



Government of Pakistan
PAKISTAN TELECOMMUNICATION AUTHORITY
HEADQUARTERS, F-5/1, ISLAMABAD

Enforcement Order under sub-section 3 of section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 against Brain Telecommunication Ltd. for Non-Payment of Annual Regulatory Dues (ARDs) for the years ended 30th June, 2018 and 2019

No. PTA/Finance/LL/Brain Limited/600/2006/354

Date of Show Cause Notice:	31 st January, 2020
Venue of Hearing:	PTA HQs, Islamabad
Date of Hearing:	22 nd June, 2020

Issue:

**“Non-Payment of Annual Regulatory Dues (ARDs)
For the years ended 30th June, 2018 and 2019.”**

DECISION OF THE AUTHORITY

1. Brief facts of the case:

1.1 Brain Telecommunication Limited (the “**licensee**”) was awarded non-exclusive Local Loop License No. LL-13-2004 dated July 19, 2004 and License No. LL-39-2004 dated 4th November, 2004 (the “**license**”) for the regions of LTR and KTR respectively by Pakistan Telecommunication Authority (the “**Authority**”) to establish, maintain and operate a Telecommunication System and provide Telecommunication Services, subject to the terms and conditions contained in the license.

1.2 The license clauses 4.1.2 (a), 4.1.3, 4.2.1, 4.2.2, 4.2.3, 3.3, 3.4 and sub-regulation (6) and (7) of regulation 23 of the PTA (Functions and Powers) Regulations, 2006 makes it obligatory upon the licensee to deposit Annual License Fee (“**ALF**”) and contributions (USF and R&D) within 120 days of the end of financial year to which such fees and contributions relate. Moreover, license condition Nos. 4.2.4 and 6.4.3 of the license, also require the licensee to submit Annual Audited financial statements (“**AAAs**”) within 120 days of the close of financial year in support of its calculations of Annual Regulatory Dues including ALF, USF and R&D Contributions (“**ARDs**”) payable pursuant to Article 3 and 4 of the license and the Authority shall have the right to audit such statements at any time.

1.3 The licensee vide letters dated 25th September, 2018, 11th October, 2018, 7th November, 2018, 15th March, 2019, 22nd March, 2019, 24th April, 2019, 30th September, 2019, 25th November, 2019, 18th December, 2019 and through various emails dated 26th December, 2018, 1st January, 2019, 10th January, 2019, 18th January, 2019, 7th February, 2019 and 25th April, 2019 was required time and again to pay ARDs, and submit auditors’ certified breakup of revenue and inter-operator costs for the year ended on 30th June, 2018. Furthermore, with regard to financial year ended 30th June, 2019, the licensee was directed vide letters dated 16th September 2019, 8th October 2019, 5th November 2019, 4th November, 2020 and 14th December, 2020 to pay ARDs and submit auditors’ certified breakup of revenue and inter-operator costs.

However, the licensee neither deposited ARDs nor provided AAAs and auditors’ certificate for the said years.

1.4 As regard to financial year ended 30th June 2018, the licensee submitted draft breakup of revenues and inter-operator costs vide an email dated 14th December 2018; provisional demand note was accordingly issued on 18th December, 2018. Subsequently, the licensee submitted revised draft breakup on 16th January, 2019, the provisional demand note was accordingly revised on 17th January, 2019 requiring it to make payment of Rs. 2,530,315/- along with late payment additional fee. The licensee, besides contesting the demand of ARDs, deposited partial payment amounting to Rs. 818,504/- in two tranches on 9th March, 2019 and 20th March, 2019 based on its own calculation. The licensee vide letters dated 22nd March, 2019, 24th April 2019 and 14th June, 2019 was again required to deposit the balance amount immediately, however, the licensee again contested the demand vide letters dated 12th April, 2019 and 24th June, 2019 stating that a part of its revenue on account of interconnect services amounting to Rs. 98,575,635/- being non-licensed services should be excluded in calculation of ARDs. In order to understand licensee’s point of view, it was required to clarify its stance with technical detail. The licensee, with significant delay and in bits and pieces, provided technical information with respect to nature of interconnect services in support of its claim. In this regard, different stances taken by the licensee, from time to time, with regard to interconnect services are appended below:

- i. The licensee vide letter dated 12th April, 2019 informed that the nature of interconnect Services is “Point to Point laying of infrastructure for interconnect services”.
- ii. The company vide letter dated 24th June, 2019 clarified the nature of interconnect services as “Point to Point laying of infrastructure for interconnect services for IT usage”.
- iii. In notes to the financial statements for year ended 30th June, 2019, the licensee expressed the interconnect services as “Maintenance of Customer Infrastructure (Interconnect Services)”.
- iv. The company vide letter dated 28th November, 2019 provided the following further details with respect to interconnect services:

