



PAKISTAN TELECOMMUNICATION AUTHORITY

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Website: <http://www.pta.gov.pk>

No: PTA/Lic/(WLL&M)/WTL/125/2006/220

19th August, 2020

Subject: Order of the Authority in case titled "Worldcall Telecom Limited"

Please refer to the show cause notice vide No. PTA/Lic/(WLL&M)/WTL/125/2006/130 dated 8th June, 2020.

2. Attached please find order of the Authority passed in the captioned matter for your information and compliance.

Encl: As above.


(Sajjad Latif Awan) 19/8/20

Director General (Law & Regulations)

To:

Worldcall Telecom Limited

Through its Chief Executive Officer

Plot # 1566/124, Main Walton Road, Lahore Cantt.

Tel # 042-36671192-6 Fax # 042-36671197

Copy for information to:

1. DG (Licensing), PTA HQs
2. DG (Coordination), PTA HQs
3. Director (Finance), PTA HQs
4. SO to Chairman, PTA HQs
5. SO to Member (Compliance & Enforcement), PTA HQs
6. PA to Member (Finance), PTA HQs



Enforcement Order under Section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 against Worldcall Telecom Limited

File No.PTA/Lic/(WLL&M)/WTL/125/2006/

Show Cause Notice:	8 th June, 2020
Venue of Hearing:	PTA HQs, Islamabad
Date of Hearings:	5 th August, 2020 13 th August, 2020

The Issue:

“Change of Substantial Ownership Interest/ Control without Approval of the Authority”

Hearing Panel

Maj. Gen. Amir Azeem Bajwa (R)	Chairman
Dr. Khawar Siddique Khokhar	Member (Compliance & Enforcement)
Muhammad Naveed	Member (Finance)

Background Facts

1. Brief facts of the case are that Worldcall Telecom Limited (the "Licensee") was awarded non-exclusive Long Distance International (LDI) License No. LDI-02(01)-2004 dated 14th July 2004, non-exclusive Local Loop (LL) FLL Licenses No. LL-10-2004 dated 16th July, 2004 & No. LL-09-2004 dated 16th July, 2004 and non-exclusive Wireless Local Loop License No. WLL 09-2004 dated 12th November, 2004 (the "Licenses") by Pakistan Telecommunication Authority (the "Authority") to provide Licensed Services and to establish, maintain and operate the Licensed Telecommunication System, subject to the terms and conditions contained in the Licenses.
2. As a Licensee of PTA, the Licensee is required to comply with the provisions of prevailing regulatory laws comprising of the Pakistan Telecommunication Authority (Re-organization) Act, 1996 (the "Act"), the Pakistan Telecommunication Rules, 2000 (the "Rules"), the Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006 (the "Regulations") and the terms and conditions of the License.
3. The provisions of section 21(4) (j) of the Act, Rule 11 of the Rules, Regulation 21 of the Regulations read with clause 12.4 of the terms and conditions of the Licenses, the Licensee is under an obligation to ensure that substantial interest in, or control of it is not transferred to any person either by way of sale of share(s) or otherwise and that neither the Licenses nor the rights conferred upon the Licensee thereunder shall be transferred, assigned or disposed of in any manner

or transfer directly or indirectly without prior written intimation and prior written approval of the Authority. The Licensee was informed with regards to the violations/ contraventions by the Authority vide its letter dated 22nd January 2020. However Licensee failed to satisfy the Authority in respect of its contraventions.

4. The aforementioned failure on the part of the Licensee in notifying to and/or seeking prior approval of the Authority for change of substantial ownership interest/ control amounts to violation and contravention of the prevailing regulatory laws and the terms and conditions of the Licenses mentioned above, which has exposed itself to penal provisions prescribed under section 23 of the Act i.e. to levy fine up to three hundred and fifty million rupees or to suspension or termination of the Licenses and/or imposition of additional conditions by issuance of an enforcement order against the Licensee under section 23 of the Act.

