



Government of Pakistan  
PAKISTAN TELECOMMUNICATION AUTHORITY  
Headquarters, F-5/1, ISLAMABAD

**Enforcement Order under Section 23 of the Pakistan Telecommunication (Re-Organization) Act, 1996 against M/s Dancom Pakistan (Pvt.) Limited for Non-Payment of APC for USF Contribution**

No. PTA/CA/APC/Enf Order/341/2019/1/1690

Show Cause Notice: 25<sup>th</sup> February, 2020  
Venue of Hearing: PTA HQs, Islamabad  
Hearing Date: 16<sup>th</sup> April, 2025

**Hearing Panel**

Maj. Gen. Hafeez Ur Rehman (R)	Chairman
Dr. Khawar Siddique Khokhar	Member (Compliance & Enforcement)
Muhammad Naveed	Member (Finance)

**THE ISSUE**

**“NON-PAYMENT OF APC FOR USF”**

This enforcement order seeks to dispose of Show Cause Notice dated 25-02-2020 (“SCN”) issued to M/s Dancom Pakistan (Pvt.) Limited for non-payment of Access Promotion Contribution (“APC”) for Universal Service Fund (“USF”) (i.e. “APC for USF”) along with late payment charges.

**1. Facts of the Case:**

1.1. Precisely stated facts of the case are that the Pakistan Telecommunication Authority (the “Authority”) granted a Long Distance and International (“LDI”) non-exclusive License No. LDI-05(10)-2004 dated 03-08-2004 (the “license”) to M/s Dancom Pakistan (Pvt.) Limited (the “licensee”) to establish, maintain and operate telecommunication system and to provide the licensed services, in particular, termination of international incoming calls in Pakistan.

1.2. In accordance with the terms and conditions of the license, the licensee was required to comply with the provisions of the prevailing regulatory laws, *inter alia*, comprising of the Pakistan Telecommunication (Re-Organization) Act, 1996 (the “Act”), the Pakistan Telecommunication Rules, 2000 (the “Rules”), the Access Promotion Rules, 2004 (the “AP Rules”) and the Access Promotion Regulations, 2005 (the “AP Regulations”). By virtue of section 21(4)(a) of the Act, read with clause 8.1 of the Appendix B of the Rules and condition 3.1 of the license, the licensee was obliged to comply with the provisions of the Act, the Rules and the Regulations.

**SCN:**

1.3. As per the applicable regulatory framework, the licensee was required to make payment of APC for USF periodically. The Authority had been determining and demanding payment of APC for USF from time to time, and the licensee was making payment off and on since January 2005, however, sometime, it was delaying and/or avoiding the payment of APC for USF on one pretext or the other including under the guise of litigation. With the advent of International Clearing House (“ICH”) policy in year 2012, the recovery of outstanding APC for USF for the pre-ICH period was initiated/effectuated as per the formula/percentage agreed in the ICH policy.

After the abolishment of ICH regime in year 2014-15, the Authority once again reconciled the outstanding dues of APC for USF. However, due to certain observations regarding calculation of APC for USF in the judgment dated 23-11-2015 passed in the case of licensee bearing FAO No. 345/2012 by the Hon'ble Lahore High Court, Lahore, the proceeding for the period mentioned in SCN could not be initiated against the licensee for the outstanding APC for USF. The Authority being aggrieved with aforesaid judgment dated 23-11-2015 passed in FAO No.345/2012, filed CPLA converted into Civil Appeal No.209/2016 before the august Supreme Court. The proceeding in CA No.209/2016 was finally concluded vide order dated 25-10-2019 passed by the august Supreme Court by remanding back the matter to the Authority for decision afresh without being influenced from the observations made in judgment dated 23-11-2015. Accordingly, the Authority, apart from deciding the subject matter of CA No.209/2016, also noted that the licensee has failed to make payment of APC for USF of Rs. 4,075,975,059/- (Principal: Rs. 1,642,854,825/- + LPAF: Rs. 2,433,120,234/- as on 11-02-2020). This amount, pertaining to the period as provided in table below, was calculated on the basis of traffic data submitted by the licensee:

No	Tenure of Dues	Amount (In Rupees)
1	September 2006 (partial amount)	3,244,134
2	October 2006	7,225,223
3	November 2006	976,743
4	December 2006	1,072,308
5	January 2007	703,404
6	February 2007	1,123,612
7	March 2007	413,911
8	April 2007	675,409
9	May 2007	573,905
10	June 2007	342,322
11	July 2007	86,186
12	August 2007	116,642
13	September 2007	311,124
14	November 2008 (partial payment)	16,921,705
15	December 2008	28,756,499
16	January 2009	30,596,098
17	March 2009	38,105,050
18	April 2009	84,022,068
19	May 2009	88,443,576
20	June 2009	129,221,356
21	July 2009	165,789,310
22	August 2009	154,484,528
23	September 2009	127,359,511
24	December 2010	141,974,239
25	March 2011	85,948,426
26	April 2011	26,429,665
27	May 2011	21,840,243
28	June 2011	44,368,740

29	July 2011	77,495,512
30	August 2011	71,319,027
31	September 2011	73,308,105
32	October 2011	5,634,388
33	November 2011	10,135,611
34	December 2011	9,988,886
35	January 2012	14,024,497
36	February 2012	12,999,937
37	March 2012	15,405,247
38	April 2012	15,202,779
39	May 2012	22,123,169
40	June 2012	31,648,890
41	July 2012	24,287,447
42	August 2012	26,034,077
43	September 2012	29,834,657
44	Additional amount for the month of September 2010	2,286,659
	<b>Total</b>	<b>1,642,854,825</b>

1.4. The licensee was required by the Authority vide its different letters / demand notes mentioned in the SCN to deposit respective amount in the designated account administered by the Ministry of Information Technology & Telecom (“MoIT&T”) but the licensee failed to deposit the required amount within the prescribed time. Due to persistent default on the part of the licensee in making payment of APC for USF, the Authority was constrained to issue show cause notice dated 25-02-2020 under section 23 of the Act, whereby the licensee was required to pay APC for USF in the sum of Rs. 4,075,975,059/- including late payment charges amounting to Rs. 2,433,120,234/- as of 11-02-2020 within seven (07) days of the issuance of SCN and also to explain in writing, within thirty (30) days of the issuance of the notice as to why the license should not be suspended, terminated or any other enforcement order should not be passed against the licensee under section 23 of the Act.

1.5. The licensee initially filed reply dated 28-02-2020 to the SCN by simply stating that the licensee has paid excess amount of Rs. 122.27 million on account of APC for USF for the period mentioned in the SCN and further stated that despite stay order dated 18-10-2018 issued by the Hon’ble Islamabad High Court in FAO No.108/2018, the SCN has been issued in violation thereof; the licensee reserved right to file a contempt petition and requested to adjourn the matter till the outcome of stay order and Civil Suit No.123/2011 for rendition of accounts pending adjudication before the District Court Islamabad. Due to aforesaid Court proceedings, the Authority, as an abundant caution, could not undertake any further proceeding in the SCN.

1.6. Finally, the learned Civil Judge, Islamabad rejected the plaint/dismissed the Civil Suit No. 123/2011 vide its order dated 04-06-2021. Though, the licensee has filed RFA No. 327/2021 before the Hon’ble Islamabad High Court against rejection of plaint/dismissal of Civil Suit No. 123/2011, however, no restraining order has been passed against the Authority.

