



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

Order under section 23 of the Pakistan Telecommunication (Re-Organization) Act, 1996 against Circle Net Communications Pakistan (Pvt.) Limited for Non-Payment of APC for USF Contribution in respect of Show Cause Notice dated 14-03-2025 and Court Order dated 22-03-2022 in FAO No. 4274/2019

No. PTA/Commercial Affairs/Circlenet/322/2028/334/436

Venue of Hearing: PTA HQs, Islamabad
Hearing Date: 5th May, 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 the Show Cause Notice dated 14-03-2025 (“SCN”) issued to M/s Circle Net Communications Pakistan (Pvt.) Ltd. for non-payment of Access Promotion Contribution (“APC”) for Universal Service Fund (“USF”) (i.e. “APC for USF”) along with late payment charges, as well as in terms of remand order dated 22-03-2022 passed in FAO No. 4274/2019 by the Hon’ble Lahore High Court, Lahore.

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-11(19)-2004 dated 19-08-2004 (the “**license**”) to M/s Circle Net Communications Pakistan (Pvt.) Ltd. (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 dated 14-03-2025

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 APC for USF from time to time and the licensee was making payment off and on, however, sometimes, it was delaying and/or avoiding the payment of APC for USF on one pretext or the other. The Authority vide its letter dated 23-09-2010 followed by a reminder dated 08-10-2010 demanded APC for USF for the month of June 2010 amounting to Rs. 106,559,423/-. The licensee failed to pay the amount on due date, hence the Authority was constrained to initiate proceedings for recovery of the outstanding dues of APC for USF in terms of section 30 of the Act. The licensee challenged the said recovery proceedings by way of filing WP No. 2990/2011 before the Hon'ble Islamabad High Court on 27-10-2011 against recovery notice issued by Tehsildar / Assistant Collector for non-payment of APC for USF. The said petition remained pending for quite some time and vide order dated 24-11-2021, the same was allowed by the Hon'ble Court in the following manner:

"..... The bare perusal of above provision shows that same is attracted where there is violation of any terms and conditions of the license and / or the Act or the rules framed there-under. Though it is a general provision containing the powers which the Authority can exercise to remedy the contravention including recovery and imposition of fine or taking any other penal action for enforcement of this provision in addition to section 30, ibid, however, it provides a mechanism for determination of liability in case there is a dispute with respect to the same, where-after, if the amount is not paid, the provisions of Land Revenue Act could have been invoked under section 30 of Pakistan Telecommunication (Re-organization) Act, 1996 and section 80 of Land Revenue Act, 1967 and the similar provisions under the said Act would become operational and the petitioner even in these proceedings could dispute the liability within the mandate of law.

9. *It seems that in the instant case, no adjudication, as such, was undertaken prior to issuance of demand notice and especially after the dispute with respect to the same.*

10. *For the above reasons, instant petition is allowed; consequently, impugned notices issued by respondent No.4, are set aside with the observation that respondent is well within its rights to recover the amount in accordance with the mandate provided in Pakistan Telecommunication (Re-organization) Act, 1996 and Land Revenue Act in light of observations made herein above."*

1.4. Being aggrieved from the decision of the Hon'ble Islamabad High Court passed in WP No.2990/2011, the Authority filed an ICA No 02/2022 before the Hon'ble Islamabad High Court. The Hon'ble Court disposed of the matter vide its order dated 22-10-2022 in the following manner:

“In view of above, instant appeal is disposed of with the observation that PTA Authorities shall issue a notice to respondent in accordance with the mandate of section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 and respondent would submit its detail reply with all factual and legal grounds, whereafter PTA shall decide the same within period of Ninety (90) days under intimation to this Court.”

1.5. In light of the above Court order, the Authority initiated proceedings under section 23 of the Act by issuing a show cause notice dated 14-03-2025 for non-payment of APC for USF as already determined and demanded through various letters/demand notes, detail of which is mentioned in the operative part of the order, for outstanding dues of twenty-two (22) months i.e. for the period of June (partial), September (partial) of 2010 and from February 2011 to September 2012, whereby, the licensee was required to pay APC for USF in the sum of Rs. 5,628,361,338/- including late payment charges as of 11-03-2025 in Ministry of Information Technology and Telecommunication's ("MoIT&T") account or otherwise in escrow account in accordance with regulation 10(4) of AP Regulations within seven (07) days of the issuance of the above show cause notice 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.

