



**PAKISTAN TELECOMMUNICATION AUTHORITY**  
**HEADQUARTERS, F-5/1 ISLAMABAD**  
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**Enforcement order under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 against, Pakistan Telecommunication Company Limited**

Date of Issuance of Show Cause Notice: 27<sup>th</sup> April, 2011  
Venue of Hearing: PTA HQs, Islamabad  
Date of Hearing: 7<sup>th</sup> June, 2011  
16<sup>th</sup> June, 2011

The Authority present:

Dr. Mohammad Yaseen: (Chairman)  
Dr. Khawar Siddique Khokhar: Member (Technical)

The Issue:

**“Usage of Extra Radio Frequency Spectrum Bandwidth at Karachi, Lahore and Multan”**

**DECISION OF THE AUTHORITY**

**Brief facts of the case:**

1. Precisely stated facts of the case leading to initiate legal proceedings under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 (the “Act”) against Pakistan Telecommunication Company Limited (the “licensee”) are that the licensee pursuant to terms and conditions of license bearing No.PTA/M(T)-014/A dated 15<sup>th</sup> April, 1997 as modified on 13<sup>th</sup> June, 2005 (the “license”) was required to provide wireless telecommunication services in accordance with radio frequency spectrum allocated and described in Appendix 2 of the license.
2. The Frequency Allocation Board (FAB), established under section 42 of the Act and having exclusive authority to allocate and assign portion of radio frequency spectrum to the provision of telecommunication services and telecommunication system, vide report/letter dated 2<sup>nd</sup> December, 2010 reported that the licensee had been found involved in usage of extra frequency spectrum bandwidth at Karachi, Lahore, Rawalpindi, Islamabad and Multan in WLL 1900 MHz band. In addition, ISPAK vide dated 10<sup>th</sup> December, 2010 also lodged a complaint against the licensee for extra usage of radio frequency spectrum to FAB.
3. The matter was taken up with the licensee and vide letter No.12-19/2010/Enf/PTA dated 14<sup>th</sup> December, 2010 was directed to immediately vacate the unauthorized extra bandwidth and submit a compliance a report by 3<sup>rd</sup> January, 2011.It would be pertinent to mention here that

the detailed report of extra usage of bandwidth was also provided and communicated to the licensee along with the said letter.

4. The licensee vide letter dated 28<sup>th</sup> December, 2010 informed that it is using only assigned spectrum for its services and is not in violation of any of its licensed services. Accordingly, a meeting was convened on 9<sup>th</sup> February, 2011 wherein the licensee was directed to stop using of extra bandwidth as already communicated to the licensee by the Authority vide letter dated 14<sup>th</sup> December, 2010.
5. In compliance with the said instruction, the licensee vide letter dated 15<sup>th</sup> February, 2011 intimated that it has checked its WLL systems operation at sites identified in aforementioned PTA's letter in Multan, Karachi, Lahore and Islamabad and has not found operations outside the licensee's assigned frequencies.
6. In order to ensure compliance of the Authority's instruction, terms and conditions of license and assurance made by the licensee vide its letter dated 15<sup>th</sup> Feb., 2011, a fresh survey was carried out by FAB in the month of April, 2011. However, as per report of the FAB vide letter dated 12<sup>th</sup> April, 2011 it was found that the licensee did not comply with the instruction and continuously providing its WLL services by using extra radio frequency spectrum band which tantamount not only a contravention of license conditions No. 2.10, 23.1, clauses 46.1 and 47 of schedule 6, clause 23.1 of the license but also a violation of clause 8.1 of Appendix B of the Pakistan Telecommunication Rules, 2000.
7. Due to the aforementioned contraventions and violation, a Show Cause Notice (SCN) vide No.PTA/Wireless Licensing/LL and Mobile/Licensing/104/2006/3/1588 dated 27<sup>th</sup> April, 2011 was issued to the licensee whereby the licensee was required to remedy the aforementioned contravention by vacating the unauthorized extra radio frequency spectrum with immediate effect and restrict its telecommunication system by using only radio frequency spectrum/ bandwidth which is assigned to the licensee vide Appendix 2 of the license and also explain in writing within 30 days of the issuance of SCN as to why the license should not be suspended, terminated or any other enforcement order as referred above may not be passed against the licensee under section 23 of the Act.
8. The licensee vide letter No.RA/PR/PTA/4/May/2011 dated 26<sup>th</sup> May, 2011 replied the SCN and denied all allegations leveled in the SCN. Reply of the licensee is reproduced below:

