



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

Date of Issuance of Show Cause Notice: 12th October 2010, 3rd January 2011, 16th March 2011, 11th May 2011 and 27th June 2011
Venue of Hearing: PTA HQs, Islamabad
Date of Hearing: 13th October 2011 and 28th 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 Circle Net Communications Pakistan (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-11(19)-2004 dated 19th 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 of May 2010 (Rs. 39,995,843), July 2010 (Rs. 106,400,380), August 2010 (Rs. 149,914,079/-), September 2010 (Rs.229,246,744/-), October 2010 (Rs.278,181,978/-), November 2010 (Rs.280,031,189/-), December 2010 (Rs.309,601,015/-) and January 2011 (Rs. 556,886,089) from the licensee. Despite various demands for making payments of the Contribution, the licensee only paid Rs. 5,000,000 against the dues of May 2010 and did not pay the rest of amount. Subsequently, due to contravention of the aforesaid

provision of regulatory laws, Show Cause Notices (SCNs) under section 23 of the Act requiring licensee to pay the outstanding contribution of the said months were issued on 12th October 2010, 3rd January 2011, 16th March 2011, 11th May 2011 and 27th June 2011. It would be pertinent to mention here that the licensee has not replied the SCNs.

1.4 In order to proceed further, the matter was fixed for hearing on 13th October 2011 before the Authority. Mr. Wajahat Zeeshan Khan, Consultant, on behalf of the licensee attended hearing on the said date. The Consultant submitted that the company has filed a civil suit on rendition of account bearing No.C.S No.171/2011 in Islamabad High Court, Islamabad in which the Honorable court has issued status quo until next hearing. In view of the said circumstances, it is most respectfully submitted that the matter regarding contribution is sub-judice therefore, the hearing may kindly be adjourned till the final outcome of above mentioned legal cases.

1.5 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, sub-regulations (3) and (4) of regulation 6 and sub-regulation (2) of regulation 10 of the AP Regulations 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.

1.6. 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.1,945,257,317/- on account of APC for USF for the months of May 2010, July 2010, August 2010, September 2010, October 2010, November 2010, December 2010 and January 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 02 pages.