respectively (excluding late payment charges in light of court order dated 12th September, 2011 in W.P No.2553 of 2011) within seven days and also to explain in writing within thirty days of the issuance of notice, as to why the license should not be suspended, terminated or any other enforcement order should not be passed against the licensee under section 23 of the Act.

4. The licensee vide letter dated 8th October, 2012 replied the SCN dated 6th September, 2012 and vide 5th March, 2014 replied the SNC dated 7th Feb., 2014 . Since replies of the licensee of both SNCs are based on similar grounds therefore, main points raised by the licensee in its replies are reproduced below:

1. That the payments of, inter alia, ARFSF for the year ended June 30, 2006, 2007 and 2008 is pending adjudication in F.A.O. No. 147 / 2010 before the honorable Lahore High Court Lahore. The Honorable Court was pleased to issue restraining orders against PTA in terms of the said matter.

2. That PTA, in contradiction to aforesaid restraining order passed by the Honorable High Court proceeded to issue another show cause notice bearing No. PTA/Finance/Finance/WLL / Worldcall/112/2006/912 dated 18th Jan., 2011 and dated 6th September, 2012 despite the fact the issue of ARFSF are sub-judice as aforesaid.

3. That detailed reply dated February 14, 2011 and October, 8, 2012 to the said subsequent show cause notice was submitted wherein the entire demand of ARFSF was categorically denied on the premise of preoccupation of auctioned frequency spectrum and consequent loss suffered by WTL. The hearings were scheduled on 15th June, 2011 and 27th June, 2011. During hearings, the Authority was kind to acknowledge the factum of preoccupancy of frequency spectrum and agreed to resolution of WTL’s grievance through an arbitration proceedings between WTL and the Authority.

4. That despite an agreement on resolution of the aforesaid matter through arbitration, Authority in a meeting called for reconciliation of all other matter, retracted from its earlier stance of resolution through arbitration and proposed a constitution of a committee to be headed by Member (Technical) for evaluation of WTL losses. The details on the said proposal are till date pending on the part of Authority.

5. That as it may there is an admission of the fact that frequency spectrum auctioned to WTL for Rs.2.5 billion was already in use and had severe interferences for which WTL has reported a direct loss of Rs 5.326 billion. However, it is most unfortunate that the Authority, despite admitting, is reluctant to resolve the issue.

6. That the instant Notice has been issued in utter disregard to developments, as mentioned above, on the long pending claim of WTL and manifest a mechanical approach towards the rights of the licensees which is in complete negation of section 6 (a) of the Act. The demand raised in the Notice is thus unjustified and illegal. We reiterate our response to the Notice as follow:

- i. That upon procurement of licenses and frequency spectrums, WTL rolled out its telecommunication infrastructure in the licensed regions by investing more than Rs.6 billion. However, upon commencement of service it was found that frequency spectrums auctioned to WTL had interference and were pre-occupied. The fact of pre-occupation of spectrum and interference is an admitted fact on record. Pakistan Telecommunication Authority's (PTA) determination dated 15th October 2008 issued against M/s Amtech (Pvt.) Limited, a licensee of PTA, is a clear evidence on record to the said extent, in the said determination, PTA directed M/s Amtech to vacate frequency spectrum which PTA had auctioned to WTL. However, the frequency spectrum remained occupied and PTA issued another determination dated 31st August 2009.
- ii. That due to aforesaid pre-occupation and interference in frequency spectrums, WTL over the years suffered heavy loss in terms of revenue and repute for degraded service levels. WTL despite of being the first to launch operations/services in the post de-regulation era lost the benefit of this initiative to the competition due to the degraded CDMA services caused by continuous interference in the allocated spectrums in major telecom regions like LTR, KTR, MTR, GTR and STR-I. Customer confidence was lost in

other WTL products as well and revenues for CATV, IOC, Dial-up, Pre-paid LDI services etc were adversely affected.