**Subject: SHOW CAUSE NOTICE UNDER SECTION 23 OF THE PAKISTAN TELECOMMUNICATION (RE-ORGANIZATION) ACT, 1996 (the "Act")**

Dear Sir,

Kindly refer to subject SHOW CAUSE NOTICE numbering PTA/Wireless Licensing/LL and Mobile/Licensee/104/2006/3/1588 dated April 27, 2011 issued to Pakistan Telecommunication Company Limited ("PTCL") under sub-section (1) of section 23 of the Act alleging use of extra radio frequency spectrum/bandwidth at Karachi, Lahore, Multan and Rawalpindi/Islamabad

based on survey carried out by FAB. The alleged activity of use of extra radio frequency spectrum/bandwidth has been termed as violation of Clause 8.1 of Appendix-B of Rules and Clause 23.1 of the license and the terms and conditions appearing in Appendix 2 and Schedule 6 of the license.

Through the above referred Show Cause Notice, the Authority has required PTCL to immediately vacate the alleged unauthorized extra radio frequency spectrum/bandwidth and restrict the telecommunication system to use only radio frequency spectrum/bandwidth assigned to PTCL vide Appendix 2 of the license and also explain in writing within 30 days of the issuance of the above referred Show Cause Notice regarding alleged violation.

In this regard, we submit as follows:

1. PTCL, at the outset, reiterates that it has always taken all possible measures to comply with obligations as per license, Pakistan Telecommunication (Re-Organization) Act, 1996 ("the Act"), rules and regulations validly made under the Act. PTCL has not violated Clause 8.1 of Appendix-B of the Rules and Clause 23.1 of the license and the terms and conditions appearing in Appendix 2 and Schedule 6 of the license.
2. PTCL, as a major player, has made huge investments in its wireless broadband network in the face an otherwise troubled WLL industry. PTCL has contributed most significantly towards the government policy objectives of broadband proliferation providing stimulus to the economic growth of the country and creating direct and indirect employment opportunities.
3. It is also pertinent to note that PTCL's wire line network is not ubiquitous and is susceptible to external hazards like disruptions from activities of other development entities, thefts, malicious cuts and right of way issues etc. In order to make its modern and innovative services accessible to greater number of citizens of Pakistan; PTCL is making huge investment in wireless network.
4. It is very unfortunate that instead of providing support to PTCL to accelerate the pace of deployment, to provide enhanced services to the citizens of Pakistan, the Authority is being dragged into non- issues. We request the Authority to use its resources for facilitation of operators who have deployed huge resources to serve the citizens through innovative services.
5. In the past also allegations of spectrum violations on the complaints of others, has proved to be wrong and this case is no different.
6. That PTCL would also like to take this opportunity to highlight that PTCL is the only Operator who has made full payment of the spectrum auction price while all other licensees have defaulted but still continue to use the spectrum which warrants serious actions by PTA and these defaulted Operators are diverting Authority's attention by misleading and false referrals. The other WLL operators are in purported default on and PTCL's business is adversely affected as these operators to rob PTCL of legitimate revenue.

7. The non-provisioning of additional spectrum allocation has slowed down broadband growth rate in the country as acknowledged by the Authority in its meeting with broadband service providers held on 18<sup>th</sup> May 2011. PTA instead of facilitating the PTCL who has already invested huge amounts in wireless state of the art broadband network is chasing the 3G dream through mobile by holding numerous workshops and seminars to invest in 3G network.
8. The Authority is obsessed with broadband through cellular mobile 3G and this has led to non-utilization of precious resource of the country (WLL spare spectrum), loss of revenue to GoP exchequer and depriving citizens of Pakistan from the modernized telecom services. This is a case of strict accountability that for the last two years the request for the spectrum is pending before the Authority.