1.7. The Authority finally fixed the hearing of SCN on 16-04-2025 in order to proceed further for adjudication thereon. Mr. Luqman Kamil (CEO), Col (R) Aurangzeb (Director), Ms. Amna Khan (Secretary) appeared on behalf of the licensee and attended the hearing. Since

the matter pertains to APC for USF, accordingly MoIT&T was also invited for the hearing, which was attended by Dr. Sajjad A. Mansha Legal Executive, Mr. Hassan Aziz Director Telecom on behalf of MoIT&T.

1.8. The licensee filed a reply/response on 24-04-2025 to SCN wherein it has referred to its earlier detailed submission dated 14-04-2020 whereby it has raised objections relating to the demand of the Authority regarding payment of outstanding APC for USF. While making preliminary submissions on the issue of APC for USF regime, the licensee contended that SCN is misconceived, having been issued on misreading of the law. The licensee denied allegation mentioned in the SCN. In addition, the licensee also raised some observations on calculation of amount and also provided its own calculations. For ready reference relevant paras of the reply to the SCN are as under:

- i. *The issued of APC for USF is pending adjudication before the Honorable Islamabad High Court in F.A.O No. 108 of 2018 wherein the Honorable court has granted stay order.*
- ii. *The licensee submitted that it has paid amount in excess of due amount for APC (for USF) contribution as required through SCN. Total amounts paid and deposited are in excess of due amount by Rs.122.57 million which is to be returned to Dancom, calculation / detail of which is given in next pages.*
- iii. *The licensee has also raised the issue of validity and authenticity and requires investigate and adjudicate upon the claim raised by its official against Dancom and thereafter to proceed further in the matter, if necessary. In the above backdrop, the levy of any late payment charges simply does not arise as the Authority is yet to enter into investigation / adjudication on the claim.*
- iv. *APC for USF and APCL are two distinctively different contribution. The definitions of APCL and APC for USF vide AP Rule 2004 are different and are as under:*

*2(c) "APCL" means Access Promotion Contribution for fixed line Local Loop and includes Limited Mobility Communication Services;*

*2(e) "APC for USF" means the mopped-up amount of Access Promotion Contribution on cellular termination diverted to Universal Service Fund.*

**Rule 8, read as follows:**

- a. *Within fifteen days of the issue of these rules, the Authority shall determine the APCL Contribution and the APC for USF Contribution.*
- b. *In making a determination of the APCL Contribution, measured on a per minute basis, unless the Authority determines that some other basis of calculation is preferable, the Authority shall determine the APCL Contribution applicable to Incoming International Telephony Service from a country. The APCL Contribution of a country shall consist of the Approved Settlement Rate for that Country, less LDI share, to be determined by the Authority which may be an amount up to US\$0.06.*
- c. *APCL Contribution shall include the local termination charge of LL Licensee. Any other payment due to a LL Licensee, as a result of interconnection agreement, shall have to be paid by a LDI Licensee from his own share.*

- d. In making a determination of the APC for USF Contribution, measured on a per minute basis, unless the Authority determines that some other basis of calculation is preferable, the Authority shall determine the APC for USF Contribution applicable to Incoming International Telephony Service from a country. The APC for USF Contribution of a country shall consist of the Approved Settlement Rate for that country, less LDI share, to be determined by the Authority which may be an amount up to US\$ 0.06, and less the local interconnection termination contribution due to an operator of a public mobile switched network in respect of one minute of Incoming International Telephony Service as determined by the Authority.'
- v. The licensee further observed that the above two definitions read with rule 8 supra provide that APCL and APC for USF will have to be dealt with separately for the purpose of recovery of said two different contributions. A bare reading of Rule 8 (2) and 8(4) makes it abundantly clear that APCL contribution is distinct and totally different from APC for USF contribution. In the instant case following notification of APC for USF contribution is available qua the relevant period Notification dated 24.1.2006, 11.9.2006, 31.12.2007, 23.2.2011, 17.8.2011. Whereas vide notifications dated (i) 31-3-2008, (ii) 6.1.2008, (iii) 19.1.2009, PTA fixed APCL contribution only.
- vi. In view of above no question of any demand viz APC for USF can lawfully be raised by PTA from May 2008 till 31 March 2011. The above said questions require investigation/adjudication by the Authority before even contemplating issuance of show cause notice u/s 23 of the Act 1996. It is reiterated that the same question i.e the non-existence of any instrument notifying the APC for USF charges is subject matter of trial in C.S 123/2011 and F.A.O-108/2018.
- vii. Without prejudice to above, it is stated AP Rules 2004 clearly provides that an LDI licensee is to negotiate the rates with foreign service providers and LDI licensee is to inform PTA about its negotiations from time to time. PTA officials are bound by AP Rules 2004 to update such Accounting Rate/Settlement Rate negotiated by an LDI Licensee. Sub Rule 2(r), 2(g) and 2(h) is reproduced as under:
- 2(r) "**Total Accounting Rate**" means the rate that a licensee negotiates with a foreign service provider for handling one minute of international telephony service.
- 2(g) "**Approved Accounting Rate**" means Total Accounting Rate approved by the Authority under rule 6.
- 2(h) "**Approved Settlement Rate**" means one half of the Approved Accounting Rate. It is therefore very clear that rates PTA role is to update the negotiated rates under Rule 6 which is reproduced as under:

**Rule 6 "Approved Accounting Rates"**

- The Authority shall maintain a list of approved Total Accounting Rates for different countries.
  - The Authority shall update the list of Approved Accounting Rates from time to time.
- viii. In this regard the licensee is of the view that in ASR notifications rates without any support of Rules/ Law on this matter. International Market forces usually determine rates whenever there is a significant change in situation like grey channel availability, demand factor and capacity available with each LDIs.

- ix. Moreover, in view of the regulation 3(12) any agreement which is not approved under section 3(5) can only lead to invocation of fine and nothing else. It is settled law that No court or authority can provide for an omission of the legislature on the settled principle of cassus oimsus reliance is placed on PLD 2016 supreme court 872, PLD 2016 Supreme Court 637, 2013 SCMR 1062, 2012 SCMR 377.
- x. AP Rules 2004 / Regulations 2005 provides a formula to calculate APC for USF wherein the Mobile Termination Rate (MTR) is deductible to calculate APC for USF. PTA thus cannot fix APC for USF through notifications. It is further contented that without prejudice to above, even if it is assumed that Rate decided by the Authority are legally valid irrespective of an LDI's negotiated rates. Same is subjected to allowed discount termed as permissible range which is fixed by PTA itself from time to time. AP Rules (2.P) defines permissible range, reproduced as under;

**“Permissible Range”** means range of prices between the Approved Settlement Rate and ninety-five per cent of the Approved Settlement Rate or such other percentage of the Approved Settlement Rate as the Authority may at any time, or from time to time, determine and notify thirty days in advance. Sub-Rule 7 (a,b,c) of AP Rule 2004 further elaborates above as much as that payment amount actually received will be in permissible range.

