



**PAKISTAN TELECOMMUNICATION AUTHORITY**  
**HEADQUARTERS, F-5/1 ISLAMABAD**  
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**Enforcement Order under sub-section 3 of Section 23 of the Pakistan Telecommunication  
(Re-organization) Act, 1996 in the matter of M/s Dancom Pakistan (Pvt) Limited**

**File No. 6-2 (Dancom) /06**

Date of Issuance of Show Cause Notice:	22 <sup>nd</sup> August, 2006
Date of re-hearing (under court order):	29 <sup>th</sup> July, 2008
Venue of Hearing:	PTA H/Qs, Islamabad

**The Authority:**

Dr. Muhammad Yaseen:	Chairman
S. Nasrul Karim Ghaznavi:	Member (Finance)

**The Issue:**

*“Providing incorrect CDRs to the Authority in contravention of AP Rules and AP Regulations”*

**Decision by the Authority**

**Brief Facts:**

1. **Reasons for deciding the issue afresh:**
  - 1.1. Brief facts, for re-hearing the instant matter, are as under:
  - 1.2. M/s Dancom Pakistan (Pvt) Limited (the “licensee”) was issued a show-cause notice (the “notice”) under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 (the “Act”) on 22<sup>nd</sup> August, 2006 for contravening terms and conditions of the licence, Access Promotion Rules, 2004 (the “Rules”) and Access Promotion Regulations, 2005 (the “Regulations”) by providing incorrect information/data relating to incoming international telephony minutes. To decide on the notice, the licensee was heard on 19<sup>th</sup> April, 2007 and finally on 18<sup>th</sup> March, 2008. Since the licensee failed to appear on the said date, we proceeded *ex-parte* by suspending the license vide our determination/enforcement order dated 3<sup>rd</sup> April, 2008.
  - 1.3. The licensee, being aggrieved of our aforementioned determination, approached the hon’ble Islamabad High Court, Islamabad by invoking its appellate jurisdiction under sub-section (1) of section 7 of the Act through FAO No.08/2008.
  - 1.4. The aforementioned FAO came up for hearing before the High Court on 16<sup>th</sup> July, 2008 on which date the Court set aside our earlier determination of 3<sup>rd</sup> April, 2008 and remanded the case back to us for our decision on the issue of jurisdiction to the effect that

during pendency of arbitration proceedings before the Civil Court of competent jurisdiction in light of clause 28.4 (b) of interconnection agreement dated 4<sup>th</sup> August, 2004 between the licensee and PTCL, the Authority can take cognizance of the matter, with speaking order and reasons, manifesting application of judicial mind to the issues and points of controversy involved in the matter within a period of 15 days from the date of receipt of this order. Hence, the instant decision of the issue afresh vide this determination of ours.

## **2. Why Show-Cause:**

2.1. Though complete background and facts of the issue was given in our earlier determination of 3<sup>rd</sup> April, 2008, however, since the said determination has been set aside by the hon'ble Court, the same facts are reproduced herein below for reference:

- i. The licensee was awarded non-exclusive license No.LDI-05(01)-2004 dated 3<sup>rd</sup> April, 2004 by Pakistan Telecommunication Authority (the "Authority") for provision of Long Distance and International telephony services in Pakistan.
- ii. Under the terms and conditions of its licence, the licensee was required to comply with the provisions of the prevailing regulatory laws comprising of the Act, the Rules, the Regulations and the terms and conditions of the licence.
- iii. Pursuant to rule 12 of the Rules, and regulation 11 of Regulations, the licensee is required to furnish report to the Authority of total incoming international minutes carried and delivered by it to the telecommunication system of Local Loop (LL) and Mobile licensees including total payments made to LL and Universal Service Funds (USF), respectively.
- iv. The licensee on 9<sup>th</sup> March, 2006 submitted the aforesaid report to the Authority. However, it was found that the licensee has shown over two million (i.e. 2,654,292) incoming international telephony minutes less than that of the actual minutes. This fact was corroborated by the analysis carried out by matching with the licensee's CDR and CDRs of other operators including PTCL. The licensee was, thus, found in misreporting of incoming international telephony minutes and concealing of the real/actual facts/data from the Authority in contravention of the terms and conditions of the license, the Rules and the Regulations.
- v. Section 23 of the Act empowers the Authority to issue a show-cause notice if any licensee is contravenes the provisions of the Act, the Rules made thereunder or the terms and conditions of its licence. Hence, for the reasons given in para iv, above, section 23 was invoked and the licensee was served with a show-cause notice.