### **Preliminary Submission**

9. This reply is furnished without the benefit of a review of the methodology applied unilaterally by the inspection team during the monitoring survey leading to the issuance of instant Show Cause Notice. The inferential exercise underlying the aforesaid conclusions cannot be considered 'evidence' unless PTCL is confronted with the underlying methodological approach along with the opportunity to be present during the monitoring inspection. For these reasons, this reply remains preliminary with reservation of right of PTCL to submit a final reply once complete methodology and tools applied for conducting of inspection is shared.
10. The proceedings relating to the instant Show Cause Notice are quasi-judicial in nature and are therefore subject to the provisions of the Qanun-e-Shahadat Order, 1984. As such, the 'evidence' being relied upon by the Authority has to be presented and, subject to all legal exceptions, properly 'admitted' at the hearing on the instant Show Cause Notice. PTCL has the right to cross-examine the officials who participated in the inspection and wrote the inspection report. In the absence of the aforesaid process being adopted, the Authority may not treat the 'findings' stated in the Show Cause Notice as evidence against PTCL and pass any adverse order based thereon. It is, therefore, requested that the underlying report with methodology and tools applied be furnished for PTCL to properly prepare its defence and that PTCL be provided an opportunity of hearing approximately three weeks after the said report is provided to PTCL.
11. That the reliance of the Show Cause Notice on Clause 8.1 of Appendix-B of the Rules and Clause 23.1 of the license and the terms and conditions appearing in Appendix 2 and Schedule 6 of the license is incorrect as PTCL has not violated any of above referred provisions. The Clause 8.1 of Appendix-B ("General Conditions of License") of the Rules and Clause 23.1 of the license requires the licensee to observe the provision of the license, the Act and any applicable Rules and Regulations, orders, determinations and decisions of the Authority. Moreover, PTCL has thoroughly checked its WLL systems and services and no violation, as alleged in Show Cause Notice, was observed.
12. That notwithstanding the submission on the issue of jurisdiction and maintainability, it is submitted that the monitoring survey was conducted unilaterally in the absence of any representative of PTCL. Furthermore, no detailed survey methodology and inspection report has ever been provided to PTCL and it is not possible to verify the "results"

which have been stated in the Show Cause Notice and PTCL contests the findings and submits that if any survey is to be carried out PTCL's authorized representatives must be invited for that.

13. It may please be noted that PTA under Section 4[l(b)], 5(2)(c) & 43(5) Section 43(6) of Pakistan Telecommunication (Re-organization) Act, 1996 is under statutory obligations to process the application for spectrum within stipulated time period. The Pakistan Telecommunication (Re-Organization) Act, 1996 requires the Authority to refer application for the use of radio frequency spectrum to the FAB for assignment of spectrum within a period of thirty days and FAB, under proviso to Section 43(2)(6) is required to process the application and intimate the status of application within three months.
14. In order to meet the broadband service requirements of fast increasing number of customers, PTCL has been repeatedly requesting for additional spectrum for the last two years. PTCL's request was/is in line with Government of Pakistan objective for proliferation of broadband and PTCL has made huge investment in wireless network. PTCL has deployed more than 1500 BTSs across the country. Delay in provisioning of the additional spectrum has blocked gainful utilization of the investment and is causing huge revenue loss to PTCL and depriving the citizens from availing modern services in addition to depriving the national exchequer from urgently needed tax revenues.
15. Moreover as per Telecom Act Section 4[l(e)] & 4[l(b)], the Authority is responsible for promotion and modernization of telecommunication systems and telecommunication services. By delaying / denying PTCL's request, the Authority is ignoring the mandate given to it through the fundamental telecom law.
16. That above referred requests include communication with PTA/MoIT for allocation of additional spectrum vide our requests numbering RA/RS-007/WLL dated 25<sup>th</sup> August 2009 and 9<sup>th</sup> September 2009 to PTA and vide its letters numbering RA/C&PS/04/2009 dated August 12, 2010 and RA/C&SP/1 1/2010 dated January 28, 2011 to MoIT (copies of correspondence is attached).

#### **Para-wise Reply**

17. That the contents of Para 1 are a matter of record, however, the Show Cause Notice relates to the license No. PTA/M(T)-01/A dated April 15, 1997 while PTL was assigned an integrated license No. PTA/M(T)-014/A dated April 15, 1997 duly modified on June 13, 2005.
18. That the contents of Para 2 & 3 regarding obligation of licensee to comply with provisions of Act, Rules, Regulations, license conditions and orders, determinations, directions and decisions of the Authority are correct and PTCL has been fully complying with all such conditions.
19. That the contents of Para 4 regarding Section 43(1) and (5) are correct that the FAB, through PTA, is empowered with exclusive authority to allocate and assign portions of radio frequency spectrum to the providers of telecommunication services and telecommunication system.