5. As a consequence thereof, a Show Cause Notice (the "SCN") dated 8th June, 2020 under section 23 of the Act was issued to the Licensee. As per SCN, the Licensee was required to show cause within fourteen (14) days as to why the License(s) should not be suspended, terminated or any other enforcement order should not be passed against the Licensee under section 23 of the Act.

6. The Licensee on one hand vide its Letter No.WTL-05/4-1/11364 dated 18th June, 2020 requested for extension in time for at least 30 days in submitting reply to the SCN as many of their staff members have been infected with COVID-19 due to which the office was closed. Whereas on the other hand, the Licensee challenged the SCN by filing a suit for declaration and permanent injunction before the Civil Court Lahore and obtained an ad-interim injunction to maintain status quo vide order dated 20-06-2020.

7. That perusal of the plaint reveals that the said order had been obtained on the basis of concealments and misrepresentations. Since the status quo order had the effect of making the entire regulatory framework of the Authority completely redundant, the Authority assailed the order dated 20-06-2020 by filing an Appeal before District Court Lahore whereby the learned Appellate Court vide order dated 27-07-2020 was pleased to suspend the operation of the status quo order 20-06-2020. Meanwhile to proceed further, the Authority scheduled a hearing of the SCN for 05-08-2020 and issued a Hearing Notice dated 29-07-2020 to the Licensee. The Licensee once again attempted to escape the hearing and sent a vague and baseless letter dated 04-08-2020 demanding that the hearing of the SCN be postponed. The Authority responded to the said letter on the same date explaining how the hearing of the SCN had been scheduled strictly in accordance with law requiring the Licensee to ensure its attendance. During the hearing on 05-08-2020, Malik Mushtaq Ahmed, SM (Regulatory Affairs) alongwith Mr. M. Akram Shaheen, Advocate attended the hearing on behalf of the Licensee and requested for adjournment. In order to meet the ends of justice, the Authority allowed the request and fixed the matter for hearing on 13-08-2020 with the consent of the Licensee.

8. That after obtaining the said adjournment, the Licensee challenged the order dated 27-07-2020 passed by the Appellate Court by filing Civil Revision No. 35351/2020 before the Lahore High Court, Lahore. The said Civil Revision was also contested by the Authority and the same was withdrawn by the Licensee to file an Application / Petition seeking vacation of the interim relief granted by the Appellate Court as depicted by the order dated 10-08-2020 passed by the Hon'ble Lahore High Court, Lahore. Accordingly on 11-08-2020 the Licensee filed an application for suspension of order dated 27-07-2020 before District Court Lahore and the same was contested by the Authority and the application of Licensee was dismissed vide order dated 12-08-2020.

9. That it was in this background that the Licensee vide Letter No.WTL-05/4-1/1368 dated 11th August, 2020 replied to the SCN. The crux of reply to the SCN is as under: -

(i) *Since license suspension is threatened in the SCN, it is therefore pertinent to remind PTA of existence of Injunction issued by the honorable Civil Court at Lahore whereby PTA is directed not to obtain coercive measures against WTL. In the event WTL's licenses are suspended, the same shall amount to contempt of Court which might entail penal consequences for PTA. We earnestly hope that PTA will not disregard the Court orders.*

(ii) *WTL is a limited liability company limited by shares which shares owned by its sponsors and also traded at Pakistan Stock Exchange. WTL is distinct from its shareholders and is capable to sue and be sued in its own name. WTL can own property and as such multiple telecom licenses are owned by WTL. It is to be noted that WTL has no control over its shareholders who independently buy and sell shares of WTL. Any person having majority shares gains control of WTL. Corpus of WTL is governed under the present Companies Act 2017 which repealed Companies Ordinance 1984.*

(iii) *WTL did not receive any objection of whatsoever kind from PTA in this entire period in which transaction of sale purchase took place even after extensive public announcements. Since the licenses were neither transferred nor disposed of and remained in the ownership of WTL it was abundantly clear that PTA had no objection nor it could have any objection.*