- xi. It is therefore clear that even if an LDI adhere to rate decided by PTA, the amount received will be net of the discount factor (permissible range). It is not possible for an LDI to pay APC on PTA's decided rate arbitrarily when an LDI Licensee received amount net of the discount. It is alleged that discount is to be deducted from LDI share, in this case it is stated that sub-rule 8(3) of AP Rules and sub-Regulation 6(2) of AP Regulation defines those amounts that are to be deducted from LDI share. Same is reproduced as under:

#### **Rules 8(3)**

**“APCL Contribution shall include the local termination charge of LL Licensee. Any other payment due to a LL Licensee, as a result of interconnection agreement shall have to be paid by a LDI Licensee from his own share.**

#### **Regulation 6(2)**

*Where a Delivering LDI Licensee handovers incoming international traffic to a Receiving LDI Licensee for onward termination on the network of an LL Licensee; the Delivering LDI Licensee shall transfer to the LL Licensee the APCL Contribution relating to the incoming international traffic so transferred in accordance with sub-regulation*

**Explanation:** *Where, pursuant to sub-regulation (2), a Delivering LDI Licensee handovers incoming international traffic to the Receiving LDI Licensee for onward termination on the network of an LL Licensee; the Delivering LDI Licensee shall pay to the Receiving LDI Licensee the transit charges for the traffic so terminated from its own LDI Share. If the discount amount is to be deducted from LDI share of US 5 Cents, the same should have been mentioned in AP Rules/AP Regulations which is not the case. Therefore, basis of calculation is not ASR but payment actually received by an LDI.*

- xii. *In this regard, PTA had also admitted the factum of international market rates through its own letters dated 24.1.2006, 10.7.2007, 11.09.2006, 31.8.2007, 3.3.2008, 14.3.2008, 29.9.2008, 13.10.2008, 30.4.2009, 19.6.2009, 24.03.2010, 30.8.2010 and 27.1.2011. Hence the licensee has been doing business by following rates available in international market or else close down its business. Below is a table comparing PTA arbitrary fixing rates vs Rates prevailing in international market during periods. (Rates are in US cents/ minute of an international incoming call). Calculations by the licensee compared with those shown in show cause. For periods in show cause, the licensee calculated due amount of APC for USF on basis of (1) PTA notified APC for USF rate and (2) alternatively on basis of prevailing market rates (settlement rates) negotiated with foreign service provider.*
- xiii. *Without prejudice, even if it is assumed that PTA notified APC for USF are lawfully valid then the licensee is entitled to refund of RS 122.575 million. In other case of negotiated rates with a foreign service provider, the licensee is entitled to refund of Rs 518 million along with interest accrued in escrow account.*
- xiv. *Another fact is that the licensee's net revenue during 2005 to 2012 after payment of interconnect cost and PTA annual dues and APC for USF comes to Rs 57.216 million as against PTA demand of additional APC for USF to the tune of Rs 1,642.854 million plus late payment charges. PTA has already recognized our annual audited annual accounts (AAA) thus the annual dues like annual licensee fee (ALF) and contributions (USF/ R&D) were charged on basis of submitted annual accounts (AAA). It is surprising that PTA officials have now calculated additional APC for USF 25 times higher than Dancom net earnings before tax. How Dancom can pay money that it has not earned through LDI license.*
- xv. *In view of all above submissions, PTA's officer's calculations shown in show cause notice for "APC for USF contribution" is not in line with "LDI license terms/conditions", "AP Rules 2004", "AP Regulation 2005" and the "Telecom Act 96". It is requested that Show Cause notice dated 25.2.2020 be withdrawn and Dancom be refunded APC for USF payment of made in excess.*

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

2.1. Matter heard. Record perused. Since the instant matter relates to payment of APC and recovery thereof from the licensee, therefore, before proceeding further with the instant matter, it would be advantageous to have an overview/understanding of APC along with legal framework in which the APC regime operates.

2.2. The APC as introduced in the De-Regulation Policy 2003, is part of revenue generated from international incoming traffic/calls terminate at Pakistan. As a matter of fact, international incoming traffic/call generates a revenue over the cost of conveying and terminating the traffic/call into Pakistan. Accordingly, a reasonable portion of the aforesaid revenue fixed by the Authority was being utilized to promote infrastructure expansion and accessibility in the rural and remote areas of Pakistan. In this regard, the said fixed portion of the revenue on the international incoming calls terminated at local loop licensees/fixed telephone lines was directly being paid to local loop licensees lines for improvement of their infrastructure. Whereas, the same fixed portion of the revenue on the international incoming calls terminated at mobile was not available to cellular mobile operators, rather the same was to be mopped up and diverted, after deducting mobile termination charges, to Universal Service Fund ("USF") created under section 33A of the Act for

the purposes of utilization mentioned in the Act and this fixed portion of the revenue is called APC for USF. It is worthy to note that APC was exclusively payable by the LDI licensee and no other licensee of the Authority is obliged to make such payment.

2.3. Regarding the legal framework of APC, it is stated that the Authority is responsible for regulating APC. In this regard, the Authority draws its power under section 4(k) of the Act to regulate APC. As stated above, the APC has been introduced through De-Regulation Policy, 2003; clause 4.3 thereof deals with APC. The AP Rules and the AP Regulations provide complete procedure and mechanism for making periodic payments of APC. For instance, rule 5(2) of AP Rules and regulation 6 (3) & (4) as well as regulation 10 (2) of the AP Regulations make it obligatory on the licensee to deposit APC for USF contribution within ninety (90) days after the end of calendar month for which the payment obligation arises. Furthermore, the Authority in consultation with the industry including the licensee deliberated upon the mode and manner of collection of APC in its Minutes of Meeting dated 06-12-2004. Subsequently, through the proposal of all LDI licensees including the licensee conveyed vide letter dated 05-01-2006, it was "*jointly recommended that APC should be fixed at US\$ 0.025 per minute for all countries of the world with effect from 8<sup>th</sup> November 2005*". Accordingly, from time to time, APC is being fixed/revised for all countries of the world instead of each country separately from time to time.

2.4. It may not be out of place to mention here that all issues of APC *vis-à-vis* mode and manner of payment and legality of AP Rules and AP Regulations through which APC contribution was to be regulated, have passed the test of judicial scrutiny. In this regard, all actions taken by the Authority with respect to its regulation and recovery including issuance of enforcement orders have been upheld and settled comprehensively up to the level of august Supreme Court of Pakistan in a judgment reported as 2016 SCMR 475.