## **3. Reply to the show cause notice by the licensee:**

3.1. The licensee, in its reply dated 20<sup>th</sup> September 2006 to the notice, categorically denied the allegation regarding provision of incorrect information contained in the notice and put forth various pleas for difference of minutes. Relevant paras from the reply are reproduced as under:

- i. *"Sir, we categorically deny the allegation of provision of incorrect information. Based on the PTCL CDRs that were provided to us by PTCL after lot of delays,*

we extracted the information and compared the data with our records. The difference of minutes is very less, rather within negligible limits due to possible difference of clock at various PoPs of PTCL and Dancom. The table below shows the number of calls and minutes recorded by both the systems:

Types of Trunks	Months	Dancom System		PTCL System	
		Calls	Minutes	Calls	Minutes
National	Jan 06	1,141,621	3,362,601	1,146,936	3,598,763
	Feb 06	1,078,129	3,057,362	1,059,607	3,135,738
International	Jan 06	1,120,270	5,371,904	1,130,753	5,371,007
	Feb 06	888,798	3,816,884	898,226	3,785,936

*Difference of Minutes (PTCL minus Dancom)*

- a. National Trunks January 2006 = 236,162 mins  
February 2006 = 78,376/-
- b. International Trunk January 2006 = (897) mins  
February, 2006 = (30948) mins
- ii. The difference of minutes (2 million) stated in the above referred Show Cause is not correct and perhaps it is due to misunderstanding. There has been numerous correspondence exchanged between Dancom and PTCL. In case copy of any letter written by PTCL to Dancom, is not provided by us to PTA, it is simply due to the fact the PTA office may not specifically have asked for any or all letters exchanged. The substance of the matter mentioned in the so-called concealed PTCL letter dated 21<sup>st</sup> April has already been reported to PTA vide our letter No.CPH/CLO-3(LDI)/PTA-CA dated 18<sup>th</sup> July 2006 and even number dated 27<sup>th</sup> July, 2006. Moreover, we have earlier communicated through our letters to PTCL and some are copied to PTA that while calculating the bills amount, PTCL has erroneously levied APC on National calls (also received on National Trunks by PTCL.
- iii. As per the PTCL Interconnect Agreement, Schedule-12, we had filed the disputes related to excessive charging and wrong levy of APC on the national calls received on the National Trunks with PTCL. The copies of the filed disputes are enclosed. Upon receiving no response from PTCL, we were left with no choice but to resort to Court of Law for arbitration proceedings. The learned court has admitted this case and the wrong levy of APC is now sub-judice matter.
- iv. It is further submitted that concerned PTA office has not provided us enough opportunity for clarification otherwise we could explain the matter that there is not much difference of minutes of calls. The levy of wrong APC by PTCL is unjustified and it is an Act by PTCL without proper justification. Dancom Pakistan (Pvt.) Limited has provided the accurate and true information that is almost matching with PTCL records in term of number of minutes.
- v. In view of the above, Dancom Pakistan (Pvt.) Limited pleads that it has provided correct information to the Authority. Moreover, this matter is presently subjudice

*and it is therefore requested that the Authority may kindly withdraw the Show Cause Notice.”*

3.2 The reply was not found satisfactory for the following reasons:

<b>Operator</b>	<b>Minutes Calculated from Dancom (CDR)</b>	<b>Minutes Calculated from PTCL (CDR)</b>	<b>Difference</b>
<b>Instaphone</b>	76,476	129,083	<b>52,607</b>
<b>NTC</b>	19,350	26,636	<b>7,286</b>
<b>PTCL</b>	3,732,420	5,131,712	<b>1,399,292</b>
<b>SCO</b>	137,596	144,867	<b>7,271</b>
<b>Telenor</b>	155,527	176,615	<b>21,088</b>
<b>Ufone</b>	461,917	533,924	<b>72,007</b>
<b>Warid</b>	177,024	203,078	<b>26,054</b>
<b>Other</b>	85,317	215,082	<b>129,765</b>
<b>Total</b>	<b>6,504,922</b>	<b>7,060,494</b>	<b>1,715,370</b>

