



PAKISTAN TELECOMMUNICATION AUTHORITY
HEADQUARTERS, F-5/1 ISLAMABAD
Ph: 051-9214243 Fax: 051-2878113

Enforcement order under sub-section 3 of section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 against Warid Telecom (Pvt) Limited being licensee for AJK & NA

Date of Issuance of Show Cause Notice: 8th March, 2010

Venue of Hearing: PTA HQs, Islamabad

Date of Hearing: 3rd June, 2010

The Authority present:

S. Nasrul Karim A. Ghaznavi: Member (Finance)
Dr. Khawar Siddique Khokhar: Member (Technical)

The Issue:

“Non payment of PTA dues and failure in submitting annual audited accounts”

DECISION OF THE AUTHORITY

BRIEF FACTS

1. **Warid Telecom (Pvt.) Limited** (the “licensee”) was awarded non-exclusive Cellular Mobile Telephony License No.MCT-03/WLL&M/PTA/2006 dated 26th June, 2006 by Pakistan Telecommunication Authority (the “Authority”) to establish, maintain and operate Telecommunication System and to provide the licensed services in Azad Jammu & Kashmir and Northern Areas (GB), subject to the terms and conditions contained in the license.
2. As a licensee of the Authority, Warid Telecom (Pvt.) Limited was required to comply with the provisions of the prevailing regulatory laws comprising of the Azad Jammu & Kashmir Council Adaptation of Pakistan Telecommunication Authority (Re-organization) Act, 2005 (the “Act”), Northern Areas Telecommunication (Re-organization) (Adaptation and Enforcement) Order, 2006 (the “Order”), the Pakistan Telecommunication Rules, 2000 (the “Rules”), the Pakistan Telecommunication Authority (Function & Powers) Regulations, 2006 and the terms & conditions of the license. Whereas in this case the licensee has violated conditions 4.1.2, 4.1.2.1, 4.1.2.2, 4.4.1, 4.4.2 and 4.4.3 of its license, sub-regulation (6) and (7) of regulation 23 of the Pakistan Telecommunication Authority (Function & Powers) Regulations, 2006, by failing to provide annual audited accounts alongwith annual regulatory fee and

contribution within 120 days of the end of the financial year to which such fee and contribution relates.

3. The licensee has defaulted in submitting annual audited accounts alongwith payment of annual regulatory fees and contributions (ALF and USF) for the year ended on 30th June, 2009. In addition, the licensee has also delayed the payment on account of Annual Radio Frequency Spectrum Administrative Fee (ARFSF) for the year 2009 by 36 days for which late payment charges of Rs.78,336/- accrued. In this regard the Authority made various requests to the licensee but in vain. Hence, the Authority issued Show Cause Notice (the “Notice”) dated 8th March, 2010 under section 23 of the Act whereby required the licensee to remedy the contravention by submitting annual audited accounts along with annual license fee for the year ended on 30th June, 2009 and aforesaid late payment charges on account of Annual Radio Frequency Spectrum Administrative Fee within seven days and also to submit written reply to the Notice within thirty (30) days of the issuance of the Notice and explain as to why the license should not be suspended, terminated or any other enforcement order should not be passed under section 23 of the Act against the licensee.
4. The licensee submitted its reply to the notice vide its letter dated Nil received in PTA on 6th April, 2010 and denied the allegations. The same is reproduced *in verbatim*:

“Reply on behalf of Warid Telecom (Pvt.) Limited to the Show Cause Notice Ref: PTA/Finance/Mobile/Warid AJK/639/2006/913 dated 8th March 2010 issued under Section 23 of the Azad Jammu and Kashmir (AJ&K) Council Adaptation of Pakistan Telecommunication (Re-Organization) Act, 2005 read with Northern Areas Telecommunication (Re-Organization) (Adaptation and Enforcement) Order, 2006

Respectfully Sheweth:

Preliminary Submissions

- a) *It is stated that Warid Telecom (Pvt.) Ltd. (hereinafter referred to as “Warid” or the “Licensee”) always abide by the prevailing and applicable laws, and the Licensee believes that it has committed no contravention, whether intentional, unintentional, direct or indirect, of any of the provision of the Azad Jammu and Kashmir (AJ&K) Council Adaptation of Pakistan Telecommunication (Re-Organization) Act, 2005 (hereinafter referred to as the “Act”), particularly Section 23 thereof as alleged in the Show Cause Notice dated 08.03.2010. (hereinafter referred to as the “Notice”), or the obligations or conditions of the granted to the Licensee (hereinafter referred to as the “License”) issued by The Pakistan Telecommunication Authority (hereinafter referred to as “PTA” or “This Authority”).*
- b) *That in discharge of its obligations under the License or the applicable laws, rules and regulations, the Licensee has always complied, in letter and spirit the same. There is no default on its part on any account whatsoever and all payment, fee and contribution under the License have been duly paid by the Licensee.*
- c) *As the Authority is aware of the fact that Warid is holding two separate Licenses*

to provide telecom services in Pakistan as well as Azad Jammu and Kashmir and Northern Areas. The regulator for both the Licenses is one i.e. the Pakistan Telecommunication Authority, so the accounts were submitted to the Authority both for Pakistan and the Azad Jammu and Kashmir and Northern Areas. Accordingly all amounts due from Warid (for Pakistan, AJK and Northern Areas) were deposited in the designated accounts. There is no violation of any provision of law on the part of Warid. The attached financial statement duly signed by the Auditors clearly reflects the following Gross Revenue figures:

Pakistan	AJK Revenue reported to Sales Tax Authorities	Total
Rs. 29,049,362,738	Rs. 184,094,262	Rs. 29,233,457,000

On the basis of the above figures and after deduction of Interconnection cost and PTA mandated payments, the relevant contributions have been paid by the Warid, the detail whereof is as under:

Annual License Fee @ 0.5 %	113,953,675
R& D fund contribution @0.5%	113,953,675
USF fund contribution @1.5% PAK	341,861,025
Fee Payable	569,768,374

There is nothing outstanding on the part of Warid on any account whatsoever.