2.5. While turning to the facts of the instant case after having an overview of APC for USF, it is very pertinent to clarify here that there is no dispute with regard to figures relating to termination of international incoming telephony minutes, on the basis of which APC for USF has been calculated, as the data of the international incoming traffic/calls had been provided by the licensee itself. In addition, it is also an admitted position that in accordance with applicable regulatory framework, the licensee is under obligation to make contribution on account of APC for USF. As a matter of record, initially the licensee had deposited APC for USF in accordance with AP Rules, AP Regulations and notifications issued by the Authority. Thereafter, the licensee had made partial payments of APC for USF for different months during the years 2005, 2006, 2007 and 2009. Details of payments made by the licensee are as under:

- i. Rs. 2,814,728/- on 30-08-2005;
- ii. Rs. 2,058,647/- on 21-03-2006;
- iii. Rs. 8,506,450/- on 05-04-2006;
- iv. Rs. 1,599,768/- on 03-05-2006;
- v. Rs. 15,000,000/- on 22-08-2006;
- vi. Rs. 15,639,717/- on 29-10-2006;
- vii. Rs. 15,000,000/- on 16-11-2006;
- viii. Rs. 2,600,000/- on 29-12-2006;
- ix. Rs. 8,323,090/- on 18-01-2007;
- x. Rs. 6,680,000/- on 31-01-2007;
- xi. Rs. 1,000,000/- on 15-04-2009;
- xii. Rs. 10,000,000/- on 25-05-2009;
- xiii. Rs. 20,000,000/- on 25-05-2009;
- xiv. Rs. 15,865,182/- on 18-06-2009;

- xv. Rs. 20,000,000/- on 02-07-2009 in Escrow Account;
- xvi. Rs. 15,000,000/- on 03-08-2009 in Escrow Account;
- xvii. Rs. 15,000,000/- on 03-09-2009 in Escrow Account;
- xviii. Rs. 26,274,302/- on 03-10-2009 in Escrow Account;
- xix. Rs. 2,810,803/- on 30-10-2009;
- xx. Rs. 2, 810,803/- on 30-10-2009;
- xxi. Rs. 2, 810,803/- on 30-10-2009;
- xxii. Rs. 140,000,000/- on 08-07-2013 in Escrow Account;

2.6. After making adjustment of payments made from time to time by the licensee, APC for USF is outstanding for the months of January to September 2007, September 2008 till January 2009, March 2009 to September 2012 and additional amount for the month of September 2010. The total principal amount of APC for USF since January, 2005 till September, 2012 has been calculated in the sum of Rs. 3,911,640,696/- out of which only Rs. 133,519,991/- has been paid by the licensee, whereas, the total outstanding amount payable by the licensee on account of APC for USF is Rs. 13,710,883,164/- (Rs. 3,778,120,705/- i.e. principal & Rs. 9,932,762,459/- i.e. late payment additional fees as on 15-12-2025). The licensee has also deposited contribution in escrow account pursuant to court order as well as ICH policy directive issued in 2012 by the MoIT&T.

2.7. Before dilating upon the correctness and legality of demand of APC for USF mentioned in SCN under adjudication, it would be relevant and for just adjudication of the instant matter to highlight and observe the conduct of the licensee towards payment of APC for USF since it had been made applicable from January, 2005 onwards.

2.8. Firstly, the licensee was required to submit details for payment of APC for USF from January 2005 up to June 2005 vide letter dated 07-10-2005 by simply sharing the format for calculation of APC for USF. It may not be out of place to mention here that the licensee was making partial payments off and on since August 2005 till October 2009, however, sometime, it was delaying the payment of APC for USF on one pretext or the other including under the guise of pending litigation. Since certain payment on account of APC for USF was outstanding, accordingly, the Authority vide its letter dated 09-08-2006 directed the licensee to pay entire overdue amount of APC for USF up to April, 2006. In response, the licensee submitted three post-dated cheques of Rs. 15,000,000/-, 15,639,717/- and 15,000,000/- towards payment of APC for USF on 21-08-2006.

2.9. Since the payment on account of APC for USF remained due, therefore, the Authority vide its letter dated 27-09-2006 required the licensee to pay outstanding payments for APC for USF, followed by another letter dated 17-07-2007 directing the licensee to pay overdue APC for USF amounting to Rs. 38,123,587/-. Due to persistent default in making the requisite payment of APC for USF, the Authority was constrained to issue show cause notice dated 29-08-2007 under section 23 of the Act. This show cause notice resulted into enforcement order dated 04-04-2008 requiring the licensee to make payment of outstanding APC for USF dues mentioned in the show cause notice.

2.10. Being aggrieved, the licensee along with other LDI licensees challenged the Authority's consolidated enforcement order dated 04-04-2008 before the Hon'ble Islamabad High Court, Islamabad through FAO No.11/2008. Further, the licensee also filed WP No.741/2008 challenging the vires of AP Rules and AP Regulations before the Hon'ble Islamabad High Court. The Hon'ble Islamabad High Court, Islamabad vide its consolidated judgment dated 21-01-2009 (reported as PLD 2009 Islamabad 41) dismissed all FAOs filed by LDI licensees including the licensee as well as all Writ Petitions challenging the vires of AP Rules and AP Regulations by declaring that the enforcement order dated 04-04-2008 has been passed in accordance with law and that AP Rules

and AP Regulations are *intra vires*. This judgment of the Hon'ble Islamabad High Court was subsequently upheld and further amplified by the august Supreme Court vide its judgment dated 22-12-2015, reported as 2016 SCMR 475. Regarding dismissal of WP No.741/2008, the licensee filed ICA No.69/2009 before Hon'ble Islamabad High Court, Islamabad the same was disposed of vide order 20-12-2017 being infructuous on the ground that the august Supreme Court has settled this issue in its judgement dated 22-12-2015 reported as 2016 SCMR 475. Thus, the issue relating to *vires* of AP Rules and AP Regulations has been settled once for all.

2.11. After announcement of judgment dated 21-01-2009 by the Hon'ble Islamabad High Court in FAO No.11/2008, the Authority vide its letter dated 24-02-2009 issued demand note for payment of outstanding APC for USF dues amounting to Rs. 43,162,050/- from January 2005 to December 2007 (after adjusting an amount of Rs. 78,222,400/- already paid by the licensee).



**GOVERNMENT OF PAKISTAN  
PAKISTAN TELECOMMUNICATION AUTHORITY**

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No:2-04/2009(AP/CA)/PTA

February 24, 2009

Subject: **PAYMENT OF ACCESS PROMOTION CONTRIBUTION FOR  
UNIVERSAL SERVICES FUND**

This is with reference to Rule 5 of Access Promotion Rules, 2004 and in continuation to our previous demands for payment of APC for USF.

2. As the Authority's determination on APC for USF has been upheld by the Islamabad High Court vide its order of January 21, 2009, you are, therefore, requested to make payment of Rs.43,162,050/- on account of outstanding dues of APC for USF (details attached at Annexure-A as per the traffic data provided) at the earliest but not later than **March 4, 2009**.

3. It has been noted with concern that M/s Dancom has not yet submitted international traffic data from **January 2008 onwards** to this office in contravention of the provisions of AP Rules, 2004. You are, therefore, also requested to send traffic details for the above mentioned period to the undersigned **without any further delay and to clear all your outstanding dues accordingly** (if any). In case of "Nil traffic" for the above period, report of same should be immediately sent to the undersigned as per **clause 11(3) of AP Regulation, 2005**.

4. Please be advised that the non-payment of above outstanding amount will lead to initiation of strict action under Section 23 of the Pakistan Telecommunication (Re-Organization) Act 1996.