Proceedings in pursuance of Remand Order dated 22-03-2022 in FAO No. 4274/2019

1.6. This enforcement order also deals with the controversy remanded to the Authority in terms of the order dated 07-05-2018 passed in ICA No. 130/2011 by the Hon'ble Islamabad High Court. As a matter of background, the licensee had filed WP No.1707/2011 wherein, it asserted that Approved Settlement Rate ("ASR") had been incorrectly mentioned in all the previous notifications and therefore, APC for USF had been incorrectly determined w.e.f. May 2008 to March 2011. In the said writ petition, the licensee prayed that the Authority be directed to settle accounts. This writ petition was dismissed *in limine* by the Hon'ble Islamabad High Court on the first date of hearing vide order dated 31-05-2011. The licensee challenged the said order by filing ICA No.130/2011 before the Hon'ble Islamabad High Court, Islamabad, which was allowed by the Hon'ble High Court vide its order dated 07-05-2018, in the following terms;

“Respondent/PTA is directed to treat this writ petition as representation and decide the question of settlement of account in terms of Access Promotion Rules, 2004 through speaking order after considering the data, record and hearing the appellant on a properly notified date of hearing within a period of sixty (60) days. However, respondent authority is at liberty to require any information, data from the appellant and follow the reporting requirement as referred under the Access Promotion Rules, 2004.”

1.7 The Authority after hearing the licensee again passed an Enforcement order dated 24-12-2018 addressing therein detailed reasoning and justification for applicability of AP Regime and APC for USF calculations thereon. Accordingly, the licensee was required to make payment of APC for USF amounting to Rs.8,579,555,821/-. Instead of making the payment, the licensee again challenged the enforcement order dated 24-12-2018 by way of filing FAO No.4274/2019 before the Hon'ble Lahore High Court, Lahore which was disposed of and the matter was remanded back to the Authority vide order dated 22-03-2022, in the following manner:

*“With the concurrence of the learned counsels for the contesting parties, the impugned order dated **9.10.2018** is hereby set aside by accepting this appeal and the matter is remanded back to the respondent /Chairman, CPD, Pakistan Telecommunication Authority, Islamabad to decide the matter afresh.*

*2. Both the parties are hereby directed to appear before above said respondent on **01.04.2022.**”*

2. Hearing Proceedings:

2.1 In order to proceed further, the matter was fixed for hearing on 23-04-2025 and 05-05-2025 which were attended by Mr. Sohail Khan (HOD) and Mr. Kaleem Ilyas, Advocate Supreme Court of Pakistan on behalf of the licensee. Mr. Ikram-ul-Haq Qureshi Member (Legal), Mr. Sajjad Ahmed (Legal Executive) and Mr. Hassan Aziz (Director Telecom) attended the hearing on behalf of MoIT&T, as the matter pertains to APC for USF. On 23-04-2025, the licensee was not prepared to make submission on the ground that they had not received the SCN and sought adjournment. As per record, the hearing notice was duly issued/dispatched on the licensee's address, however, in the interest of justice, the matter was adjourned. The licensee even not submitted its written reply to the SCN on adjourned date of hearing i.e. 05-05-2025, despite issuance of repeated intimation by the Authority vide letter dated 25-04-2025.

2.2 During the hearing, the licensee contented that it is not liable to pay APC for USF Contribution as the same has not yet been determined. The licensee also referred various court cases and stated that the protracted litigation history, including judgments and interim orders from the Hon'ble Lahore High Court, Lahore underscores the need that the Authority to adhere the provisions of the Act, AP Rules, AP Regulations, due process and the judicial order. In addition to verbal arguments /submission made during the hearing, the licensee was required to submit its written submission latest by 12-05-2025.

3. Written submissions of the licensee:

3.1 The licensee through letter dated 12-05-2025 submitted its written submissions wherein issue of renewal of license was also highlighted in addition to above. Since the

instant matter pertains to APC for USF, therefore, contention of the licensee with regard to APC for USF will be considered and addressed in this order. For ready reference, relevant contentions of the licensee made through written submissions are reproduced as under:

“1. In response to our letter dated 08-04-2025, PTA, through letter dated 18-04-2025, again only referred to the Islamabad High Court Order dated 7th May 2018 passed in ICA No. 130/2011 and the Lahore High Court Order dated 22-03-2022 passed in FAO No. 4274/2019 whereby the PTA Order dated 24-12-2018 was set aside and the PTA Authority was directed by the Lahore High Court to decide the matter afresh. Even in this PTA's letter dated 18-04-2025, in response to our letter dated 08-04-2025 for seeking clarification, PTA did not inform that how and when the said alleged amount of APC for USF was determined by the PTA.

2. As regards APC for USF, we take this opportunity to state that LDI Licensees were required to pay certain contributions out of the amounts received for the services from international operators (out of the premium, till it existed, over the cost of terminating/conveying the calls or annual revenues) one of which is Access Promotion Contribution (APC). It was a contribution out of the premium over the cost of services provided by LDI Licensees. APC for US was not a fixed charge and was not a levy like a tax or fee rather was a contribution. PTA's stance in this regard was not legally correct because some contributions (Research and Development Contribution, etc.) were to be payable as fixed percentage on the revenues of LDIs (i.e. having no relationship with determination and review of the rates for APC for USF, etc. which were based on market forces, etc.) whereas APC for US was not a fixed percentage and not out of the revenues but was the remaining amount after deduction of LDIs share. The contribution was based on the premium over the cost which premium admittedly had been decreasing with the passage of time and ultimately had fallen so low that PTA itself stopped receiving the contribution. The APC was to continue only till the existence of premium.