Paragraph-wise Reply

In addition to and subject to the submissions in paragraphs above, it is stated that all the contraventions alleged in the Notice are hereby denied:

1. The contents of the paragraph 1 relate to the award of Cellular Mobile License to the Licensee and are admitted.
2. The contents of paragraph 2 relates to the obligation of all licensees to comply with applicable laws and regulations and need no reply.
3. The contents of paragraph 3 needs no reply as the same relates to the License obligations of Warid.
4. The contents of paragraph 4 also relates to License obligations of the Licensee.
5. The contents of paragraph 5 are denied. Warid submitted its account to the Authority on 17 November 2009. However, the separate financial statement duly signed for AJK is being submitted for your perusal. The requisite fee (ALF, R&D and USF) has also been deposited. Nothing is pending or outstanding on the part of Warid.
6. The contents of paragraph 6 relate to statutory provisions and its effect.
7. The contents of paragraph 7 are vehemently denied. As stated above, it is further

submitted that Warid is holding two separate Licenses to provide telecom services in Pakistan as well as Azad Jammu and Kashmir and Northern Areas. The regulator for both the Licenses is one i.e. the Pakistan Telecommunication Authority, so the accounts were submitted to the Authority both for Pakistan and the Azad Jammu and Kashmir and Northern Areas. Accordingly all amounts due from Warid (for Pakistan, AJK and Northern Areas) were deposited in the designated accounts. There is no violation of any provision of law on the part of Warid. The attached financial statement duly signed by the Auditors clearly reflects the following Gross Revenue figures:

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On the basis of the above figures and after deduction of Interconnection cost and PTA mandated payments, the relevant contributions have been paid by the Warid, the detail whereof is as under:

<i>Annual License Fee @ 0.5 %</i>	<i>113,953,675</i>
<i>R& D fund contribution @0.5%</i>	<i>113,953,675</i>
<i>USF fund contribution @1.5% PAK</i>	<i>341,861,025</i>
<i>Fee Payable</i>	<i>569,768,374</i>

The late payment charges of Rs. 19,023,551 has also been paid by Warid. There is nothing outstanding on the part of Warid on any account whatsoever.”

8. *In response to paragraph 8 it is submitted that Warid has already made compliance of its obligation under the License and the law. There is no violation on the part of Warid.*

NOW THEREFORE, in view of the above, it is requested that the afore-referred Show Cause Notice under Section 23 of the Act may very graciously be withdrawn and proceeding be dropped against the Licensee.

5. Therefore, before passing an enforcement order a Hearing Notice dated 25th May, 2010 was issued and served on the licensee whereby informed the licensee to attend the hearing dated 3rd June, 2010, 2010.
6. Mr. Omer A. Haider, (GM), Mr. M. Naeem (Litigation Manager) and Mr. Amir Shahid appeared before the Authority on the said date. During the hearing the licensee reiterated the same facts as mentioned in Para 4 above and took the plea that it has not violated any provision of the law and the license. It has already submitted its annual audited accounts on 17th November, 2009 and also provided copy of the letter dated 6th April, 2010 issued by Auditors providing statement of AJK Revenue. It further stated that they have taken time to segregate the accounts that is why it has paid penalty. It also informed that it has already paid late payment charges of Rs.78,336/- vide letter dated 4th February, 2010 and provided copy of the said letter. It also pointed out that the component of R&D is wrongly mentioned in the show cause notice because R&D payments are not applicable under AJK & GB license. There is nothing outstanding against it on any account.

Keeping in view the foregoing, the Authority directed the Finance Division to verify the statement of the licensee regarding accounts and payments, which was verified and found to be correct to the extent of payments, however, separate annual audited accounts as per the license conditions were not provided. Furthermore, the letter dated 6th April, 2010 which was referred by the licensee was issued for sale tax authorities.

7. Findings of the Authority:

- (i). Record reveals that the licensee had provided its annual audited accounts for the year ended on 30th June, 2009 on 17th November, 2009 for Pakistan and also made the payments of annual regulatory dues for the said year.
- (ii). The licensee has not submitted separate annual audited accounts for the year ended 30th June, 2009 for AJK & GB (NA) in support of its calculations of annual regulatory dues for the licensed territory of AJK & GB (NA) despite repeated instructions, hence, violated license conditions 4.4.3 and 6.4.3 of the license, therefore, the instant show cause notice was rightly issued.
- (iii). Record reveals that the licensee had already paid the late payment charges Rs.78,336/- mentioned in the notice, hence, the facts relating to R&D payment and late payment charges were inadvertently alleged in the show cause notice, which is regretted.

8. ORDER

7.1. Keeping in view the above mentioned facts coupled with the available record, the Authority hereby dispose of the subject show cause notice in the following terms:

- (i). The licensee/ Warid Telecom (Pvt.) Limited is hereby directed to submit separate Annual Audited Accounts for AJK & GB (NA) for the year ended 30th June 2009 within 60 days of issuance of this determination pursuant to clauses 4.4.3 and 6.4.3 of its license.
- (ii). In case of failure to abide by the aforesaid order, the Authority shall initiate strict legal action under the provisions of the Act against the licensee.

(S. Nasrul Karim A. Ghaznavi)
Member (Finance)

(Dr. Khawar Siddique Khokhar)
Member (Technical)

9. This determination signed on 22-11-2010 and comprises 05 pages.