(iv) *That as an abundant caution, WTL itself vide letter dated 29.01.2018 informed PTA about the completion of transaction and further confirmed that WTL is continuing to carrying its functions in terms with Act, Rules, Regulations and its License terms. It was further confirmed that principal management remained same and as such no change took place in control of WTL.*

(v) *That thereafter multiple communication took place mainly viz. providing documents which the WTL did. PTA however started abusing its position and brought irrelevant matters in the process which had nothing to do with transaction. In this regard PTA wrote a letter dated 24.10.2018 and imposed its legal demand of refarming of spectrum. Thereafter PTA brought another irrelevant objection of clearance of outstanding dues which had nothing to do with the share sale purchase transaction of WTL. Vide letter dated 15.11.2018, PTA demanded dues which were subject matter of various court cases and valid stay order existed against the same.*

(vi) *A bare perusal of the above mentioned Act, Rules and the License condition, along with rest of the provisions, makes it abundantly clear that license given by PTA cannot be transferred, assigned or disposed of by a licensee without notice to the PTA. However, the started scheme does not in any manner regulate restrict the shareholders of a company to trade their shares as it is company which is owner of the licenses such as WTL and not its shareholders.*

(vii) *WTL received two letters dated 21.07.2016 and 20.12.2016 whereby WTL was conveyed that it cannot enter into any change of management or acquisition without first clearing dues of PTA. These letters were utterly against the law as neither the WTL was*

involved in any such transaction nor its licenses were being transferred from it to any other person. If PTA had any apprehension, it should have addressed to the parties entering to share purchase arrangement but not the WTL.

(viii) As said above, share of WTL cannot be sold or purchased without proper announcements. In this regard, a series of public announcements were made in major dailies of Pakistan in English and Urdu on 08 March, 2017, 30 March 2017 and 29 April 2017 whereby public at large including the PTA was informed that a company known as Worldcall Services (Pvt.) Limited (WSL) is buying majority shares of WTL from Omantel. It is extremely pertinent to mention that WTL had not role in this transaction and continued its business as usual.

(ix) That thereafter for entire one year PTA became silent and finally to the utter surprise of WTL, PTA vide its ex-parte, obnoxious and absurd letter dated 22.01.2020, in an apparent reply to WTL's year old letter dated 21.01.2019 wherein documents were provided, stated that WTL has not complied with Rule 11(5) and Regulation 21 thus the share purchase transaction is contrary to legal and regulatory requirements. WTL vide letter 10.02.2020 again cleared its position and conveyed that at all times transaction was in the knowledge of PTA and it is only harassing WTL for recovery of undue amounts.

(x) Astonishingly, PTA's letter dated 22.01.2020 did not disclose any reason or requirement or any violation by WTL and only based it on the recovery of dues which had nothing to do the with sale purchase transaction. These so called dues demanded by PTA are illegal and WTL have challenged the same before various courts of law. It is also pertinent to mention that WTL did not even provide opportunity of hearing and issue a letter after complete silence of one year.

(xi) The SCN is based on mala fide as PTA vide its letter dated 22.01.2020 has already disclosed its mind therefore it is obvious that SCN is issued to penalize WTL illegally and unlawfully. PTA has not issued SCN to the parties who have done sale purchase but WTL who had no control over the transaction. WTL is fully compliant with its terms of license and its licenses are still in its ownership and no change has taken place. The SCN only issued for recovery purposes; in fact to extort money from WTL and to circumvent the process of law as going on various courts.

(xii) Last but not the least, it is submitted that acquisition transaction has taken place and 3rd party rights have been created. Moreover, rights of general public are also involved now. At this stage, any action by PTA will hurt the rights and interests of 3rd parties as well as general public. The company is operational and there is no change in its business. The spirit of the law is complied with. Without admission of default, WTL request PTA to regularize even if there was any procedural lapse. If PTA suspends license of WTL or imposes fine on WTL, it will practically destroy the company and its thousands of shareholders for no fault on their part. The share purchase transaction has become part and closed transaction now and cannot be reversed for reasons as said above as well as creation of 3rd party rights.