3. The litigation between the Circle Net (and other LDI Licensees) and the PTA started when the Show Cause Notices were issued in 2010/2011 pursuant to which PTA earlier had demanded amounts and passed the decision dated 30-06-2012 which was challenged through FAO No. 346/2012 before the Lahore High Court, Lahore. The Lahore High Court, Lahore vide judgment dated 23-11-2015 (passed in main FAO No. 340/2012 along with other cases, including Circle Net's FAO No. 346/2012) finally decided the issues (including the question of permissible range) and accepted the contentions of the Licensees while considering the Access Promotion Rules, 2004 and the Access Promotion Regulations, 2005.

4. In the last para of the judgment dated 23-11-2015 (para 17) the LHC set aside the impugned order of PTA and observed "as the respondents have not raised the demand as per the amount actually

received according to Formula provided by the rules and regulation of 2004 and 2005 respectively."

5. The above judgment was challenged before the Hon'ble Supreme Court by PTA, etc. (CPLAs were filed and after grant of leave C.A.s Nos. 205, 207, & 209 to 212/2016 were filed. In respect of Circlenet: C.A.s Nos. 210 & 212/2016. PTA and US had also filed CPLAs and after grant of leave CAs in respect of other LDis which were party before Lahore High Court, Lahore.) During the pendency of the above appeals before the Hon'ble Supreme Court, another set of cases (CAs Nos. 1107 to 1109/2018) reached the Hon'ble Supreme Court from the Hon'ble Islamabad High Court relating to the jurisdictional question of the constitution of PTA. Because the very jurisdictional basis of PTA's decisions was in question so the above-mentioned appeals relating to LHC judgment dated 23-11-2015 and the appeals relating to the Islamabad High Court's judgment were clubbed together and were decided vide judgment dated 25-10-2019. The impugned judgment of the Lahore High Court dated 23.11.2015 was not examined by the Supreme Court on merits, and were decided on the jurisdictional question of the constitution of the Authority. The appeals filed by PTA were disposed of with the direction that the Authority (three members) will hear the matters afresh and decide the same within a period of fortnight from the date of receipt of this order.

6. After remanded as above, PTA once again passed a decision dated 29-11-2019, on the same line against the relevant rules and regulations, which was challenged by Circlenet before Lahore High Court, Lahore through FAO No. 77397/2019, and stay order was also granted vide order dated 20-12-2019, suspending the operation of the PTA's decision.

7. Another round of litigation was when Circlenet in 2011 (W.P. No. 1707/2011) approached Hon'ble Islamabad High Court for seeking certain directions against PTA, but the writ was dismissed in limine vide order dated 31-05-2011 on the ground of involving financial controversies and disputed questions of fact being not competent. Circlenet went into appeal (ICA No. 130/2011) which was accepted vide judgment dated 07-05-2018 on the point that Circlenet was only seeking direction against PTA for compliance of the rules and hearing was not granted to Circlenet, thus, PTA was directed to treat the writ petition as representation and decide the question of settlement of accounts in terms of the rules and PTA was also allowed to require information, etc.

8. Then pursuant to the direction issued in ICA (No. 130/2011) by the Islamabad High Court, after exchange of some letters and replies, finally PTA issued its decision dated 24-12-2018 once again in violation of the law/rules/regulations and in violation of the judgment of Lahore High Court, Lahore (which was in field at that point of time as noted above). PTA's decision dated 24-12-2018 was challenged by Circlenet through FAO No. 4274/2019 before the Lahore High Court, Lahore. Meanwhile PTA also issued a Show Cause notice dated 19-04-2019 against which stay order dated 29-04-2019 was passed. Finally, PTA's

decision dated 24-12-2018 was set-aside vide order dated 22-03-2022 "With the concurrence of learned counsels for the contesting parties" and the matter was remanded to the Chairman.

9. As regards the judgment dated 18-10-2022 passed in PTA's ICA No. 2/2022 by the Islamabad High Court, referred in the Show Cause Notice, this litigation started when the PTA endeavored to recover a part of APC for USF amount for the month of June 2010 through the process provided for recovery of arrears of land revenue. Circlenet filed WP No. 2990/2011 before the Islamabad High Court which was allowed vide order dated 24-11-2021 discussing several principles of law, including the provisions of the Act were also considered which were being violated by PTA. Even despite that order PTA has again violated those principles of law.

10. PTA challenged the above order in ICA No. 2/2022 which was disposed of vide judgment dated 18-10-2022 once again with reference to important legal principles, and the matter was also remanded to PTA to follow the procedure, etc.

