

NO. SECP/MISC/DC-1/49/2000  
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
(Monitoring & Enforcement Division)  
State Life Building, 7-Blue Area,  
Islamabad

Sub: **ORDER ON COMPLAINTS FILED BY PAKISTAN TELECOM AUTHORITY, ISLAMABAD ALLEGING MIS-STATEMENT IN PROSPECTUS UNDER SECTION 59 & 60 OF THE COMPANIES ORDINANCE, 1984 WORLDCALL PAYPHONES LIMITED.**

M/s. Pakistan Telecommunication Authority (PTA), Islamabad made a complaint to this Commission that signatories to the Prospectus of M/s. WorldCall Payphones Limited have made misstatement in the Prospectus regarding royalty payable to PTA by M/s. WorldCall Payphones Limited. Accordingly a show cause notice under Section 60, 66 and 492 of the Companies Ordinance, 1984 was issued on 14.04-2000 to the signatories of Prospectus of WorldCall Payphones Limited to explain as to why action may not be taken against them as provided under law. The auditors of the company were also advised vide letter dated 18-04-2000 to clarify the position with reference to their certificate issued under Section 53(1) read with Clause 28(1) of Section (2) of Part – I of the Second Schedule to the Companies Ordinance, 1984.

2. In response to the show cause notice M/s. WorldCall Payphones Limited took the plea as under :-

- (i) Under Para 2.2 (c) (ii) of the license Agreement between the company and PTA, the company is required to pay PTA Royalty at the rate of 4% of the gross revenue of the company. PTCL charges are collected on their behalf by the company and therefore, these charges can by no means be included in the gross revenue of the company.
- (ii) The term “revenue” is clearly defined and explained in IAS-18 (revised

1993) in which revenue has been defined as the gross inflow of economic benefits arising in the course or ordinary activities of an enterprises.

- (iii) PTCL as an operator, is itself required to pay license fee and royalty fee to PTA on its part of revenue. If the company also pays royalty on PTCL charges, the PTA would be getting royalty twice i.e., from the company as well as from the PTCL.

3. The company also furnished a copy of PTAs letter dated 22.07.1999 in which it was stated that as per annual accounts of the company upto the period 31.05.1999, PTA has calculated royalty on the basis of gross revenue less PTCL charges, for which the PTA did not raise any objection either at the time of finalization of accounts in the past or at the time of publication of Prospectus in the newspapers. The company also furnished opinion from a Law Firm which indicates that royalty is to be paid on the revenue of the company after deducting PTCL charges.

4. The auditors in their reply took the plea that they have given their certification on the basis of the audited accounts for the period ended 31.12.1999 which were not objected by the PTA. They had further made reliance on the confirmation of the legal adviser that there was no pending litigation against the company.

5. Since the company had strongly refuted to the charges made by the PTA regarding payment of royalty, PTA was asked to offer their comments on the reply of the company as well as on the reply of the auditors of the company.

6. In response to our letter, PTA has furnished its comments and it has been contended as under :-

- (i) That license agreement does not state that PTCL charges shall be deducted from gross revenue for computation of royalty;

- (ii) That the language of the license is quite clear and the argument of the operator that PTCL charges are not their income is not valid;
- (iii) That the argument of the operator taken from IAS-18 is not valid in the present case. In this connection he has given an example of a travel agent who sells air tickets on behalf of an airline and in that case gross revenue of the agent will consist of only commission received from him. In present case operator is not the agent of PTCL, It buys telephone calls from PTCL, add value to it and sales them as card payphones calls. He is selling another product, after adding value and therefore, his call charges to PTCL cannot be deducted from his sales revenue to determine his royalty for a given period.
- (iv) As regards opinion of the company's legal advisor, it has been stated that opinion of company's legal advisor cannot be accepted as it does not give any reason for holding this opinion.

7. On the date of hearing Mr. Mumtaz H. Syed, Director of the company alongwith Mian Safiullah, Chartered Accountant of Taseer Hadi Khalid & Co., and Sardar Ali Wattoo, Group Financial Controller appear before the undersigned and took the plea that there was no dispute till issue of Prospectus. As such it was decided to call the representative of the PTA to establish that there was dispute on the date of publication of the Prospectus and it had been expressly communicated.

8. Dr. Muhammad Ramzan, Director Finance, PTA appeared before the undersigned on 15.06.2000. He was asked to establish on the basis of some documentary evidence that there was some dispute between PTA and the company on or before the date of publication of the Prospectus and state whether any correspondence was exchanged between PTA and the company in this regard. He only referred to PTA's letter dated 25.04.2000 but this letter does not establish that there was a dispute before the date of

publication of Prospectus. He has further referred to one of his note on his file claiming that dispute was duly discussed in a meeting on 6<sup>th</sup> March, 2000 with Financial Controller of the Company. This note is dated 14-04-2000 and reads as follows:-

“An analysis and review of the Audited Annual Reports of WorldCall Limited and its reconciliation with the accounting record of PTA disclosed that:-

- (a) The company used to determine annual Royalty Payable to PTA on the basis of Gross Revenues (Minus) PTCL Call Charges; and
  - (b) The Finance Section of PTA, especially D.D (F) has been demanding the WorldCall Limited to make payment of Royalty for 1996 to 1999 in accordance with the statistics submitted by the company; and
  - (c) Finally, the corresponding computation of Royalty (1996 to 1999) totally ignored the determination of annual Royalty equivalent to 4% as the Franchise Receipts' earned by WorldCall Limited during a particular operating year.
- (2) The undersigned had an opportunity to formally appraise the observed situation where the Financial Controller of WorldCall Limited handed over the Audited Accounts of the company to the undersigned during our meeting scheduled on March 6, 2000.
  - (3) The relevant information, facts and figures surrounding the total Royalty accrued to WorldCall Limited were previously submitted to the Authority in the working paper titled “Promulgation of Uniform Standard for calculation Annual Royalty of Card Payphones operators” on March 13, 2000 which was approved.

- (4) As directed, a DFA titled "Withdrawal/Cancellation of Previous correspondence of PTA on account of Royalty payable by WorldCall Limited for the period 1996 to June 30, 1999 is submitted for approval please.
- (5) The up-to-date calculation of total Royalty outstanding to WorldCall Limited for the years 1996 to June 30, 1999 is also summarized by Schedule given on Page 32/C.

9. From the Para-2 of the note above it appears that on 6<sup>th</sup> March, 2000 in a meeting, Finance Controller of the company delivered audited accounts on which this note was put up on 14.04.2000. The Director Finance who appeared before me stated that previously company never provided audited accounts and invoices/bills were raised on the basis of data provided by the company.

10. There is certainly a dispute between PTA and WorldCall, Payphone Limited and it can be decided on either way but there is no evidence that any correspondence on the dispute had been exchanged between the parties till the date of publication of the Prospectus. I am convinced that it is not a case of misstatement in the Prospectus but relates to a commercial dispute which may be resolved by the parties at some other forum. Further more, the financial impact is not so material that had the royalty been provided in the manner the PTA desires, the financial results depicted in the Prospectus would have deteriorated to that extent that public would have restrained to invest. The complaint by the PTA, having no merit, is rejected and filed.

**(M. Zafar – ul – Haq Hijazi)**  
**Commissioner (Enforcement)**

Place: Islamabad  
Dated: June 19, 2000