  
**Zeeshan Gul**  
Director (Commercial Affairs)

To:

Mr. Asif Raza  
Dancom

Cc:

1. Senior Project Manager (USF), MoIT
2. DG (CA), PTA
3. DG (L&R)
4. DG (Finance), PTA
5. Director (Vigilance Cell), PTA
6. SO to Chairman, PTA
7. PA to Member (Finance), PTA

Annexure-A

**DANCOM APC FOR USF DETAILS**

Month	Reported International Incoming Mobile Traffic	Average USD Rate	Mobile Termination Rate in PKR	APC in cents	APC for USF in PKR
Jan-05	-	59.34	2.00	10.29	-
Feb-05	193,878	59.24	2.00	10.29	794,085
Mar-05	486,516	59.25	2.00	10.29	1,993,171
Apr-05	510,801	59.38	2.00	10.29	2,099,232
May-05	880,935	59.49	2.00	10.29	3,630,792
Jun-05	1,229,694	59.62	2.00	10.29	5,084,027
Jul-05	653,123	59.58	2.00	7.50	1,611,989
Aug-05	881,638	59.59	1.60	7.50	2,529,640
Sep-05	1,388,582	59.63	1.60	7.50	3,987,834
Oct-05	1,409,547	59.65	1.60	7.50	4,050,686
Nov-05	1,437,738	59.68	1.60	7.50	4,134,395
Dec-05	1,466,493	59.72	1.60	7.50	4,221,483
Jan-06	2,734,074	59.73	1.60	6.83	6,779,298
Feb-06	1,978,523	59.80	1.60	6.83	4,915,324
Mar-06	3,140,078	59.87	1.60	6.83	7,814,962
Apr-06	3,070,150	59.95	1.60	6.83	7,658,750
May-06	3,696,398	60.10	1.60	6.83	9,258,849
Jun-06	3,332,169	60.12	1.60	6.83	8,349,931
Jul-06	5,680,508	60.24	1.25	5.00	10,007,635
Aug-06	6,162,188	60.24	1.25	5.00	10,857,775
Sep-06	4,511,954	60.39	1.25	5.00	7,983,903
Oct-06	4,071,695	60.49	1.25	5.00	7,225,223
Nov-06	3,668,520	60.65	1.25	2.50	976,743
Dec-06	3,980,727	60.78	1.25	2.50	1,072,308
Jan-07	2,632,008	60.69	1.25	2.50	703,404
Feb-07	4,240,047	60.60	1.25	2.50	1,123,612
Mar-07	1,559,720	60.62	1.25	2.50	413,911
Apr-07	2,542,715	60.63	1.25	2.50	675,409
May-07	2,199,925	60.44	1.25	2.50	573,905
Jun-07	1,322,984	60.35	1.25	2.50	342,322
Jul-07	335,030	60.29	1.25	2.50	86,186
Aug-07	445,667	60.46	1.25	2.50	116,542
Sep-07	1,178,499	60.56	1.25	2.50	311,124
Oct-07	1,769,586	NA	1.25	2.00	-
Nov-07	987,913	NA	1.25	2.00	-
Dec-07	1,326,684	NA	1.25	2.00	-
<b>TOTAL</b>	<b>77,106,707</b>				<b>121,384,450</b>
<b>Total Payments made</b>					<b>(78,222,400)</b>
<b>Balance Payable</b>					<b>43,162,050</b>

2.12. The above demand note was followed by two reminders dated 17-03-2009 and 03-04-2009 to make payment of outstanding amount of Rs.43,162,050/- on account of APC for USF. The licensee vide its letter dated 07-04-2009 requested the Authority to make installments of outstanding amount of Rs. 43,162,050/- in eighteen (18) equal installments. The Authority vide its letter dated 09-04-2009 advised the licensee to make some upfront payment. The licensee made payment of Rs. 1,000,000/- on 11-04-2009. Finally, while considering request of the licensee, the Authority vide its letter dated 17-04-2009 granted approval for payment of Rs. 42,162,050/- on account of outstanding APC for USF in fifteen (15) equal monthly installments i.e. Rs. 2,810,803/- per month. Though the licensee submitted three cheques each of Rs. 2,810,803/- dated 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup> July, 2009 but it did not accept/endorse approval of fifteen (15) installments for outstanding payment and vide its letter dated 29-04-2009 requested the Authority "...to pay dues

until December 2008 in more easy installments and with little wider gaps...". The Authority vide its letter dated 07-05-2009, regretted the licensee's request. The licensee did not make payment of outstanding APC for USF as per approved installments, however, made payments in smaller amounts through cheques, which have been acknowledged and accounted for.

2.13. Since APC for USF was required to be paid periodically, accordingly, the Authority determined and demanded APC for the month of June, 2009 vide letter dated 16-09-2009 followed by a reminder dated 01-10-2009. Upon non-payment on due date, the Authority issued show cause notice dated 16-11-2009 under section 23 of the Act to the licensee for non-payment of APC for USF of **Rs. 129,221,356/-** for the month of June, 2009. For ease of reference, the demand note for the month of June, 2009 is as under:



**PAKISTAN TELECOMMUNICATION AUTHORITY**

F-5/1, Islamabad, Pakistan; <http://www.pta.gov.pk>  
Voice: +9251.922.5221 • Fax: +9251.287.8133  
[imran@pta.gov.pk](mailto:imran@pta.gov.pk)

No. 02-10/09/(AP/CA)PTA

September 16, 2009

**SUBJECT: DEMAND NOTE OF APC FOR USF FOR THE MONTH OF JUNE 2009**

This is with reference to Access Promotion Rules, 2004 (AP Rules) and Access Promotion Regulations, 2005 (AP Regulations) regarding payment of APC for USF.

2. As per AP Rules, payment of APC for USF is payable **within ninety (90) days** after the end of the calendar month for which the payment obligation arises. In this regard last date for payment of APC for USF for the month of **June 2009** is **September 30, 2009**. Based on the reported traffic by **Dan Com Pakistan (Pvt.) Ltd.** APC for USF obligation for the month of **June 2009** is calculated as under:

Company/Month	Terminated Traffic on Mobile	APC (USD)	MTR (PKR)	Avg. Exchange Rate (PKR/USD)	APC for USF (PKR)
Dan Com ( Jun 09)	25,500,021	0.075	1.00	80.90	129,221,356

3. You are therefore requested to make payment of **Rs.129,221,356** on account of APC for USF latest by **September 30, 2009**.

  
Imran Shafi Rana  
Dy. Director (Commercial Affairs)

To:  
Col (R) Faheem ud Din Mir  
Chief Operating Officer  
Dan Com Pakistan (Pvt.) Ltd.

- Cc:
- Senior Project Manager (USF), MoIT
  - DG (Finance), PTA (For booking of **Rs.129,221,356** in Finance Ledger)
  - SO to Chairman, PTA
  - PA to Member (Finance), PTA

2.14. Upon becoming due APC for USF for subsequent months, the Authority determined and demanded the APC for USF for the months of July, August and September, 2009 vide letters dated 04-11-2009, 05-11-2009 and 11-12-2009 respectively. Due to non-payment, the Authority issued show cause notice dated 28-01-2010 under section 23 of the Act to the licensee for outstanding APC for USF for the months of July, August and September 2009 in the sum of Rs. 455,844,076/- (Rs. 165,789,310/- + Rs. 154,484,528/- + Rs. 127,359,511/- along with late payment charges Rs. 8,210,727/- up to 31-12-2009). The proceedings in the aforesaid show cause notice could not be concluded, however, the amount of the said show cause notice has subsequently been included in the SCN under adjudication. For ease of reference, the demand notes for the months of July, August and September, 2009 are as under:



**PAKISTAN TELECOMMUNICATION AUTHORITY**  
 F-5/1, Islamabad, Pakistan; <http://www.pta.gov.pk>

No. 04-01/09/(AP/CA)PTA

November 4, 2009

**SUBJECT: DEMAND NOTE OF APC FOR USF FOR THE MONTH OF JULY 2009**

This is with reference to Access Promotion Rules, 2004 (AP Rules) and Access Promotion Regulations, 2005 (AP Regulations) regarding payment of APC for USF.