11. Pursuant to the Lahore High Court's Order dated 22-03-2022 in FAO No. 4274/2019, it was only on 27-06-2022 that PTA issued a Hearing Notice to be held on 06-07-2022 before the Authority/PTA. It was the matter that PTA was to hear as Authority after **remand** by the Lahore High Court, Lahore. On 06-07-2022 **hearing** took place before the Authority (but the quorum was not complete i.e. three members), however, Circlenet's case was presented, and it appears on realizing the lack of quorum and other circumstances which so far have not been communicated in writing to Circlenet, the hearing was closed without any further date of hearing or any information."

4. Litigation History/Background:

4.1. At this stage, it is important to mention the various cases and litigation forming basis of the controversy. The Authority had been determining and demanding payment of the APC for USF from the licensee and the licensee was making payment off and on since September 2005, however, sometime, it was delaying and/or avoiding the payment of APC for USF on one pretext or the other. Due to persistent default on the part of the licensee, the Authority was constrained to issue a show cause notice dated 20-04-2007 to the licensee on account of non-payment of outstanding APC for USF dues amounting to Rs. 126,085,197/- for the period up to September 2006. During the pendency of said proceedings, the Authority issued various letters to the licensee demanding payment of APC for USF for subsequent months. The Authority issued a consolidated Enforcement Order dated 04-04-2008 deciding all the objections of the LDI licensees including the licensee, and held that the licensee was liable to pay APC for USF as earlier demanded by the Authority with direction to make payment of the entire outstanding amount as per show cause notice within 30 days.

4.2. That the said enforcement order was never challenged by the licensee and attained finality as far as the licensee is concerned. It chose not to challenge along with

several other LDI licensees before the Hon'ble Islamabad High Court, Islamabad whereby not only the legality of the demand was challenged but also the vires of AP Rules and the AP Regulations were challenged which was dismissed by the Hon'ble Islamabad High Court through consolidated judgment dated 21-01-2009 reported as PLD 2009 Islamabad 41.

4.3 In pursuance of the Enforcement Order dated 04-04-2008, the Authority required the licensee to make payment of APC for USF for various subsequent months in accordance with the traffic data supplied by the licensee. Due to persistent default of the licensee, the Authority through its letter dated 09-04-2009 suspended the authorization of the licensee to terminate international incoming traffic in Pakistan, which was restored by the Authority pursuant to the directions of the Hon'ble Lahore High Court, Rawalpindi bench in WP No.1497/2010. Moreover, the licensee submitted fifteen (15) post-dated cheques against outstanding APC for USF dues of Rs.231,698,400/- along with an undertaking to make complete payment.

4.4 That the Authority was issuing regular letters/demand notes while demanding payment of APC for USF with respect to each month starting from May 2010, the licensee failed to make payment and continued its default. Resultantly, the Authority was therefore constrained to issue another show cause notice dated 12-10-2010 for non-payment of APC for USF dues for the month of May 2010 amounting to Rs. 39,995,843/- alongwith late payment charges thereof.

4.5. The licensee challenged the aforesaid show cause notice by way of filing WP No.4678/2010 before the Hon'ble Islamabad High Court, Islamabad wherein the licensee made the following prayer:

- “(i) to declare show cause notice as illegal and unlawful.*
- “(ii) to treat the petition at par with other LDI operators there by allowing the petitioner to deposit a PC for USF relating to the month of May 2010 and 15 equal installments as it has already done in eight other quoted cases.*
- “(iii) to declare that suspension of license is not allowed on account of non-payment of APC for USF contribution and the only penalty is late payment additional fee as provided in terms of Regulation 10 (6) of 2005 Regulations and in accordance with the judgment reported as PLD 2010 Lahore 260.”*

However, the said petition was ultimately dismissed as withdrawn by the licensee on 29-02-2012, on the pretext that the licensee paid the outstanding amount of APC for USF for the month of May 2010.

4.6. For the months of July and August 2010, the licensee was required to make payment of APC for USF of Rs. 256,314,459/-. However, the licensee did not pay the same, as a consequence thereof, the Authority was again forced to issue show cause notice dated 03-01-2011 for the default of the said amount. The licensee again

challenged the said show cause notice by way of filing another WP No.309/2011 before the Hon'ble Islamabad High Court, Islamabad with the identical prayer as earlier made in WP No.4678/2010, which was still pending at that time.

4.7. That the licensee remained adamant on non-payment of outstanding dues of APC for USF. The Authority again issued letters/demand notes determining the amount for payment of APC for USF for the months of September, October and November of 2010. On account of non-payment of the same, the Authority was constrained to again issue show cause notice dated 16-03-2011 for default of Rs. 507,428,722/-.

4.8 The licensee did not pay the outstanding amounts and again resorted to litigation by filing another WP No.1313/2011 before the Hon'ble Islamabad High Court, Islamabad claiming that the total amount due was Rs. 231,698,364/- which had been paid by the licensee; and therefore, the Authority be directed to issue formal letter/order for settlement of amount on the basis of settlement arrived at between petitioner and the respondent authority; and not to initiate any recovery proceedings/claim issue any fresh show cause or process encashment of post-dated security cheques of equal amount. Initially, the licensee obtained injunctive order from the Court, however, the said petition was dismissed due to non-prosecution on 10-10-2016.