10. Thereafter the Licensee through Letter No.WTL-05/4-1/1368-I dated 12th August, 2020 submitted a supplementary reply to the SCN in continuation of the reply dated 11th August, 2020. The relevant paras of the reply are as under:

“24. That the SCN notices is issued under Section 23 of the Act which only authorizes Authority to issue SCN on contravention of the Act, Rules and Licenses terms and conditions and not the Regulations. The relevant part of Section 23 is reproduced hereunder for ready reference:

23. Issue of enforcement orders and penalties. (1) Where a licensee contravenes **any provision of this Act or the rules made thereunder or any term or condition of the license**, the Authority [or any of its officers not below the rank of Director] may by a written notice require the licensee to show cause within thirty days as to why an enforcement order may not be issued.

27. At the best the Authority can impose such additional conditions as are mentioned in Rule 11(5) which is reproduced hereunder:

(5) If a substantial ownership interest in, or control of, a licensee is proposed to be changed, the licensee shall give the Authority notice of such fact in writing. That written notice shall include all relevant details of the proposed change. If the Authority is of opinion, that change shall adversely affect the ability of the licensee to provide its licensed telecommunication services, **it may impose such additional conditions in the license as shall be reasonable and directly relevant to the proposed change.**”

11. On 13-08-2020 hearing was attended by Mr. Umar Durrani, Director (Regulatory Affairs), Malik Mushtaq Ahmed, Sr. Manager (Regulatory) along with Legal Counsel Mian Abdul Bari Rashid who reiterated the same stance as stated in the reply and supplementary reply.

12. Findings of the Authority: -

Matter heard and record perused. After careful examination of the record, the findings of the Authority are as under: -

12.1 Perusal of record reveals that the Authority had written a comprehensive Letter dated 22-01-2020 to the Licensee in which the issue of substantial change of shareholding without prior written intimation to the Authority was highlighted and other related concerns regarding the transaction were also addressed, issues were also brought to the notice. When the Licensee was unable to address / resolve the concerns raised therein to the satisfaction of the Authority, the Authority was constrained to issue a formal SCN on the subject matter. It is clarified that the Licensee is obligated to adhere to and abide by terms and conditions of the License, Rules, Regulations, Standing Operating Procedure(s) (SOP) as well as directions issued by the Authority from time to time. As a matter of record, it is an admitted position that the Licensee did not inform the Authority in writing in advance regarding a substantial change in its shareholding / ownership. Therefore the Licensee has clearly committed a contravention of Rule 11(5). As a consequence thereof, the Authority required information with regard to determine the fate of such transaction and its implication with regard to provision of licensed services.

12.2 In supplementary reply to the SCN, the Licensee has raised an objection that SCN can only be issued on contravention of the Act, Rules and License terms and conditions and not on the basis of any contravention of the Regulations. Therefore, reference of Regulations in SCN need to be excluded from the SCN. In this regard, it is clarified that due to contravention of License terms and conditions and applicable enabling Rules and provisions of the Act, SCN has been issued.

Moreover, license condition 3.1.1 of the license provides that license is subject to the terms and conditions contained herein and to the Act, Rules and Regulations respectively, thus any violation of Regulations also be considered as violation of license terms and conditions. It would not be out of context to mention here that the Licensee has not denied change of substantial ownership interest/ control of the company. It is also pertinent to note that the requirements envisaged under Regulation 21 are the same as laid down in Rule 11. It is a matter of record that the Licensee did not notify the Authority in the manner as required under Rule 11(5) of the Rules. Moreover said transaction was executed without prior written approval of the Authority as required under clause 12.4 of the License.