Table1.0 Reconciliation for January 2006

<b>Operator</b>	<b>Minutes Calculated from Dancom (CDR)</b>	<b>Minutes Calculated from PTCL (CDR)</b>	<b>Difference</b>
<b>Instaphone</b>	58,573	65,690	<b>7,117</b>
<b>NTC</b>	17,913	22,622	<b>4,709</b>
<b>PTCL</b>	2,425,612	3,184,957	<b>759,345</b>
<b>SCO</b>	95,986	102,320	<b>6,334</b>
<b>Telenor</b>	107,209	121,054	<b>13,845</b>
<b>Ufone</b>	364,077	411,658	<b>47,581</b>
<b>Warid</b>	144,106	160,662	<b>16,556</b>
<b>Other</b>	78,088	156,916	<b>78,828</b>
<b>Total</b>	<b>4,495,218</b>	<b>4,666,900</b>	<b>934,315</b>

Table2.0 Reconciliation for February 2006

- i. Interim inspection of the licensee’s Call Detail Record was carried out on 7<sup>th</sup> March 2006, but the licensee unnecessarily delayed the submission of its CDRs. Furthermore, the CDRs supplied by it also lacked data for six days, (last three days of February, 2006 and first three days of March, 2006) which was provided later on. This fact was also admitted by the licensee.
- ii. CDRs were obtained from the licensee and PTCL. To prove authenticity of the supplied CDRs, PTCL also supplied raw (machine readable) form of its CDRs as well as a-leg

CDRs, however, the licensee didn't supplied the raw form of its CDRs claiming that its system did not produce the raw form of CDRs.

- iii. The licensee was given the opportunity to provide matching of PTCL a-leg and b-leg (international incoming) CDRs. For this purpose relevant PTCL CDRs were handed over to the licensee for performing processing at its own end. On multiple occasions the licensee provided the matching of PTCL CDRs. However, during the evaluation the matching produced major flaws. The licensee admitted the flaws and demanded more time, which was granted, but the licensee remained unable to provide the required matching.
- iv. To settle the controversy of the Category field both the licensee and PTCL were given ample opportunity to provide substantial evidence to validate their claim. In this regard PTCL and the licensee/Dancom presented technical experts in front of the Committee. The licensee's technical expert asserted that the field 'Category' being used by PTCL is not an ITU-T recommended field for detecting an international call. However, there was unanimous view from both sides that the field Forward Call Indicator (FCI) can indicate an international or nationwide call. Technical expert from PTCL vendor Siemens also met the Committee. He explained that the field 'Category' in Siemens exchanges is derived from the standard fields 'Calling party category' and 'Forward call indicator'. Nokia Siemens also provided an undertaking asserting the same. Given the global authenticity of Nokia Siemens and the licensee's own endorsement of the FCI field there was no doubt left in the authenticity of the 'Category' field to detect international calls.
- v. Analysis of the licensee/ Dancom's CDRs also produced major abnormalities, which showed that the licensee had used its calling card platform to mask international calls as nationwide. Following abnormalities were detected after analysis:
  - i. Abnormal number of users against a single calling card
  - ii. Abnormal usage of calling cards- a single calling card being used from multiple remote cities within few minutes
  - iii. Invalid calling numbers

Calling Card	Number of distinct phones
46541418	196
31652277	128
46543687	128
37056384	126
46435791	126
42331169	123
44369842	121
44372844	117
44663404	110

Table 3.0 Brief description of a single calling card used by different PTCL numbers

The mechanism of masking is explained in the following diagramme:

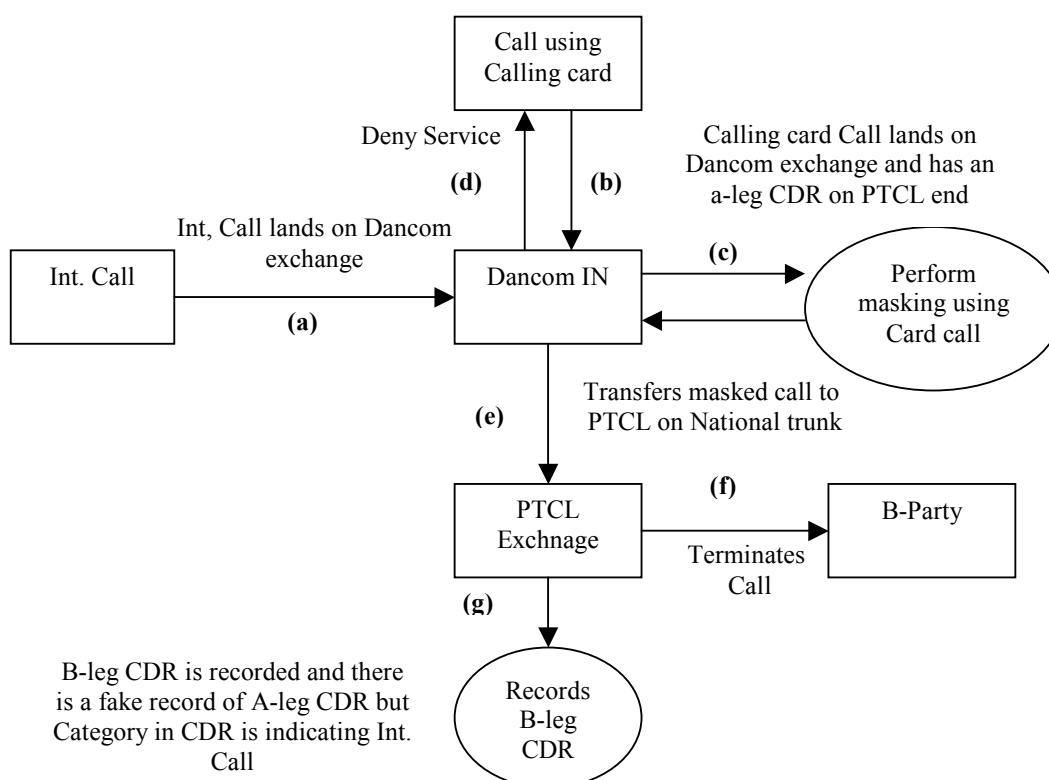


Figure 1.0 Usage of calling card platform for masking international traffic

- vi. The licensee's data contained in (i) CDR for months (January-February 2006) and (ii) CDR for the missing six (6) days as provided by the licensee exhibited that one CDR listed calls duration in minutes while the other in seconds, whereas the licensee earlier claimed that its switch was only capable of producing CDR for international calls listing duration in minutes. It means that one of these CDR is not original and has been provided after post processing;
- vii. The licensee's claim of negligible difference between it and PTCL CDR is not a valid. It has considered traffic terminated on PTCL National Trunk as nationwide but PTCL has detected bulk of that traffic as International on the basis of international flags in the CDR. These international calls on National Trunks for January and February 2006 are 1,591,047 & 795,799 minutes, respectively. Furthermore, the statistics provided by the licensee for International Trunks are also inaccurate and a discrepancy of around half a million minutes is evidenced in its CDR;

viii. The licensee's claim that enough opportunity was not provided to explain its position was not correct. It took about approximately six weeks to respond on the anomalies being pointed out to it in Zonal office of the Authority at Rawalpindi on 12<sup>th</sup> April 2006;

3.3 The licensee was required to appear before us so that it could be heard, however, it failed to appear and our earlier determination of 3<sup>rd</sup> April, 2008 was issued which was, as stated above, later on set aside by the High Court.