Nature of Services	Data Interconnect Services (Dark Fiber Cable).
Description	With dark fiber, business mostly using it for data connectivity between their own offices or/and between their associates and partially for internet access.
Infrastructure Ownership	Mostly customer pay one time charge to own the infrastructure either provided by Brain Tel or by third party (Infrastructure is owned by customer).
Role of Brain Tel	In some cases Brain provides Point to Point laying and maintenance of Infrastructure Services for IT usage.

1.5 In order to deliberate on the licensee’s contention, the technical and other details furnished in this regard were reviewed in detail. Further in this context, the licensee was required to clarify sharp decline in its revenue from Internet Services during the period 2016-17 to 2018-19 that dropped from Rs.233.9 Million in the year 2016-17 to Rs. 6.5 Million and Rs.6.4

Million in later two years, whereas, total revenue remained in the range of Rs.170 Million to Rs.153 Million despite significant decrease in said services i.e. internet Services as depicted below:

Revenue	2017	2018	2019
Internet Services	233,891,619	6,479,360	6,433,624
Interconnect Services	19,295,072	98,575,635	92,496,311
Telecommunication Services	9,202,579	10,579,716	6,064,326
O & M Services	-	18,104,280	32,869,756
Business Management Services	5,836,019	1,637,846	2,565,185
Installation	-	29,690,426	26,934,332
Revenue	268,225,289	165,067,263	167,363,534
Less: Sales Tax	(1,501,676)	(1,726,397)	(5,447,113)
Less: Discount	(96,139,110)	(7,369,910)	(8,437,775)
Total Revenue (Net of Sales Tax)	170,584,503	155,970,956	153,478,646

In this context, it may be considered that corresponding bandwidth cost (reported as internet charges in AAAs) that the licensee resells as Internet Services has not shown any significant corresponding decline unlike Internet Services as explained below:

Description	Financial Year		
	2016-17	2017-18	2018-19
Internet Services (Revenue)	233,891,619	6,479,360	6,433,624
Internet Charges (Cost)	29,850,851	22,722,980	29,297,968

1.6 Subsequently, the licensee submitted auditors' certificate for the year 2017-18 with a significant delay on 3rd October, 2019 having again incomplete details and the revenue being reported therein was not matching with revenue reported in AAAs. The licensee was accordingly required to furnish the auditors' certificate with complete and correct details in a meeting held with the licensee on 14th October, 2019 and minutes of meeting issued vide email dated 18th October, 2019 followed by reminder email dated 28th October, 2019 and letter dated 25th November, 2019. In response, the licensee vide letter dated 28th November, 2019 reiterated its stance without providing any cogent reason in support of its claim about interconnect as a non-licensed service. In response, the licensee was again informed vide letter dated 18th December, 2019 that all the technical and other details of interconnect services provided by the licensee have been deliberated in detail. It was explained therein that point-to-point connectivity and internet services are covered under local loop license, therefore, said services are licensed services. Hence, the demand of ARDs is correct. The licensee instead of depositing the ARDs, again contested the demand on 27th December, 2019 on the same grounds.

1.7 As regard to financial year 2018-19, the licensee didn't submit AAAs and auditors' certificate nor deposited ARDs despite various reminders and follow up.

1.8 Furthermore, despite repeated efforts and follow up meetings with licensee to resolve its contention, the licensee failed to substantiate its stance about interconnect services nor provided complete auditors certificate for the year 2017-18. The licensee not only fail to submit/provide

AAAs but auditors certificate for the year 2018-19 but also failed to pay ARDs for the years 2017-18 and 2018-19.

1.9 As a consequence thereof, a Show Cause Notice (SCN) dated 31st January 2020 was issued requiring the licensee to remedy the contravention by submitting AAAs along with Auditor's certificate and make payment of outstanding dues for the years 2017-18 and 2018-19 within seven (07) days.