20. Regarding para 5 of the Notice, it is submitted that PTCL is fully complying the provisions of sub-section (2) of Section 20 of the Act. PTCL has established and is maintaining & operating telecommunication system and providing telecommunication service strictly in accordance with the provisions of its license.
21. That the contents of Para 6 needs no response.
22. Regarding Para 7 it is submitted that PTCL has been complying with terms and conditions with regard to frequencies assigned to it and appearing in Appendix 2 and Schedule 6.
23. That the contents of Para 8 are denied. PTCL verified its system and did not find any violation which was duly communicated to PTA.
24. That the contents of Para 9 are not admitted. In this regard, it is submitted that PTCL replied vide its letter dated RA/RS-007/WLL/2010 dated December 28, 2010 giving assurance to use only assigned spectrum for its services followed by a meeting in PTA Headquarters on February 9, 2011 on the subject. PTCL again on February 15, 2011 vide our letter No. RA/C&SP/04/2011 replied to Authority that the sites identified by PTA have been investigated and PTCL has not found operations outside PTCL's assigned frequencies (copies of correspondence attached). The purported referred survey of April 2011 has been carried out without notice to and presence of PTCL hence ex-parte. PTCL has not been provided with detail survey report and in absence of same the "results" put forth by PTA can neither be accepted nor do they have any legal validity. The said survey and purported results are both denied and cannot be form basis of the Show Cause Notice. Moreover, reference to violation of Clause 8.1 of Appendix-B of the Rules and Clause 23.1 and Schedule 6 of the license are not relevant.
25. That the content of Para 10 are denied. The alleged contravention on the part of PTCL is misconceived as PTCL has at all times fulfilled its obligations under the Act, Rules, Regulations, and conditions of license. We understand that without a proper survey, in the presence of PTCL and PTA representative, issuance of show cause notice making severe allegations is total violation of natural justice. The subject Shown Cause Notice as submitted earlier is misconceived and not maintainable.

#### **PRAYER**

In view of the foregoing submission, it is most humbly prayed that the Show Cause Notice dated April 27, 2011, may kindly be withdrawn and related proceedings may please be stopped.

9. The reply submitted by the licensee was examined and not found satisfactory with respect to rebuttal of allegation leveled in the SCN. Resultantly, the matter was fixed for hearing on 7<sup>th</sup> June, 2011 however, on request of the licensee the matter was rescheduled and fixed for hearing on 16<sup>th</sup> June, 2011. Mr. Sikandar Naqi, SEVP, Mr. Gul Ahmed, EVP (Reg.), Mr. Ghulam Mustafa (G.M Legal), Mr. Waheed Anwer, GM Wireless, Mr. and Aziz-ur-Rehman (SM Reg. Affairs) on behalf of the licensee attended the hearing on the said date. The representative of the licensee reiterated the same as stated in the reply.

10. On the other hand, Mr. Tassadaq Rashid, Director Monitoring FAB informed the Authority that in accordance with monitoring reports, as of today i.e., on 16<sup>th</sup> June, 2011, the licensee is still using extra radio frequency spectrum bandwidth. The monitoring reports were not only presented to the Authority but also shown and shared with the licensee during the hearing. The licensee requested that a meeting may be arranged with the FAB to sort out the issue, as the licensee has also applied for allocation of frequency which has not yet been allocated and provided.
11. After hearing arguments and perusal of available record, the Authority reached at the conclusion that despite provision of report/information to the licensee with respect to usage of extra radio frequency spectrum, the licensee has failed to remedy the contravention as alleged in the SCN. Moreover, as per FAB report, as presented during hearing, it was found that licensee has not vacated the frequency till 16<sup>th</sup> June, 2011.

## 12. ORDER

- 12.1 Keeping in view the above mentioned facts coupled with the available record, the Authority hereby imposes fine of Rs.82.496 Million for unauthorized use of extra radio frequency spectrum to be paid within thirty (30) working days of the issuance of this enforcement order. The licensee is further directed to immediately stop the unauthorized use of extra radio frequency spectrum.
- 12.2 PTA Enforcement Division and FAB are required to monitor the usage of extra radio frequency spectrum as the subject matter of the instant case and update the Authority within one month of the issuance of this enforcement order.
- 12.3 In case of non-compliance by the licensee of the order as mentioned at para 12.1 above the license awarded to the licensee may be suspended till further order of the Authority and may initiate appropriate legal proceedings under the applicable provision(s) of the Act.

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(Dr. Khawar Siddique Khokhar)  
Member (Technical)

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(Dr. Mohammed Yaseen)  
Chairman

This determination signed on \_\_\_\_\_ and comprises 07 pages.