

Dated : 18<sup>th</sup> Oct, 2021

PAKISTAN TELECOMMUNICATION AUTHORITY  
HEADQUARTERS, F-5/1 ISLAMABAD

**Enforcement Order under section 23 of Pakistan Telecommunication (Re-organization) Act, 1996 against Wi-Tribe Pakistan Ltd. for discontinuation of licensed telecom services**

File No: PTA/Coord/Minutes of Misc. Authority Meetings/634/2020/590

Show Cause Notice:	21 <sup>st</sup> August, 2020
Venue of Hearing:	PTA HQs, Islamabad
Date of Hearing:	22 <sup>nd</sup> December, 2020

**Panel of Hearing**

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

**Issue**

**“Discontinuation of licensed services”**

**Decision of the Authority**

**1. Facts of the case:**

1.1 Precisely stated that Wi-tribe Pakistan Limited (the “licensee”) is engaged in the business of telecommunication services in Pakistan pursuant to non-exclusive licenses No.WLL-02-2004 dated 1<sup>st</sup> November, 2004 (the “licenses”) issued by the Pakistan Telecommunication Authority (the “Authority”) to establish, maintain and operate telecommunication system and provision of telecommunication services in fourteen regions of Pakistan on the terms & conditions contained in the licenses.

1.2 The licensee under prevailing regulatory laws comprising the Pakistan Telecommunication (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 is under a continuing obligation to comply with the same.

1.3 As per license condition No. 1.1.2 of the license, the licensee is under an obligation to provide the following mandatory services, *inter alia*, basic public telephone access services including:

- (i) access to emergency services;
- (ii) access to directory enquiry services;
- (iii) access to operator assistance services; and
- (iv) access to long distance and international public voice telephone services.

1.4 Section 4(1) (m) read with section 6(f) of the Act provides to safeguard and protect the rights of the consumers. More so, as per section 21 (4) (1) of the Act protection of consumers rights is an obligation upon the licensee.

1.5 As per license condition No. 5.2.1 (f) of the license, efficient use of frequency is mandatory. Further, in accordance with license condition No. 5.2.1 (d) of the license, Frequency Allocation Board (FAB) shall have the right, exercisable at any time, to terminate the assignment to the licensee of the radio frequency spectrum described in Appendix 2 of the license if the Board determines that the licensee is not complying with the requirement applicable to such radio frequency spectrum. Upon such termination by the Board, any rights granted to the licensee hereunder to use the radio frequency spectrum shall terminate.

1.6 In accordance with license condition No. 6.2.1 of the licenses, the licensee shall not discontinue providing the licensed services or a category of licensed services unless (a) the licensee gives the Authority and affected customers at least 90 days prior written notice of such discontinuation and (b) Authority's prior written approval to such discontinuation is obtained.

1.7 As per letters dated 14<sup>th</sup> July, 2020, 21<sup>st</sup> July, 2020 and 22<sup>nd</sup> July, 2020 of the licensee it has been noticed that as a consequence of commercial dispute between the licensee and EDOTCO Pakistan (Pvt.) Limited (Telecom Tower license holder), the telecom services being provided to the consumers were discontinued. Thus, due to non-provision of telecommunication services users were affected without any default on their part.

1.8 In accordance with license condition No. 7.2.1 (e) of the licenses, it is obligatory that the standard contract service must include refund or other rebate for the service problem.

1.9 As a result of discontinuation of telecom services to customers without any default on their part, a Show Cause Notice (the "SCN") dated 21<sup>st</sup> August, 2020 was issued to the licensee requiring therein to remedy the contravention by adhering license conditions in terms of provision of licensed services as to protect the interest of consumers and submitting a compliance report within three working days of the issuance of the SCN and also to explain in writing, within thirty (30) days.