1.10 The licensee vide letter dated 7th February, 2020 replied to the SCN and submitted auditors' certificate only for the year 2017-18. The relevant part of the reply is reproduced hereunder for reference:

".....Due to collecting and compiling the accounts data and shortage of human resource, our Annual Audit 2018 got late but on directions of PTA and to obey rules and regulations, we provisionally submitted ALF, R&D and USF contribution before audit as:

<i>Sr#</i>	<i>Description</i>	<i>Amount (Rs.)</i>
1	<i>Annual License Fee</i>	<i>544, 200</i>
2	<i>USF-Contribution</i>	<i>205, 758</i>
3	<i>R & D</i>	<i>68, 576</i>
	<i>TOTAL</i>	<i>818, 504</i>

After getting and submission of Annual Audited Accounts 2018, we received 1st "Demand Note" comprised of "Interconnect Charges" as part of calculation/working which created lot of delay to settle the issue. We remained constantly in contact with you by meetings, letters, emails and telephonic discussions to resolve it. Since that we had received four different Demand Note: with different "Adjusted Gross Revenue" (AGR), showing significant difference all amounts.

Whereas the concern of Interconnect charges, we had tried to express in detail that this amount includes services for the maintenance of point to point customer's infrastructure and should not be mixed up with internet Service, Telephonic Service or Telecom voice Interconnect. We were directed to provide Auditors Certificate for calculation upon this issue and to strengthen our point of view we were further directed to provide Technical Specification, Service diagram and customers list as well. We requested and obtained Auditors Certificate on dated October 03, 2019 and submitted to PTA along with required Technical Specification, Service diagram and customers list with our letter Ref: BTEL/LEGL/ PTA/1131 December 27, 2019.

On 3rd January 2020 we received email from Director Finance with comments:

"As per license condition, Brain Telecommunication (BTEL) is required to submit Auditors' certificate duly reconciled with AAAs. BTEL, in various letters and meetings, has been advised to submit complete breakup of revenue earned during the year 2017-2018 but the certificate being submitted failed to include complete breakup.

In order to facilitate, again, understanding of underlying matter, pls note that break up of revenue reflected in auditor's certificate and AAAs are inconsistent with each other due to the fact that several revenue streams have been excluded in the auditors'

certificate - relevant extracts has been appended below for ease of reference. Foregoing in view, since no detail involving nature of services, specifications etc. of revenue from O&M services has been submitted till now so said revenue has been included in demand note and ARDs have been calculated accordingly. The matter of revenue from Interconnect services has already been deliberated in detail on the basis of various information submitted by BTEL and accordingly said revenue has been included in the demand note"

Following the directions above we again approached to our Auditors and discussed the matter in detail and requested to provide required certificate. Meanwhile on dated 2nd February 2020, unexpectedly we received "Show Cause Notice" to pay remaining dues with late payment charges within seven (7) days and to show cause of late submission. It is appropriate to mention here that without this undecided amount all relevant dues for year 2018 are made clear and Licensee have no liabilities of dues.

Further we are also directed to submit Annual Audited Accounts for year 2019 and to make payment of ARDS's for the year ended June 30, 2019. In this respect we would like to inform that audit is in progress and will be concluded in March 2020. Auditors assurance letter in this regard is being submitted for your review. Although we are facing economically and financially bad time and are in crises since many years but we have a very good and clear financial background with PTA dues and/are expecting the same now and in future. As our previous practice and complying the rules & regulations we are provisionally submitting dues of ALF, R&D and USF in this week positively.

Concluded the matter we humbly request to withdraw "Show cause Notice" and accept Auditors Certificate which is categorically explains true and fair disclosure of complete revenue with nature including O&M Services and will accomplish the gap of conflict between our working of dues for year 2018. In this regard, please give us an opportunity to further explain and presentation if required.... "

1.11 The matter was fixed for hearing before the Authority on 22nd June, 2020. During the hearing, the licensee requested for permission to submit a re-joinder to substantiate its claim about inter-connect services as a non-licensed service, which was accorded by the Authority. It may be considered that the re-joinder that was to be submitted on 22nd June, 2020 as per licensee's own request was received on 24th August, 2020, wherein no additional information or justification as to its claim was provided. However, the licensee submitted AAAs for the year 2018-19 without furnishing auditors' certificate and without depositing ARDs for the years 2017-18 and 2018-19. The relevant part of the licensee's letter is reproduced hereunder:

".... Accept, our apology to write you so late as we were awaiting Audited Report for year 2019. We are really thankful for providing this opportunity. Now we would like to draw your attention once again on the issues addressed in online meeting.

In clarification of revenue whether falls in working of Royalty or not, we were instructed to provide Auditors certificate to verify the bifurcation of revenue and percentages applied for annual regulatory contributions. We arranged and acquired this certificate including nature of each revenue item but regrettably it was not acknowledged by PTA

Dated: 31st October, 2022

officials without explaining any reason. Contrary to this we request PTA to provide us the basis on which the PTA is claiming that regulatory dues on the subjected services. On many occasions we pointed out that licensee/non licensee are providing point to point media without any license and regulatory dues which is in notice of PTA but is overlooked for any action. Although PTA agrees that if other licensee/non-licensee are violating any rule then it doesn't give Brain any right to do same. If it is so then it is also not right that. PTA ignores others upon their violations and penalize only Brain.