4.9 Similarly on account of default/non-payment of APC for USF dues of Rs. 589,632,204/- for the months of November and December 2010, the Authority again issued show cause notice dated 11-05-2011. Following its previous conduct, the licensee again challenged the said show cause notice by filing WP No.1655/2011 before the Hon'ble Islamabad High Court, Islamabad. It is important to note that in WP No.1655/2011, the licensee sought the declaration that the entire APC regime, its levy and collection was unconstitutional and *ultra vires* to the Act. Initially, notices were issued to the Authority in the writ petition but eventually, it was also dismissed as withdrawn on 15-07-2011.

4.10. The Authority required the licensee to make the payments on account of APC for USF for the month of January, 2011 through its demand note/reminder dated 25-04-2011 and 06-05-2011. However, due to non-payment of outstanding dues for the month of January 2011 on account of APC for USF dues amounting to Rs. 556,886,089/-, the Authority again issued show cause notice dated 27-06-2011.

4.11 The licensee filed Civil Suit No. 171/2011 in the Court of Senior Civil Judge, Islamabad, alleging therein that the Authority was required to notify Approved Accounting Rate ("AAR") as per the AP Rules and the AP Regulations; and without determining AAR, the Authority was illegally notifying the ASR; the ASR was being determined against the actual rates in the market; and the Authority has been incorrectly raising the demands on the basis of such ASR; that the licensee was entitled to claim refund for the excessive payment demanded by the Authority on account of APC for USF. This suit was dismissed by the Civil Court through order dated 07-09-2021, which was assailed by the licensee in filed RFA No.563/2021 before the Hon'ble Islamabad

High Court, Islamabad which is still pending adjudication wherein no stay order is in field.

4.12. The Authority through its Enforcement order dated 30-06-2012 had decided the five (5) show cause notices dated 12-10-2010, 03-01-2011, 16-03-2011, 11-05-2011 and 27-06-2011. The licensee challenged the said order through FAO No. 346/2012 before the Hon'ble Lahore High Court, Lahore which was allowed vide order dated 23-11-2015 and the said Enforcement order was set aside. The Authority assailed the same before the august Supreme Court which was disposed of vide order dated 25-10-2019 and the matter was remanded back to the Authority. The Authority then passed an Enforcement order dated 29-11-2019 which was challenged by the licensee in FAO No. 77397/2019 before the Hon'ble Lahore High Court, Lahore and the said appeal is *sub-judice* before the Hon'ble Court. Since a sum of Rs. 4,958,779,948/- was demanded through the said Enforcement Order which is *sub-judice*, therefore, the same is not made part of this order.

4.13 At this stage, it is necessary to mention that the licensee also filed another WP No.2384/2011 before the Hon'ble Islamabad High Court, Islamabad challenging the imposition of late payment additional fee and claim that it was *ultra vires* the provisions of the Act. The said writ petition was also dismissed for non-prosecution by the Hon'ble Court vide order dated 08-06-2016.

4.14. The licensee again filed WP No.1707/2011 wherein, for the first time it asserted that ASR had been incorrectly mentioned in all the previous notifications and therefore, APC for USF had been incorrectly determined w.e.f. May 2008 to March 2011. In the said writ petition, the licensee prayed that the Authority be directed to settle accounts with the licensee by using ASR @ US\$ 0.0532 after applying the permissible range correctly and reimburse the excess amounts illegally charged. This writ petition was dismissed by the Court on the first date of hearing through order dated 31-05-2011, on the ground that the writ petition involved financial controversy and disputed questions regarding accounts and therefore was not maintainable. The licensee challenged this order by filing ICA No.130/2011 before the Hon'ble Islamabad High Court, Islamabad. The said ICA was allowed by the Hon'ble Court vide its order dated 07-05-2018, in the following terms:

“Respondent/PTA is directed to treat this writ petition as representation and decide the question of settlement of account in terms of Access Promotion Rules, 2004 through speaking order after considering the data, record and hearing the appellant on a properly notified date of hearing within a period of sixty (60) days. However, respondent authority is at liberty to require any information, data from the appellant and follow the reporting requirement as referred under the Access Promotion Rules, 2004.”

4.15 That the Authority after hearing the licensee again passed an Enforcement order dated 24-12-2018 addressing therein detailed reasoning and justification for

applicability of AP Regime and APC for USF calculations thereon. Accordingly, Circlenet was required to make APC for USF payment of Rs.8,579,555,821/-. This order was again challenged by filing FAO No.4274/2019 which was disposed of and the matter was remanded back to the Authority vide order dated 22-03-2022, in the following manner:

“With the concurrence of the learned counsels for the contesting parties, the impugned order dated 9.10.2018 is hereby set aside by accepting this appeal and the matter is remanded back to the respondent /Chairman, CPD, Pakistan Telecommunication Authority, Islamabad to decide the matter afresh.