2. The licensee vide letter dated 26<sup>th</sup> August, 2020 replied to the SCN. Crux of the reply is given below:

- i. A complaint was filed before the Authority under section 4(f) and section 31 of the Act against EDOTCO on 27<sup>th</sup> July, 2020, which remains pending.
- ii. EDOTCO blatantly and deliberately, with complete disregard to law, closed down the network simply as an extortion and blackmail exercise to gain commercial advantage.
- iii. Our teams have succeeded in restoring services despite the hurdles placed by EDOTCO, at forty-nine (49) locations through operational Site at the said

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locations as a result of new contractual relationships with other telecom operators and passive infrastructure service providers.

2.1 In addition, the licensee vide letter dated 21<sup>st</sup> September, 2020 further submitted a detailed reply. The main contentions of the licensee are as under:

- i. The licensee entered into Master License Agreement on 28<sup>th</sup> June, 2016 with Tower share (Pvt.) Limited for provision of passive infrastructure services including space on BTS sites, which was later assigned to Tanzanite Towers (Pvt.) limited, now called EDOTCO Towers Pakistan (Pvt.) Limited. However, unfortunately in the month of July, 2020 the licensee's network was forcefully shut down in most of the areas as the Tower Facilities on which the licensee's active telecom equipment operated for the provision of the licensed services, were unlawfully shut down by EDOTCO without the licensee's consent.
- ii. EDOTCO has time and again violated the terms of the Agreement by demanding huge sums of money for disrupted and faulty services. The invoices generated and submitted to the licensee have been flawed as full amounts were demanded for services not even delivered. The licensee expressed that it each time raised this issue with EDOTCO, but in vain.
- iii. The licensee apprised that it has been negotiating the way forward since August, 2019 to resolve all such outstanding issues including the lack of services. However, on 6<sup>th</sup> March, 2020, EDOTCO informed the licensee that even though the Covid-19 pandemic has invoked the Force Majeure clause of the Agreement and lockdowns were being imposed by the Government, negotiations would no longer be undertaken. Despite of this statement of the EDOTCO and understanding the dire requirement to ensure provision of uninterrupted WLL services to its customers, the licensee continued to discuss and improve upon its offers to resolve the issue with EDOTCO, till 29<sup>th</sup> June 2020.
- iv. In continuation of multiple efforts to resolve the issue by the licensee, EDOTCO on the contrary served Notices of Termination dated 23<sup>rd</sup> June 2020, 7<sup>th</sup> July 2020 and 13<sup>th</sup> July 2020 and accordingly shut down over four hundred (400) Tower Facilities of the licensee on 5<sup>th</sup> July 2020, 8<sup>th</sup> July 2020, 13<sup>th</sup> July 2020, 14<sup>th</sup> July 2020 and 15<sup>th</sup> September, 2020 respectively.
- v. The licensee further submitted that there was no transgression on the part of licensee. Tower Facilities were shut down by EDOTCO without licensee's consent. The requirements of subject regulations related to discontinuation of services are in cases where the licensee is conducting a voluntary and pre-planned termination of services in a licensed region. The unlawful actions of EDOTCO confirm that the breakdown in licensee's service was neither voluntary nor pre-planned.
- vi. The licensee further submitted that it has tried its level best to resolve the dispute with EDOTCO and in this pursuit it has approached the Civil/ District Courts,

the Authority and Ministry of Information Technology and Telecommunication. The licensee has also filed for injunctive relief soon after the first closure of Towers Facilities and procured an interim injunctive order dated 6<sup>th</sup> July, 2020 against EDOTCO actions and therefore, shutdowns which took place after such date were all in grave violation of the interim injunctive order issued by the Civil Court.

- vii. With regard to the matters related to consumer, the licensee asserted that it has closed numerous consumer complaints and provided refunds to many customers. However, despite of license's refund offers, there are some customers who demand continuation of the licensee's licensed services and refused to take the offer as they do not wish to transfer to any other telecom service provider.
- viii. Lastly, the licensee requested that no adverse action may be taken against the licensee. It further requested that the licensee be granted some leniency and time to resolve its dispute with EDOTCO until the arbitration proceedings are concluded and a final award has been given by the arbitrator.