2. As per AP Rules, payment of APC for USF is payable **within ninety (90) days** after the end of the calendar month for which the payment obligation arises. In this regard last date for payment of APC for USF for the month of **July 2009** was October 31, 2009. Based on the reported traffic by Dancom Pakistan APC for USF obligation for the month of July 2009 is calculated as under:

Period	Terminated Traffic on Mobile	APC (USD)	MTR (PKR)	Avg. Exchange Rate (PKR/USD)	APC for USF (PKR)
July 01 ~ 19, 2009	22,921,684	0.075	1.00	82.00	118,046,673
July 20 ~ 31, 2009	13,601,891	0.055	1.00	82.00	47,742,637
<b>TOTAL</b>					<b>165,789,310</b>

3. You are therefore requested to make payment of **Rs.165,789,310** on account of APC for USF latest by **November 15, 2009** failing which your international incoming traffic will be suspended without further notice.

*M. Saleem*  
 04/11/09

Dr. Muhammad Saleem  
 Director General (Commercial Affairs)

To:  
 Col (R) Faheem ud Din Mir  
 Chief Operating Officer  
 Dan Com Pakistan (Pvt.) Ltd.

- Cc:
- Senior Project Manager (USF), MoIT
  - DG (CA), PTA
  - DG (Finance), PTA (For booking of Rs.165,789,310 in Finance Ledger)
  - SO to Chairman, PTA



**PAKISTAN TELECOMMUNICATION AUTHORITY**

F-5/1, Islamabad, Pakistan; <http://www.pta.gov.pk>

No. 04-01/09/(AP/CA)PTA

November 5, 2009

**SUBJECT: DEMAND NOTE OF APC FOR USF FOR THE MONTH OF AUGUST 2009**

This is with reference to Access Promotion Rules, 2004 (AP Rules) and Access Promotion Regulations, 2005 (AP Regulations) regarding payment of APC for USF.

2. As per AP Rules, payment of APC for USF is payable **within ninety (90) days** after the end of the calendar month for which the payment obligation arises. In this regard last date for payment of APC for USF for the month of **August 2009** is November 30, 2009. Based on the reported traffic by **Dan Com Pakistan (Pvt.) Ltd.** APC for USF obligation for the month of August 2009 is calculated as under:

Company/Month	Terminated Traffic on Mobile	APC (USD)	MTR (PKR)	Avg. Exchange Rate (PKR/USD)	APC for USF (PKR)
Dancom ( Aug 2009)	43,400,626	0.055	1.00	82.90	154,484,528

3. You are therefore requested to make payment of **Rs. 154,484,528** on account of APC for USF latest by **November 30, 2009**.

  
Zeeshan Gul  
Director (Commercial Affairs)

To:  
Col (R) Faheem ud Din Mir  
Chief Operating Officer  
Dan Com Pakistan (Pvt.) Ltd.

- Cc:
- Senior Project Manager (USF), MoIT
  - DG (Finance), PTA (For booking of **Rs.154,484,528** in Finance Ledger)
  - SO to Chairman, PTA
  - PA to Member (Finance), PTA
  - PA to Member (Technical), PTA



**PAKISTAN TELECOMMUNICATION AUTHORITY**

F-5/1, Islamabad, Pakistan; <http://www.pta.gov.pk>

No. 04-01/09/(AP/CA)PTA

December 11, 2009

**SUBJECT: DEMAND NOTE OF APC FOR USF FOR THE MONTH OF SEPTEMBER 2009**

This is with reference to Access Promotion Rules, 2004 (AP Rules) and Access Promotion Regulations, 2005 (AP Regulations) regarding payment of APC for USF.

2. As per AP Rules, payment of APC for USF is payable **within ninety (90) days** after the end of the calendar month for which the payment obligation arises. In this regard last date for payment of APC for USF for the month of **September 2009** is December 31, 2009. Based on the reported traffic by **Dan Com Pakistan (Pvt.) Ltd.** APC for USF obligation for the month of September 2009 is calculated as under:

Company/Month	Terminated Traffic on Mobile	APC (USD)	MTR (PKR)	Avg. Exchange Rate (PKR/USD)	APC for USF (PKR)
Dancom ( Sep 2009)	35,752,547	0.055	1.00	82.95	127,359,511

3. You are therefore requested to make payment of **Rs. 127,359,511** on account of APC for USF latest by **December 31, 2009**.

M. Saleem  
11/11/09  
Dr. Muhammad Saleem  
Director General (Commercial Affairs)

To:  
Mr. Basharat Khan  
Chief Executive Officer  
Dan Com Pakistan (Pvt.) Ltd.  
3<sup>rd</sup> Floor, Walyat Center,  
Murree Road, Rawalpindi

- Cc:
- Senior Project Manager (USF), MoIT
  - DG (Finance), PTA {For booking of **Rs.127,359,511** in Finance Ledger}
  - SO to Chairman, PTA
  - PA to Member (Finance), PTA
  - PA to Member (Technical), PTA

2.15. The licensee in order to delay and/or avoid payment of APC for USF resorted to all kind of litigations. For instance, the licensee filed WP No.2828/2010 against the Authority's notification dated 30-04-2009 and WP No.2961/2010 against the Authority's notification dated 19-06-2009 for revision of Approved Settlement Rate ("ASR") in the respective notifications. Both the said writ petitions were disposed of without revising ASR as prayed for. Hence, the rates of ASR fixed through those notifications have attained finality. The licensee further filed Civil Suit No.75/2011 on 14-03-2011 for recovery of loss on account of applicability of APC for USF, demand raised etc. The said Civil Suit has been dismissed with cost on 05-09-2019 for want of evidence by the Civil Court, Islamabad.

2.16. Since APC for USF was required to be paid periodically, accordingly, the Authority determined and demanded APC for the months of August, September and October, 2010 vide letters dated 22-11-2010, 21-12-2010 and 20-01-2011, however, the licensee failed to make payment of APC for USF for the said months. Accordingly, upon persistent default, the Authority was constrained to issue show cause notice dated 16-03-2011 under section 23 of the Act to the licensee for non-payment of APC for USF dues of Rs. 325,013,445/- (Rs. 72,530,996/- + Rs. 107,136,027/- + Rs. 145,346,449/- along with late payment charges) for the months of August, September and October, 2010. The licensee assailed the said show cause notice before the Hon'ble Islamabad High Court through WP No.944/2011. Furthermore, the licensee filed another WP No.1400/2011 before the Hon'ble Islamabad High Court, Islamabad challenging the vires of AP Rules and AP Regulations and seeking declaration that APC regime, levy and collection of APC be declared *ultra vires* and illegal. Both these writ petitions have been dismissed by the Hon'ble Islamabad High Court vide its judgment dated 24-06-2011. In order to resolve the long-standing issue relating to payment of outstanding APC for USF, as a result of meeting between the Authority, MoIT&T and LDI licensees, the Authority as a goodwill gesture after consulting the stakeholders, offered vide its letter dated 15-11-2011 thirty-six (36) monthly installments for payment of outstanding APC for USF in favour of the licensee. The licensee has even failed to avail this concession and continued as a defaulter.