2. Both the parties are hereby directed to appear before above said respondent on 01.04.2022.”

5. Findings of the Authority:

5.1. 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.

5.2. The APC as introduced in the De-regulation Policy 2003, is part of revenue generated from international incoming traffic/calls terminated in Pakistan. As a matter of fact, international incoming traffic/call generated 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 network was directly paid to local loop licensees for improvement of their infrastructure. Whereas, the same fixed portion of the revenue on the international incoming calls terminated on cellular would not be available to 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.

5.3. Regarding the legal framework of APC, 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. 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 AP Regulations make it obligatory on the licensee to deposit APC for USF 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 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 8th 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.

5.4. 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 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 judgement reported as 2016 SCMR 475.

5.5. The Authority has been determining the ASR as well as Total Accounting Rates ("**TAR**") and has also been conducting its review in consultation with the industry. The said rates were notified for the first time on 12-01-2005, wherein ASR was fixed at US\$ 0.1760 per minute. Thereafter, it was reviewed on 24-03-2005 and was fixed at US\$ 0.1672 per minute. It is pertinent to highlight that all the LDI licensees jointly wrote a letter initially through PTCL then a separate proposal of all other LDI licensees was received before the next review in May 2005. The Authority duly considered the recommendations of the LDI licensees as well as international trends, and announced TAR (US\$ 0.2771 per minute) as well as ASR (US\$ 0.1386 per minute) for the period from July to December 2005 through letter dated 20-05-2005. On the request of LDI licensees to review TAR/ASR, a meeting was scheduled by the Authority on 07-03-2006 at PTA Headquarters, Islamabad in order to obtain their input on the subject. After detailed discussion, the Authority determined ASR (US\$0.1283 per minute) w.e.f. 01-01-2006. The Authority vide its letter dated 25-01-2006 determined ASR of US\$ 0.1283 per minute w.e.f. 01-03-2006 and ASR @ US\$ 0.10 w.e.f. 01-07-2006. Then again Authority meetings were held with LDI licensees and LL licensees on 30-06-2006 and 06-09-2006 regarding review of ASR. The Authority after considering the view point of the LDI licensees determined the ASR @ US\$ 0.075 per minute w.e.f. 01-11-2006. For the next review of ASR, the LDI consortium held a joint meeting led by PTCL on 03-07-2007. The Authority again considered the view point of all LDI licensees and notified ASR @ US\$ 0.07 per minute w.e.f. 01-10-2007 vide its letter dated 31-08-2007. Another review of ASR was carried out on 12-03-2008 in consultation with LDI licensees wherein majority of the LDI licensees agreed with the idea of increasing APC immediately. During the said meeting, PTCL as a leader of LDI consortium was directed to call meetings of LDI licensee for review of ASR and in case LDI licensees are not successful in arriving at a consensus by 27-03-2008 then APC shall be revised to US 5 cents. In this regard, PTCL through its letter dated 24-03-2008 conveyed that it had convened two meetings with all LDI licensees on 17-03-2008 and 24-03-2008 wherein (in meeting held 17-03-2008) LDI licensees including the licensee agreed that APC should be revised to upward US 10 cents, whereas (in meeting held on 24-03-

2008) LDI licensees including the present licensee agreed that ASR should also be APC plus US 5 cents (i.e. US 15 cents). Accordingly, in line with the industry recommendations, the Authority revised ASR to US\$ 0.10 per minute w.e.f. 01-05-2008 and the Authority vide its letter dated 21-04-2008 clarified that ASR for Pakistan incoming traffic (fixed & mobile) is US\$ 0.10 per minute with effect from 01-05-2008. It is clear that the said revision was with the consent of the licensee and thereafter it changed its stance to avoid payment of APC for USF. Reference is made to various correspondence from several LDI licensees such as Wateen (letter dated 10-03-2008), Worldcall (letter dated 12-02-2008), Burraq (letter dated 10-03-2008), Telenor LDI (letter dated 11-03-2008) wherein almost all LDI licensees admitted that calling to Pakistan has been highly lucrative business for major telecom operators outside Pakistan as call rates from majority of origination centers has not seen any corresponding rates reduction for the end users. For example, Pakistani nationals working in Gulf region were still subjected to very high call rates for calling home. The LDI licensees suggested to pull up the Pakistan settlement rates to a level similar to other regional countries. The Authority also examined the data and observed that termination rates of other countries were high and data suggested an increase to the level of ASR of US\$ 0.10 per minute. The Authority before its next review scheduled a hearing on 30-12-2008 to discuss the level of ASR, level of APC, level of LDI margin and permissible range. After hearing and discussion/deliberation with all stakeholders, the Authority decided to revise ASR from US\$ 0.10 per minute to US\$ 0.125 per minute w.e.f. 01-02-2009. Needless to mention here that since this revision was with the consent of the industry, none of the LDI licensees objected and in fact kept quiet till 2011. However, later on, some of the LDI licensees including the present licensee started filing cases in order to avoid payment of APC for USF and keep the same in their own pockets without any lawful justification.