### **3. Hearing before the Authority:**

3.1 In order to proceed further, the matter was fixed for hearing on 22<sup>nd</sup> December, 2020. Mr. Faheem Khan, legal & regulatory head, Mr. Rashid Hanif, Advocate Supreme Court and Mr. Syed Imran Abbas, CEO appeared on the behalf of the licensee. During the course of hearing, the licensee reiterated the same as stated in reply to the SCN. In addition, the licensee also highlighted that it has been striving to seek alternative solutions for the provision of the licensed services to its customers.

3.2 In furtherance to the aforesaid submissions, the licensee vide letter dated 12<sup>th</sup> January, 2021 provided detailed written submissions to questions raised in the hearing before the Authority. The submissions made are reproduced hereunder:

- i. *Wi-tribe Pakistan never contracted with Edotco Towers - they were forced upon us due to the sale of the passive infrastructure from Towershare (Pvt.) Limited, with whom we had the Master License Agreement dated 28 June 2016 (the "Agreement"), to Edotco Towers. We presume this transaction was approved by the PTA and/or brought to the notice of the PTA by the two respective entities. However, the prices offered by Towershare (Pvt.) Limited against provision of passive infrastructure services was the most competitive in the market and also cost-effective at the time which is why most of the towers were shared with them and of course they broadly met the SLAs.*
- ii. *It must be noted that arbitration proceedings are extremely time consuming and applying for arbitration at the time instead of seeking injunctive relief would have caused us immediate defeat and irreparable losses as Edotco Towers had suddenly shut down around fifty (50) tower facilities, in violation of the ten (10) days' notice period mentioned in their Termination Notice dated 23 June, 2020, which immediately affected thousands of Wi-tribe Pakistan's*

*customers depriving them of our licensed services for an indefinite period of time. NB - More importantly, Edotco Towers was also in violation of its PTA License terms by terminating their licensed services without seeking prior approval from the Authority which was intentional on their part. Therefore, at the time it was imperative for us to seek an injunctive order for immediate restoration of the tower facilities and also to restrain Edotco from shutting down the other tower facilities and causing any further damage to the remaining customers.*

- iii. *Wi-tribe Pakistan followed the global market norm recommended for companies such as itself- it did a sale and leaseback agreement with respect to its passive infrastructure to re-invest in the company. The company's services were on their knees with consumers flooding the helplines due to severe congestion on the network and unsustainable churn taking place. Firstly, we committed to putting the customer experience first and as such several million USD were targeted to double our bandwidth. This is something Ooredoo had never been able to do in the 3 years prior when they owned the business as it appears, they had no interest in the Pakistani consumer but merely wished to get rid of the business and make no further investment. We however, introduced an extra spectrum to ease the dreadful congestion on our network. Though consumers benefitted hugely from this investment, this was just a short-term solution. We then decided that we should upgrade the technology on our network and instead of going for LTE-4G we knew that 4.5G or LTE-Advanced was due to be released and so we skipped a generation and introduced the first 4.5G into Pakistan and the sub-region, investing tens of million USD. In addition, every month since March 2016 we have financed a deficit without even one month of positive EBITDA. Our strategy was to stay afloat, renew our license and then invest in 5G broadband which would be the equivalent of fibre in terms of speed and reliability. Of course, this all hinged on license renewal which was never NOT an option at the time otherwise we would not have bought the business.*

#### **4. Findings of the Authority:**

4.1 Matter heard and record perused. In the instant matter, the question before the Authority is to determine whether the discontinuation of telecommunication services by the licensee to its customers, *as a result of contractual dispute with EDOTCO (a Telecom Tower license holder)*, falls within the framework of regulatory laws or otherwise. In this regard, it is clarified that the Authority under the Act is mandated to protect the interest of consumer and within applicable legal framework has jurisdiction to entertain and decide matters related to consumers.