2.17. On account of non-payment of APC for USF for various months, the Authority was constrained to issue show cause notices dated 06-05-2011, 24-05-2011, 15-06-2011, 12-07-2011 under section 23 of the Act for non-payment of APC for USF of Rs. 119,772,825/-, Rs. 118,137,537/-, Rs. 354,292,451/-, Rs. 80,332,983/- for the months of November 2010, January, 2011, January, 2010 to December, 2010 and February, 2011, respectively. All these above show cause notices along with show cause notice dated 16-03-2011 as referred above were decided vide a consolidated enforcement order dated 30-06-2012 requiring the licensee to make immediate payment of Rs. 997,549,241/- for the months of August, September, October, and November 2010, as well as for the period pertaining to January 2010 to December, 2010 (additional amount on account of APC for USF), January and February, 2011.

2.18. The licensee being aggrieved with the aforesaid consolidated enforcement order dated 30-06-2012, filed FAO No. 345/2012 before the Hon'ble Lahore High Court, Lahore. The Hon'ble Lahore High Court vide its order dated 23-11-2015 allowed appeal by setting aside the consolidated enforcement order dated 30-06-2012. The Authority, being aggrieved with the judgment dated 23-11-2015, filed appeal before the august Supreme Court of Pakistan. The august Supreme Court vide its order 25-10-2019 referred the matter to the Authority for decision afresh on the issue of quorum of the Authority without being influenced from the observations made by the Hon'ble Lahore High Court in its judgment dated 23-11-2015. After the remand order, the Authority has passed fresh enforcement order dated 29-11-2019. The licensee has again assailed the enforcement order dated 29-11-2019 before the Hon'ble Lahore High Court, Lahore through

FAO No. 76648/2019. The Hon'ble Lahore High Court vide its order dated 19-12-2019 has suspended the operation of enforcement order dated 29-11-2019 and the said FAO is still pending adjudication before the Hon'ble Lahore High Court, Lahore.

2.19. As stated in para 1.3 above, the Authority issued SCN. The licensee was fully aware of its obligations to pay APC for USF as the Authority had been determining and demanding APC for USF periodically from the licensee till September 2012. Thereafter, the ICH policy came into being and under the said ICH policy, the licensee was obliged to deposit 15% of its revenue in the escrow account in order to settle the outstanding amount of APC for USF. Thus, admission of liability of APC for USF is further evident from the fact that the licensee even deposited APC for USF contribution in pursuance to ICH policy. The licensee has deposited Rs. 216,274,302/- and Rs. 186,631,587/- in the escrow account pursuant to court order and ICH policy respectively, which has been increased to Rs. 498,201,635/- and Rs. 390,903,929/- respectively due to profit as on 31-07-2025.

2.20. It is worth mentioning here that all demands for the payment of APC for USF from the year 2008 till May 2011 were based upon the notifications dated 31-03-2008, 06-01-2009 and 19-06-2009 issued by the Authority. Despite multiple litigation by the licensee before different fora, the licensee did not expressly challenge the notifications dated 31-03-2008 and 06-01-2009. However, the Authority's notification dated 19-06-2009 was challenged by the licensee through WP No. 2961/2010. The said writ petition was disposed of without revising ASR as prayed for. Hence, the rate of ASR fixed through the said notifications have attained finality. The amount of APC for USF calculated on the basis of the aforesaid notifications has been adjudicated by the Authority. Further, there is another important aspect of the case that vide notification dated 17-05-2011, the Authority determined new rates of ASR and APC with effect from 01-04-2011. As such when the licensee filed CS No.123/2011 in Islamabad on 18-05-2011, it was supposed to challenge the notification/determination in field. However, it omitted to sue and in fact intentionally relinquished its claim and challenge to the Authority's latest notification/ determination dated 17-05-2011 and also subsequent notification dated 17-08-2011.

2.21. From the abovementioned facts regarding concluded litigation in the past, it is established that the licensee has been approaching different High Courts as forum shopping. All interim reliefs have ultimately been vacated upon dismissal/disposal of all cases of the licensee related to APC for USF except FAO No. 76648/2019 which is pending adjudication before the Hon'ble Lahore High Court.

2.22. From the above chronology of events and payments, it is clear that each and every amount was clearly calculated and determined on monthly basis and duly informed by the Authority to the licensee on regular basis. Hence, the arguments of the licensee that the determination of APC for USF had been left with the licensee is incorrect and misconceived. The self-suited presumption of the licensee that APC for USF has become zero from issuance of notification dated 31-03-2008 onward is completely misconceived and incorrect exposition of law and fact and also against the conduct of the licensee whereby it has been willingly paying APC for USF calculated on the basis of the said notifications. It is absurd to assume that APC for USF had become zero especially when APC regime was in place on account of fixation of ASR and share of LDI. On the basis of which, the LDI licensees including the licensee were regularly paying APC to local loop licensees. APC regime only came to an end upon issuance of notification dated 17-06-2014 expressly stating that APC has become zero.

2.23. The share of LDI licensees is clearly determined and they cannot retain any amount beyond their notified share. Keeping a sum over and above their notified share, amounts to

misappropriation and siphoning of the public money. Whereas, the LDI licensees are asking for an illegality to be introduced and made in their favour in violation of rule 8(4) of AP Rules as well as clause 4.3.3 (d) of the De-Regulation Policy 2003, which has capped the share of LDI licensee in ASR up to US 6 cents per minute. If APC for USF is treated as nil, the result is that all amount goes into the pocket of the LDI licensees and thereby LDI notified share increases from US 5 cents to US 9 cents per minute in clear violation of rule 8(4) of the AP Rules as well as clause 4.3.3 (d) of the De-Regulation Policy 2003, which, by any stretch of imagination, cannot be the intention of the aforesaid legal instruments having binding effect. It is thus clear that even if APC is nil, LDI licensees could not have retained beyond US 6 cents per minute at any cost. Hence, it is not only unlawful enrichment but also unlawful gain at the cost of Government funds and also violation of getting more share in revenue than permissible under the rule 8(4) of AP Rules.

2.24. It is worth noting that the demand notes / letters, including the amounts and basis/parameters of calculations, issued for the payment of APC for USF were never questioned / disputed by the licensee at the time of issuance. Without exactly pointing out anything precise, the plea that APC for USF is not payable or due, is only a bald assertion, especially after judgment of the Supreme Court reported as 2016 SCMR 475. Even today, the licensee has not come up with any contrary data relating to monthly international incoming traffic minutes showing how calculations or the total amount of APC for USF determined was wrong in the said demand notices. The basis of calculations was the data supplied by the licensee itself and calculations to determine the demand for each month were made through formula prescribed by the AP Rules read with AP Regulations. It would be apt to reproduce below the relevant portion of Rule 8(4) of the AP Rules, which deals with calculation of APC for USF:

*“..... shall consist of the Approved Settlement Rate for that country, less LDI share, to be determined by the Authority which may be an amount up to US \$ 0.06, and less the local interconnection termination contribution due to an operator of a public mobile switched network in respect of one minute of Incoming International Telephony Service as determined by the Authority”.*

2.25. The determination for the payment of APC for USF was made in accordance with the said Rule and provided all details, basis and the calculations with respect thereto. The calculations in the above referred demands are clearly in accordance with the formula laid down in rule 8(4) of the AP Rules and the total payment of APC for USF for the respective months is also correctly determined therein. All the legal objections of the licensee raised in reply to SCN vis-à-vis APC for USF are misconceived in view of the judgement passed by the Hon'ble Supreme Court of Pakistan. The licensee has failed to understand that APC for USF is in the nature of the contribution and not a fee or tax and not any amount being extracted from their revenue/income/LDI share as notified. Their share is notified and by operation of law cannot exceed the limit prescribed in AP Rules and AP Regulations. The present challenge is merely an unlawful attempt to retain what does not belong to them. Hence, the assertions of the licensee are clearly without any substance.