5.6. The Authority continued its consultative approach with the licensees before the next review. A monthly review meeting was held on 17-06-2009 with all LDI licensees to review the level of ASR/APC, status of grey traffic monitoring and other issues. Thereafter, the ASR was reviewed and notified as US\$ 0.105 per minute w.e.f. 20-07-2009. None of the LDI licensees challenged this review of ASR on any such ground that the levels determined by the Authority were unrealistic, illegal or without jurisdiction. It was only in more than two years later, in year 2011, when the licensee for the first time started asserting (as an afterthought) that the levels of ASR determined by the Authority were somehow incorrect. However, before and during this process of review of rates/levels the Authority always consulted the industry and therefore consent and the concurrence of all LDI licensees was part and parcel of the same. Even in the next review on 23-02-2011 w.e.f. 01-04-2011, when the ASR was redetermined as US\$ 0.0775 per minute, the industry was duly consulted on 13-01-2011 through meeting at PTA Headquarters, Islamabad. Similarly, in next review dated 17-08-2011, the same process was followed and the ASR was determined with the consultation of the industry and notified as US\$ 0.0625 per minute w.e.f. 01-10-2011.

5.7. From the narration of afore referred consultations with the industry, it is clear that at the relevant time all the factors and issues raised by the industry were duly deliberated in joint sessions and taken into considerations while determining the ASR, AAR, TAR, etc. The licensee and the entire LDI industry actively participated in the process and never complained that their point of view was not taken into consideration. After remaining quiet for a considerable time, the licensee in 2011, so as to avoid making payments which were due under the law, started questioning the notifications/determinations which were now past and closed. The same could not be reviewed/revisited on individual basis, since the notified ASR/TAR rates were fixed for the entire industry after due consultation therefrom. The argument of the licensee at this belated stage appears to be simply an attempt to avoid payment at all cost. In all these reviews, it was kept in mind that there was still a lot of benefit and premium available to the licensees and no valid factual data has ever been produced by the licensee to contradict the level of ASR/TAR determined in year 2008 and 2009. During all consultation meetings held in the years 2008, 2009 and 2011, all the available data was discussed before each review and the industry never complained that the data presented by them was in fact not taken into consideration by the Authority. Nothing new has been shared by licensee during these proceedings.

5.8. 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 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 operators 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 8th 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.

5.9. It is important to note that the licensee through WP No.1655/2011, sought declaration that the entire APC regime, its levy and collection was unconstitutional and *ultra vires* to the Act. The said writ petition was dismissed as withdrawn vide order dated 15-07-2011. It is clear that after withdrawal of the said petition, the licensee was not permitted by law to raise the same ground again in subsequent petitions.

5.10. That astonishingly, the licensee filed another WP No.1707/2011 before the Hon'ble Islamabad High Court, Islamabad challenging the ASR, APC for USF and

prayed that the Authority be directed to settle accounts with the licensee by using ASR @ US\$ 0.0532 after applying the permissible range correctly and reimburse the excess amounts illegally charged. The said writ petition was dismissed *in limine* by the Hon'ble Court vide its dated 31-05-2011 being not maintainable. The licensee challenged the said order by filing ICA No. 130/2011 before the Hon'ble Islamabad High Court, Islamabad.

5.11. From analysis of the two writ petitions No.1313/2011 and No.1655/2011, it is very clear that the licensee not only challenged the entire APC regime before the Hon'ble Islamabad High Court, Islamabad but also raised the issue that ASR should not be applied but some hypothetical and legally nonexistent market rate be taken into consideration as the real settlement rate. Needless to mention that at the time of filing of both these writ petitions, the notifications whereby ASR, MTR had been notified including notifications dated 31-03-2008, 06-01-2009 and 19-06-2009 were in field, however, the licensee did not specifically challenge in its prayer clause any of the said notifications as being legally defective or prayed that the same be declared illegal. The licensee also did not mention any legal basis for challenging the ASR, in spite of making detailed arguments about some hypothetical "Market Rate" in the field. This plea was not only abandoned under the law but was clearly against the provision of law since the AP Rules and the AP Regulations clearly define ASR and envisaged that the calculations and determination of payable 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 actual 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 kept on making this misconceived legal argument again and again. Needless to mention that all these legal and factual pleas were dismissed when the licensee withdrew its WP No.1655/2011 on 15-07-2011. Thereafter, the licensee could not under the law re-agitate the same pleas with regard to the matters which stood concluded by withdrawal of the WP No.1655/2011. Even the subsequent challenge in WP No.1313/ 2011 was not seriously pursued and the same was dismissed on 10-10-2016.

5.12. That the argument about permissible range was similarly false and against the admitted and 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 2004 at the time of introduction of APC, the industry was 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. upto 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 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 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 after 2011, the 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.