12.3 It is also relevant to point out that the Licensee is not providing its services in accordance with terms and conditions of its License(s), on the ground that issue of withdrawal of radio frequency spectrum is also under process which clearly shows that spectrum is not being utilized in the manner as required under the terms and conditions of the license. The requirement for prior notice/ approval is to evaluate that the proposed change shall not adversely affect the ability of the Licensee to provide its licensed telecommunication services so that the Authority can stipulate additional conditions in the license to safeguard against such acts.

12.4 It is extremely important to make reference to the conduct of the Licensee by putting on record the consistent failure of the Licensee to pay outstanding dues on account of Annual Regulatory Dues (ARDs), Annual Radio Frequency Spectrum Fee (ARFSF), Annual Numbering Charges, Initial Spectrum Fee (ISF), Microwave / BTS Charges and APC for USF Contribution. Detail of all outstanding dues is given below: -

	Principal	LPAF		Payment received in escrow account	Total
ALF	28,926,426	26,369,849	Till 30 Jan 2020		55,296,275
ALF NVCNS	31,144,637	31,462,447	Till 30 Jan 2020		62,607,083
ARFSF	401,114,163	608,454,613	Till 30 Jan 2020		1,009,568,776
ISF	1,021,500,000	2,498,888,500	Till 30 Jan 2020		3,520,388,500
R&D	34,157,622	52,393,205	Till 30 Jan 2020		86,550,827
USF	132,724,552	209,129,768	Till 30 Jan 2020		341,854,321
APC for USF	1,766,190,453	2,537,267,953	Till 21 Jan 2020	(335,002,425)	3,968,455,981
MW charges	6,430,975	11,638,610	Till 30 th June, 2014		18,069,585
ANC	2,195,000	768,567	Till April 2018		2,963,567
Total	3,424,383,828	5,976,373,512	-	(335,002,425)	9,065,754,915

Note : For expired NVCNS License, the LPAF has been calculated till 1st Oct 2017.

12.5. The Licensee has made every possible effort to avoid payment of the above referred regulatory dues. Despite the pendency of multiple court cases, the Authority is of the view that the Licensee has not been restrained to clear its financial obligations arising out of the agreed terms and conditions of the Licenses. Non-adherence with regulatory requirements and consistent failure to pay regulatory dues lead the Authority to inevitably conclude the incapability of the Licensee to provide licensed services in true letter and spirit. On one hand, the Licensee vide its Letter No.WTL-05/6-3/1313 dated 30th April, 2018 undertook and confirmed that it had sufficient

resources to make the above referred dues whereas on the other hand the record shows that the Licensee has till date not paid these dues already determined / finalized in accordance with the terms and conditions of the Licenses.

12.6 As discussed above, the Licensee has made every possible effort to avoid the proceedings pursuant to the SCN. Since, the duration of license granted to the Licensee is about to expire in the year 2024 and a huge amounts remain payable by the Licensee, therefore, in order to avoid any adverse legal consequences against the shareholders, directors and management of the Company, the Licensee is required to fulfil its legal obligations with regard to carrying out the telecom business pursuant to the licenses granted by the Authority including but not limited to payment of all regulatory dues.

13. **Order:-**

13.1 In light of what has been discussed above and without prejudice to other matter pending before the Authority, the Authority hereby imposes a fine of Rupees Ten Million (10,000,000) on the Licensee for contravention of the Act, the Rules, the Regulations and terms and conditions of Licenses and directs the Licensee to deposit the same within a period seven (07) working days.

13.2 In case of failure to comply with the same, the Licenses issued to the Licensee shall stand **suspended** automatically till payment of the aforementioned fine.

Maj. Gen. Amir Azeem Bajwa (R)
Chairman

Muhammad Naveed
Member (Finance)

Dr. Khawar Siddique Khokhar
Member (Compliance & Enforcement)

Signed on 19th day of August, 2020 and comprises of (07) pages only.