4.2 The licensee while responding to SCN submitted that it has filed a complaint before the Authority under section 4 (f) and section 31 of the Act against EDOTCO, on 27<sup>th</sup> July 2020, and the same is pending. Secondly, the licensee apprised that its team has succeeded in restoring services at Forty-nine (49) locations of Lahore and Karachi out of total of four hundred (400) through contractual arrangement with other licensed telecom operators. In this

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regard, the Authority is of the view that since it has taken the cognizance of the subject matter i.e. discontinuation of services, and issued SCNs to both i.e., the licensee and EDOTCO, therefore, complaint filed by the licensee under section 4 (f) and section 31 of the Act, pertaining to the same cause of action, stands infructuous. More so, restoration of services at 49 tower locations of Lahore and Karachi does not substantiate the fulfillment of licensed obligation with regard to provision of licensed services to their customers. The primary issue in the instant matter is to protect the interest of telecommunication consumer by providing un-interrupted licensed services as per terms and conditions of license.

4.3 On the contrary, the licensee's arguments in respect of restoring services at forty-nine locations through contractual relationship with other licensed telecom infrastructure seems to be unjustified on the ground that the Authority has received total 250 complaints relating to coverage issue, overcharging, non-provision of services etc., from May, 2020 to Jan., 2021. Nevertheless, the licensee vide an email dated 27<sup>th</sup> January, 2021 stated that presently it is not providing licensed service in any licensed region. In this regard it is suffice to conclude that licensee has failed to provide licensed services in accordance with service contract to its subscribers. It is the obligation upon the licensee that it has to ensure provision of licensed services and to protect the consumer right to use of services in accordance with terms and condition of license.

4.4 It is relevant to point out that the licensee at the time of grant of license has unequivocally and expressly agreed to abide by all the terms and conditions of the license including the provision of uninterrupted licensed services to its customers. Thus, it does not exonerate itself from discontinuation of licensed services on the ground of contractual dispute with other licensed telecom operator. Thus inaction on the part of licensee by not taking remedial steps for provision of licensed services is evident that it did not take proper, reasonable and justifiable measures for continuation of licensed service in telecom regions. As a consequence thereof, consumer not only suffered with licensed services but also faced financial losses of the amount paid against such services.

4.5 In order to ascertain and determine the refund of amount against the subscription of licensed services, the licensee was required to provide details of affected consumers who were deprived from the legitimate services as a result of discontinuation of services. However, the licensee has not provided the same despite the fact that during course of hearing the representative of the licensee ensured and undertook that they have remedied the grievances of all the consumers by providing rebate and accordingly would provide proof of the same to the Authority.

## 5. Order:

5.1 In the light of available record, it is an admitted position that the licensee has failed to comply with the terms and conditions of licenses with regard to provision of uninterrupted licensed services to its consumers. More so, the licensee has also failed to provide any alternate mode to continue to provide its licensed services as per terms and conditions of licenses. As per available record the licensed services were discontinued mainly for the region **KTR, LTR, ITR** and **RTR**, therefore, in such circumstances, the licenses bearing No.WLL-02-2004 dated 1<sup>st</sup>

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November, 2004 awarded to Witribe Pakistan Limited for said licensed regions are hereby terminated with immediate effect.

5.2 All Cellular Mobile licensees, Long Distance & International, Local Loop (WLL & FLL) and CVAS licensees are directed to terminate telecommunication facilities extended to the company under the licenses and submit a compliance report to the Director General Licensing PTA within three working days from the date of receipt of this order.

**Maj. Gen. Amir Azeem Bajwa (R)**  
Chairman

**Muhammad Naveed**  
Member (Finance)

**Dr. Khawar Siddique Khokhar**  
Member (Compliance & Enforcement)

Signed on 18th day of October, 2021 and comprises of (07) pages only.