**5. Hearing on 29<sup>th</sup> July, 2008:**

5.1. As briefly narrated in the beginning of the instant determination, the Authority was directed by the High Court vide its order of 16<sup>th</sup> July, 2008 to decide the issue afresh within 15 days of the receipt of the order, hence, the Authority fixed the case for hearing on 29<sup>th</sup> July, 2008:

5.2. The licensee was represented by its Consultants namely Mr. M Asif Raza and Mr. Imran alongwith its counsel Syed Mujtaba Haider Sherazi, Advocate. At the very outset, the court's order dated 16<sup>th</sup> July, 2008 was read out to determine the scope of the hearing. The learned counsel representing the licensee submitted an application for *sin die* adjournment of the hearing on the ground that the licensee alongwith other LDI operators has assailed the Rules and the Regulations being *ultra vires* which matter is pending adjudication before the Islamabad High Court and as its legality or otherwise is yet to be determined by the court, the Authority should not hear the matter.

5.3. As we were hearing the matter under directions of the court coupled with the reason that no such point was ever raised by the licensee before the High Court neither in its memo of appeal nor in its arguments, the request for adjournment was not accepted.

5.4. On turning down of adjournment request, the learned counsel representing the licensee refused to advance arguments on merits of the case including jurisdiction.

5.5. It was also brought to the Authority's notice that the licensee has changed its management without prior intimation to the Authority and that the licensee has defaulted in PTA dues.

5.6. A meeting was called on 30<sup>th</sup> July, 2008, which was attended by the licensee through Mr. Faheem-ud-Din, COO/GM and officers of the Authority. The representative of the licensee was instructed to respond to the following queries:

- (a). Change in management without approval of the Authority;
- (b). Non-payment of outstanding dues on account of annual license fee, Grey Telephony Monitoring Equipment contribution and APC for USF charges; and
- (c). Concealment of international telephony minutes from the Authority.

5.7. Pursuant to the aforesaid meeting, the licensee submitted its reply vide its letters dated 31<sup>st</sup> July, 2008 and 1<sup>st</sup> August, 2008.

- (a). The licensee expressed regrets on change of management without notification to the Authority and claimed that it was due to oversight on the part of licensee and

also expressed regrets on the part of new management and requested the Authority to take lenient view in the matter.

(b). Regarding payment of outstanding dues it submitted that:

- (i) As per PTA letter dated 16<sup>th</sup> July, 2008 the payable dues on account of annual license fee for CPPS license/services is Rs.149,246/- and is ready to pay the amount of Rs.149,246 before 5<sup>th</sup> August, 2008;
  - (ii) It agreed to pay contribution for acquisition of Grey Traffic Monitoring Equipment in the amount of US\$ 23,827/- and requested for permission to pay in three equal installments in two months. The first installment shall be by 10<sup>th</sup> August, 2008, the second by 30<sup>th</sup> August, 2008 and the third by 30<sup>th</sup> September, 2008;
  - (iii) Regarding APC for USF till September, 2007 it submitted that the licensee has filed an appeal (FAO.No.11/2008) in the Islamabad High Court and the court has granted interim injunction. Furthermore, the licensee also has filed writ petition on the matter, which is pending adjudication before the court and requested that the matter be pended till the decision of the Court, which will be fully honoured by the new administration of the company.
- (c). The licensee further informed vide its letter dated 1<sup>st</sup> August, 2008 that all objectionable activity as alleged is attributable to the era of previous administration and is under contest in the Court of Law pending for a decision. The new administration however undertakes to strictly abide by the decision of the court of law in all such matters, which are previously subjudice.
- (d). The dues outstanding, calculated so far are as under:

Sr No.	Fee	Period	Amount
1	Annual License Fee (LDI)	2005-2006-2007	9,854,979/-
2	R & D contribution (LDI)	2005-2006-2007	19,709,958/-
3	USF contribution (LDI)	2005-2006-2007	29,564,937/-
4	Annual License Fee (CPPS)	2007	264,732/-
5	APC for USF	2007	43,597,288/-
7	Annual Dues on under booked traffic	2006	346,011/-
	<b>Total</b>		<b>103,367,906/-</b>

## 6. Authority's jurisdiction:

- 6.1. Regarding our jurisdiction for taking cognizance of the matter despite the licensee's going to the court for arbitration proceedings with PTCL, we understand that the matter before us and the one *subjudice* before the learned civil judge are two distinct and separate matters having no relevance to each other.
- 6.2. Subject matter of licensee's petition before the civil court is its dispute with PTCL for excessive billing which is a matter between the licensee and PTCL while the reason



which led us to issue show cause notice and proceed against the licensee is its act of providing us incorrect CDRs in contravention of the provisions of the Rules and the Regulations as mentioned in the notice.