- iii. An estimate of loss suffered by WTL tuned to Rs.5.326 billion and was reported to PTA vide our letter dated November 09, 2009. The quantification of said loss is as under:

	From July 2004 to Oct.2009	Jan 09- Oct 09	July 08- Dec 08	July 07- Jun 08	July 06- Jun 07	July 05- Jun 06	July 04- Jun 05
Revenues	5,921	1,252	751	1,464	1,709	702	44
Direct Costs	(6,493)	(1,578)	(840)	(1,604)	(1,736)	(613)	(122)
Gross Profit/(Loss)	(572)	(326)	(89)	(141)	(27)	(89)	(78)
Operating Costs Other	(3,038)	(576)	(506)	(745)	(680)	(347)	(183)
Income-net	49	(55)	(28)	29	60	31	13
Finance Costs	(1,765)	(640)	(302)	(446)	(207)	(110)	(60)
Net Losses	(5,326)	(1,597)	(925)	(1,303)	(854)	(337)	(309)

- iv. That despite repeated requests to PTA, the aforesaid issue of pre-occupation and interference in auctioned frequency spectrums and consequent loss thereto is till date unattended by the PTA. In view of afore stated circumstances, any recurrent demand of Annual Radio Frequency Spectrum Fee (ARFSF) is utterly unwarranted, unjustified and unlawful until and unless the issue of preoccupation of spectrums is not adjudicated and the due compensation thereof is not awarded to WTL. WTL has suffered immense losses and as a matter of fact WTL's business viability is at question only because of the aforesaid fact. The amounts being demanded are meager to WTL's losses and WTL as a matter of right demands a fair and meaningful compensation awarded to it against auction of preoccupied frequencies. It is therefore in view of the above submissions the demand of Annual Radio Frequency Spectrum Fee (ARFSF) and issuance of the Notice thereof is unwarranted, unjust, unlawful.
- v. That no power to levy the so called late payment charge / fees is available to PTA under the Act. It may please be noted that regulations purportedly made under Section 5 of the Act and notified through SRO 315(1)2007 dated 11 April 2007 through Regulation 23(7) purported to levy a so called additional fee @ 2%

per month on the late payment of fees. It is respectfully submitted that any regulation beyond the mandate of Section 5 is *ultra-vires* the Act inasmuch as nothing in the Act authorizes the levy of a fee in the nature of late payment charges. Similarly, in issuing the license the PTA was bound by the scope of the powers made available to it by the law. PTA has no power to levy the so called late payment additional fee per month under the Act.

In the above context, it is respectfully prayed that the Notice be withdrawn and the issue of pre-occupancy of spectrum be resolved as agreed between WTL and the Authority.

5. Hearing and findings of the officers of the Authority

The replies of the licensee were not found satisfactory, thus the matters were fixed for hearing on 1st November, 2012, 28th Jan, 2014 and 16th July, 2014, Mr. M. Kamil Khan, Director (GR) (the “representative”), attended the hearing on 16th July, 2014. The representative reiterated the same as stated in reply. After hearing submissions of the representative and perusal of record, the findings of the officers of the Authority are as under:

- i. During hearing the representative of the licensee was asked to provide any document wherein the Pakistan Telecommunication Authority (the “Authority”) has decided and agreed to resolve the issue of interference of frequency through arbitration. The representative of the licensee could not provide any minutes of meeting/order of the Authority for the same. As well as, the hearing panel also could not find any decision of the Authority wherein such decision or arrangement has been made between the licensee and the Authority.
- ii. Conversely, the conduct of the licensee to agitate the issue of interference of frequency time and again on every SCN proceedings with respect to payments of outstanding dues clearly shows its unwillingness to fulfill its obligation in terms of making payment as per agreed terms and conditions of the license. Despite the fact, to date the licensee is using allocated frequency for commercial purposes without any interference therein for the years ended 31st December, 2011 and 31st December, 2012 and on the other hand without any cogent reasons and justifications, it is not only reluctant but persistently in default of making payment in respect of ARFSFs in contravention of license terms and conditions.

- iii. The matter i.e., non-payment of outstanding dues in the instant proceedings relates to the period 31st December, 2011 and 31st December, 2012 which directly or indirectly, in any manner, does not relate to the issue of interference in radio spectrum frequency. Therefore, the licensee's stance with respect to interference in frequency as portrayed and asserted in the reply is not maintainable in this case.

- iv. It would not be out of context to mention here that perusal of the record transpired that the Authority vide order dated 28th March, 2008 decided the issue of interference in frequency. The licensee being aggrieved by the decision of the Authority dated 28th March, 2008 filed an F.A.O No.10/2008 before the Honorable Islamabad High Court, however, due to non-prosecution, vide court order dated 23rd April, 2009 the same was dismissed. Moreover, the licensee filed an application for restoration/re-admission of said appeal but the same, vide Honorable Lahore High Court order dated 26th March 2010, had also been dismissed being time barred. The licensee, being aggrieved by the decision dated 23rd June, 2010 of the High Court filed a C.P No.1098 of 2010 in Honorable Supreme Court of Pakistan. The same has also been dismissed vide order dated 1st July, 2010. Therefore, in light of said court orders the hearing panel is of the view that the matter has already attained its finality, thus cannot be reconsidered at this stage.