In case PTA determined to charge regulatory dues for subject PTA Services then Brain requests PTA to provide us in writing that exact subjected services are only allowed to be provided by local loop licenses and are subject to regulatory dues so that we can help PTA by bringing such operators, in notice of PTA to halt such activities.

Now our annual Audit 2019 is completed and Revenue product with names have been reclassified by auditors under light of previous EY-Certificate and letter of PTA. (A copy of Audited accounts along with report is attached with this letter). This revenue classification clearly shows its nature and supports our point of view. In addition of it we are ready for audit by your internal department for your confirmation.

In addition of these clarifications, we would like to address that USF contribution does not apply if one having CVAS license. We had acquired this license and upon expiry applied this license again providing all documents through application which was received by your License department on 26/04/2017 but was rejected without any notice.

Further we have also license of PEMRA and can classify these services under the head of PEMRA. If PTA insists us then we may do the same with permission and consultation of PTA.

Concluding the matter, we humbly request to withdraw "Show cause Notice" and accept Auditors Certificate and new audited accounts 2019 which categorically explain true and fair disclosure of complete revenue with nature. including O&M Services and will accomplish the gap of conflict between our working of dues for year 2018. In this regard, please give us an opportunity for meeting to further explain and presentation if required..."

1.12 Subsequently, the licensee vide letters dated 4th November, 2020 and 14th December, 2020 was again required to provide the auditors certified breakup of revenue and make payment of ARDs for both years i.e. 2017-18 and 2018-19. In response, the licensee deposited an amount of Rs. 110,074/- on 26th November, 2020 on account of ARDs for the year 2018-19 based on its own calculation. Later on, the licensee submitted the auditors' certificate for the said year on 20th January, 2021. The demand notes were accordingly issued on 29th January, 2021 based on AAAs, auditors' certificate and other related records provided by the licensee, from time to time. The licensee was accordingly required to make payment of outstanding dues for both years amounting to Rs. 5,663,483/-.

1.13 Subsequently, the licensee was reminded to clear the outstanding dues. In response, the licensee vide letter dated 28th June, 2022 informed that it has deposited Rs. 3,489,389/- against outstanding dues for the years 2017-18 and 2018-19 that will settle its liability to the extent of

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principal amount. The licensee further clarified vide letter dated 2nd June, 2022 that it shall make payment of remaining late payment additional fee within July, 2022 that has not been made till date. Pursuant to the last payment deposited by the licensee on 28th June, 2022, the detail of remaining outstanding amount comprised of late payment additional fee is given below:

Description	2018		2019		Total		
	Principal	LPAF	Principal	LPAF	Principal	LPAF	Total
R&D	-	376,402	-	300,396	-	676,797	676,797
USF	-	1,129,205	-	901,188	-	2,030,393	2,030,393
Total	-	1,505,606	-	1,201,584	-	2,707,190	2,707,190

1.14 After examination of record provided by the licensee and having multiple discussions with the licensee, it is concluded that the point-to-point laying of infrastructure / Optical Fiber Cable (OFC) for interconnect services is a licensed activity. OFC is used for the emission, conveyance, switching or reception of any intelligence, whether or not that intelligence is subjected to rearrangement, computation or any other process in the course of operation of the system. No customer can lay its own infrastructure for establishing point-to-point links between two geographic locations without having a license under the Act. Being a local loop licensee holder, the licensee can provide Data Services and deploy telecommunication systems and infrastructure in connection with provision of Licensed Services. Therefore, interconnect services as claimed by the Licensee are actually Data Services.

2. Order:

Keeping in view the above-mentioned facts coupled with the available record, the Authority hereby decides as under:

2.1 Since the licensee has not provided any persuasive justification to substantiate its claim, therefore, the licensee is hereby directed to make payment of outstanding dues amounting to Rs. 2,707,190/- on account of remaining amount of applicable late payment additional fee within seven (07) days from the date of receipt of this order.

2.2 In case of con-compliance of 2.1 above, further legal action will be initiated in accordance with applicable law.


Maj. Gen. Amir Azeem Bajwa (R)

Chairman


Dr. Khawar Siddique Khokhar

Member (Compliance & Enforcement)

Signed on 31st October, 2022 and comprises (2) pages only.