2.26. It is pertinent to note that the amount of APC for USF is not being extracted from the revenue/income of LDI rather it is contribution out of the amount received by LDI from foreign operators. As a matter of fact, it is the international caller who has to pay the price of the international incoming call(s). In 2006, as the market started to expand, a need was felt that more revenue was required to be given to the Local Loop licensee and the USF in order to enable the infrastructure development along with the expanding private sector in Pakistan. This was discussed in the meeting/hearing of the Authority held on 12-03-2008 and letter dated 14-03-2008

for review of ASR/LDI share and APC. It was informed and agreed by all LDI licensees (including the licensee) that the APC was being increased from US 2 cents to US 5 cents per minute. Another important event was that a meeting was held at PTCL on 24-03-2008, wherein all the LDI licensees gathered and thereafter PTCL through letter dated 24-03-2008 informed that all LDI licensees except one or two had agreed with the proposal of the Authority to increase APC to US 5 cents per minute. Therefore, another hearing was conducted by the Authority on 28-03-2008 regarding the issues of review of ASR, APC, etc. As a consequence, thereof, the notification dated 31-03-2008 was issued, increasing the APC from US 2 cents to US 5 cents per minute. Further, the Authority vide its letter dated 21-04-2008 clarified that ASR for Pakistan incoming traffic (fixed & mobile) is USD 0.10 per minute with effect from 01-05-2008.

2.27. It is also pertinent to highlight that the licensee in its arguments has not mentioned any legal basis for "International Market Rate". This argument is clearly against the provision of law since the AP Rules and the AP Regulations clearly define the ASR and envisaged that the calculations and determination of APC for USF would be made in accordance with the formula prescribed by rule 8 of AP Rules. Neither rule 8 of the AP Rules nor any other provisions in the AP Rules mention any word as international market rate. This is a self-concocted term of the licensee and in fact due to misconception about the permissible range (which is applicable upon the LDI share only) the licensee made this misconceived legal argument.

2.28. That the argument of the licensee about permissible range was similarly false and against the admitted and clearly accepted meaning of the term 'permissible range'. In this regard, rule 7 of the AP Rules, clearly negates the stance of the licensee. Rule 7(b) states as under;

*(b) the LDI Licensee's contribution to the Corresponding Operators for the carriage, Switching and termination of Incoming International Telephony Service from a country shall be an amount in the Permissible Range for that country;*

Moreover, in the minutes of the meeting dated 06-12-2004 at the time of introduction of APC, the industry was unanimously informed that the purpose of introduction of this concept was to "provide LDI operators some flexibility to enter into agreements with foreign carriers" and "the Authority may allow LDI operators to offer discounts to foreign operators from their own share (i.e. up to US 6 cents). However, they will be required to pass the approved APC to LL operators or USF, as the case may be." Similarly, the same was clearly understood by the licensee and six (6) other LDI licensees and was being applied by them in calculation of APC without any objection, this amounted to admission through their own conduct that they accepted and implemented that the discounts to foreign operators will be given by LDI licensees from their own share. The letter dated 19-06-2009 written by the licensee and six (6) other LDI licensees contained the proposal and the chart in the proposal itself showed that they were deducting the permissible range discounts from their own share. This admission of the legal position and their understanding clearly depicts that the licensee and other LDI licensees took a U-turn and started to take a completely contradictory stance against their own previous admission just in order to avoid their liability which was previously always admitted and undisputed.

2.29. Another important reference may be made to the minutes of the meeting dated 05-12-2008 between the Authority and all the LDI licensees including the licensee wherein during the process of demanding a review and revision in the rates of APC, the LDI licensees themselves demanded more leverage and a broader flexibility in permissible range/LDI margin, since they had to pay the discounts to foreign operators from their own share.

2.30. With respect to the contention of the licensee that proceedings under section 23 of the Act cannot be initiated for non-payment of APC for USF on the ground that non-payment of APC within ninety days by the LDI licensee is not a violation of the provisions of the Act or the terms and conditions of the license. In this regard, it is stated that the obligation to pay APC within a period of ninety days arises from rule 5 of the AP Rules and section 23 of the Act clearly mention that action under the said section can be taken for violation of the *inter alia* rules made under the Act. Further, Clause 3.1 of the license clearly envisages that provisions of the Act, Rules and Regulations are part of the terms and in case of a conflict, the provisions of the Act, Rules and Regulations will prevail and the said condition require the strict compliance of the Act, Rules and Regulations. Hence, the argument of the licensee is misplaced and misconceived.

2.31. Regarding late payment charges, it is stated that same are being claimed in terms of AP Regulations, which has been declared *intra vires* by the august Supreme Court of Pakistan in its judgement reported as 2016 SCMR 475. The distinction sought to be created by the licensee between the regulation 10(4) and 10(6) of AP Regulations is incorrect exposition of law and completely misconceived. Hence, there is no substance in the argument of the licensee on this aspect of the case. Further, the stance of the Authority for late payment addition fee has been upheld by the Hon'ble Islamabad High Court in a case reported as PLD 2017 Islamabad 177 titled "*DV Com Data Vs PTA, etc.*". Additionally, the licensee itself challenged the demand and vires of late payment charges, additional fee(s), etc. as provided in various regulations issued by the Authority including the AP Regulations through WP No. 741/2008 and WP No. 1400/2011 and sought a relief that all such regulations be declared *ultra vires*, *void ab initio* and without legal effect. The said writ petitions were dismissed by the Hon'ble Islamabad High Court.

### 3. Order:

3.1. In view of the factual and legal discussion made above, the Authority has reached the conclusion that there is no ambiguity in terms of applicability of rules, regulations, notifications and demands for APC issued by the Authority and its officers and rates notified therein etc. In addition, the calculations provided by the licensee in response to SCN/written submissions are not in consonance with the applicable regulatory framework as discussed in the preceding paras.

3.2. Having gone through the above, the Authority hereby directs the licensee to pay Rs. 5,559,085,662/- (Principal: 1,642,854,825 + LPAF Rs. 3,916,230,837/- as of 15-12-2025) along with Late Payment Additional Fee on account of delay in depositing contribution to the designated account within thirty (30) days from the date of receipt of this order.

**Maj. Gen. Hafeez Ur Rehman (R)**  
Chairman

**Muhammad Naveed**  
Member (Finance)

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

Signed on 19<sup>th</sup> day of December, 2025 and comprises of (20) pages only.