- v. As far as F.A.O No.147/2010 pending adjudication in the Lahore High Court Lahore, is concerned it is observed that the said appeal is against the decision of the Authority dated 22nd February, 2010. The said appeal relates to the non-payment of outstanding dues for the years ended 30th June, 2006, 2007 and 2008. While the issue in the instant proceedings relates to the non-payment of outstanding dues for the financial years ended 31st December, 2011 and 31st December, 2012 respectively. Moreover, the Honorable Court has not restrained PTA to proceed in accordance with law on outstanding dues as mentioned in the SCNs.

- iv. Furthermore, the Authority under section 5(2)(o) of the Pakistan Telecommunication (Re-organization) Act, 1996 is empowered to issue regulations for exercise of its powers and performance of its functions. The Authority, in exercise of powers under the Act has promulgated the Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006. Sub-regulation 7 of the regulations 23 of the Regulations provides that in case of late payment of fees, the licensee shall be liable to pay an additional fee at

the rate of 2% per month on the outstanding amount for each month or part thereof. The Authority is of the firm view that the said regulation is within the power as enshrined under section 5(2)(p) of the Act. Thus, the licensee's argument regarding lack of jurisdiction of the Authority on imposition of additional fee is not correct. Most importantly, the Honorable Islamabad High Court vide order dated 30th June, 2014 in W.P No.2553 of 2011 titled World call Telecom Limited Vs. PTA has also recalled the injunctive order dated 12th September, 2011.

- vii. Having discussed so, now the only moot point for consideration before the hearing panel is as what could be the legal justification of the contentions of the licensee with regard to non-payment of ARFSF for the years ended 31st December 2011 and 31st December, 2012. After careful analysis of the legal and factual position involved in this case, the hearing panel is not inclined to accept the contentions /plea of the licensee as mentioned in the SCNs reply and as discussed above, on the ground that there was no interference in frequency of the period for which the licensee is obliged to pay ARFSF. More so, no information / complaint of interference in frequency for the years ended 31st December, 2011 and 31st December, 2012 has ever been reported. In addition, court has not restrained PTA to initiate legal proceedings and decide the matter in accordance with law. As a matter of record, it is an admitted position that the licensee has not disputed the outstanding amount on account of ARFSF.

6. **Order of the officers of the Authority**

6.1 In light of available record, it is transpired that the licensee on one pretext or the other is delaying the matter in terms of its fulfillment of its fiscal obligations in contravention of agreed terms and conditions of license. Therefore, in view of the aforementioned facts and findings, the officers of the Authority hereby pass the following orders:

- (a) The licenses No. WLL-09-2004 dated 12th November, 2004 awarded to Worldcall Telecom Limited for provision of licensed services in 14 regions are hereby **SUSPENDED** immediately for a period of one month or till payment of outstanding dues of Rs. 34,558,333 for the years ended 31 Dec., 2011 & Rs. 34,558,333 for the year ended 31 Dec., 2012 along with late payment additional fee @ 2% per month or part thereof till the date of payment on the outstanding amount for the years ended 31st December, 2011 and 2012.

- (b). In case of non-compliance of Para 6.1 (a) above, World Call Telecom Limited wireless local loop licenses bearing No. WLL-09-2004 dated 12th November, 2004 shall stand **TERMINATED** upon expiration of one month from the issuance of this order without any further notice and recovery proceedings under section 30 of the Act shall be initiated against the company i.e., Worldcall Telecom Limited for recovery of all payable dues as arrears of land revenue. While in case of payment of outstanding dues within one month from the issuance of this order, as per para 6.1 (a) the licenses of World Call Telecom Limited bearing No. wireless local loop licenses WLL-09-2004 dated 12th November, 2004 shall be restored.
- (c). All LDI, LL and Mobile licensees are directed to suspend immediately all telecommunication facilities extended to the licensee i.e., World Call Telecom Limited pursuant to the license till further orders.

Dr. Muhammad Saleem
Director General (Finance)

Ali Asghar
Director General (Law & Regulations)

Amjad Mustafa Malik
Director (Wireless Licensing)

The matter heard and decided under delegated powers of the Authority under section 9 of Pakistan Telecommunication (Re-organization) Act, 1996 read with regulation 27 of the Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006 and signed on 9th day of September, 2014 and comprises 08 pages.