- 6.3. Apart from the foregoing, show cause notice was issued to the licensee on 22<sup>nd</sup> August, 2006 while the licensee went to the civil court in September, 2006 and it was after approaching the civil court, instead of replying to show cause notice, the licensee replied to the notice by submitting that the matter is *subjudice*. This, we understand, was *malafidely* done only to frustrate the instant proceedings by us.
- 6.4. So far as request for *sine die* adjournment is concerned, apart from Para 5.3 above, though the *vires* of the Access Promotion Rules, 2004 and Access Promotion Regulations, 2005 are pending adjudication before the competent court, but still they are operative as mere filing of petitions challenging the *vires* of the Rules/Regulations do not bar its applicability.
- 6.5. Clause 28.4 of the interconnect agreement dated 4<sup>th</sup> August, 2004 provides a dispute settlement mechanism between the parties of the disputes arising out of the said agreement, being a contractual arrangement between the parties, but this clause does not oust the jurisdiction of the Authority for exercising its powers under section 23 of the Act, in case any licensee contravenes the provision of the Act, the Rules/regulations and terms and conditions of the license and in the instant case providing incorrect CDRs is breach of statutory obligation, hence, the clause referred to does not bar jurisdiction of the Authority in the matter which is entirely different from the dispute between the parties.
- 6.6. This time the subject matter of the show cause notice was not agitated except for its letter of 1<sup>st</sup> August, 2008 in which the licensee stated that all objectionable activities are attributable to the era of previous administration and is under contest in the court of law.
- 6.7. We do not agree to the foregoing as the notice was issued in the name of the company and also subject matter of the licensee's litigation with PTCL is other than the subject matter of the notice. Therefore, as per our understanding, the contravention is established.

## **7. Decision of the Authority:**

- 7.1. As our earlier determination has been set aside by the High Court vide which we had suspended the licence, therefore, there is no need to mention that with setting aside of the said determination, the suspension has also been set aside and the licence has been restored;
- 7.2. For the subject matter of the notice, i.e., contravention of rule 12 of Access Promotion Rules, 2004 and regulation 11 of the Access Promotion Regulations, 2005, we, by taking a lenient view in the matter as the licensee's management has been changed and it has undertaken to abide by each and other regulatory demand, impose a fine of Rs.1000,000/- (Rupees one million) under sub-section (3) of section 23 of the Act and direct the licensee to deposit the same within three months of the issuance of the instant determination.

- 7.3. Although the outstanding dues of Rs.149,246/- as ALF for the licensee's CPPS licence and US\$23,827/- as contribution for acquisition of Grey Traffic Monitoring Equipment are not subject-matter of the notice, however, as the licensee has agreed to pay the same (para 5.7 above), we direct the licensee to pay the amount of Rs.149,246/- immediately while the rest of the amount of US\$23,827/- is to be paid in three installments as per its own request (Para 5.7 (b) (ii)).
- 7.4. It is also brought into the notice of the licensee that its outstanding dues and other regulatory amounts as referred in Para 5.7 (d) shall be re-calculated in light of the decisions of the courts concerned on the issue of APC for USF and on its disputes with PTCL.
- 7.5. Regarding its change in management without prior intimation to the Authority, we take a lenient view this time as the licensee has regretted for the same, however, we at the same time warn the licensee to be vigilant in future and not to repeat such violations in future. The licensee is directed to submit updated record in this regard to our licensing division for updating the Authority's record.

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(S. Nasrul Karim Ghaznavi)  
Member (Finance)

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(Dr. Muhammad Yaseen)  
Chairman

This order is signed on 7<sup>th</sup> day of August, 2008 and comprises 10 pages.