5.13. Another important reference is 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.

5.14. Last but not the least, it is pertinent to note that the licensee has not taking arguments or stance of permissible range while making payment of APCL to Local Loop operators, rather has paid full amounts. On the contrary, when the licensee's obligation for payment of APC for USF arises, it takes a summer sault and denies such payments by disputing the same formula. The licensee's assertions regarding permissible range are completely fallacious, having no force and self-contradictory. Thus, the licensee is legally estopped by its own conduct not to pay or dispute APC for USF contribution as determined and demanded by the Authority on the basis of similar formula applied for payment of APCL to local loop licensee.

5.15. It is also noteworthy that as per applicable legal framework, ASR has been determined as laid down in the AP Rules and AP Regulations. The same has been defined in the AP Rules in the following manner:

“Approved Settlement Rates” means one half of the approved accounting rate whereas Approved Accounting rates means Total Accounting Rates approved by the Authority under rules 6”

Furthermore, the term “Total Accounting Rate” means the rate a licensee negotiates with a foreign service provider for handling per minute of international telephony service”.

5.16. All notifications were issued within the applicable legal framework. The Authority is mandated to regulate and determine the ASR which is applicable across the board on all the LDI licensees and the industry at large. Simply because one licensee does not like the level of ASR it could not demand review in 2011 or afterwards with retrospective effect saying that ASRs be re-fixed or re-determined as per its choice. Furthermore, the licensee seems to claims that its individual business transaction discounts be applied on the revenue generated from international incoming calls and its

individual discounted rates should be treated as the new ASR in its individual case. This is completely illegal demand and practically impossible and antithesis to why the law provides uniform ASR (on the basis of one country one rate) applicable on all LDI licensees. If the Authority goes by the demand of the licensee, then there would be no uniform ASR at all and that would be complete negation of the entire regulatory regime, AP Rules and AP Regulations. Needless to state that the validity of AP Rules and AP Regulations and the notification and demands issued thereon have been upheld by the august Supreme Court of Pakistan.

5.17. There is no ambiguity about the basis and the calculations of the payment demanded from the licensee. After determining the payment of APC for USF, the outstanding dues for the period of twenty-two (22) months against which the SCN was issued were duly intimated to the licensee whereby it was required to make payment for the months of June (partial) and September (partial) of 2010 and February 2011 to September 2012 vide letters dated 23-09-2010, 23-12-2010, 08-06-2011, 23-06-2011, 22-07-2011, 26-08-2011, 22-09-2011, 21-10-2011, 23-11-2011, 21-12-2011, 19-01-2012, 22-02-2012, 22-03-2012, 19-04-2012, 21-05-2012, 21-06-2012, 23-07-2012, 24-08-2012, 24-09-2012, 30-10-2012, 20-11-2012 and 21-12-2012, respectively. In every letter/demand note, the APC for USF was clearly calculated and determined and the same was informed to the licensee. The licensee failed to make the payments on account of APC for USF calculated on the basis of traffic data submitted by the licensee itself for the aforementioned months amounting to Rs.1,646,980,693/- (i.e. Rs. 946,220/- + Rs.4,892,929/- + Rs.110,808,058/- + Rs.282,031,608/- + Rs.100,280,337/- + Rs.171,704,864/- + Rs.111,033,577/- + Rs.118,497,693/- + Rs.96,717,101/- + Rs.139,571,331/- + Rs.12,595,893/- + Rs.10,386,950/- + Rs.8,028,674/- + Rs.22,565,169/- + Rs.33,528,237/- + Rs.39,415,077/- + Rs.46,913,781/- + Rs.57,081,061/- + Rs.67,540,502/- + Rs.64,764,180/- + Rs.76,701,383/- + Rs.70,976,067/-) respectively and late payment charges thereon amounting to Rs. 3,981,380,646/-. All the underlying basis/factors required for calculation of the sums determined as payable were clearly mentioned in the said demand notes/reminders by mentioning rates and number of minutes under the heads, "TERMINATED TRAFFIC ON MOBILE FOR THE MONTH", APC, MTR, EXCHANGE RATE and, thereafter, exact amount of APC for USF determined on the basis of such data, which the licensee was required to pay. Some of the letters are reproduced hereunder showing the said demands stated as under:



PAKISTAN TELECOMMUNICATION AUTHORITY

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

No. 04-01/10/(AP/CA)PTA

September 23, 2010

SUBJECT: DEMAND NOTE OF APC FOR USF FOR THE MONTH OF JUNE 2010

1. 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 2010 is September 30, 2010. Based on the reported traffic by Circlenet Communications Pakistan (Pvt) Ltd., APC for USF obligation for the month of June 2010 is calculated as under:

Company/Month	Terminated Traffic on Mobile	APC (USD)	MTR (PKR)	Avg. Exchange Rate (PKR/USD)	APC for USF (PKR)
Circlenet (June 2010)	28,125,219	0.055	0.90	85.25	106,559,423

3. You are therefore requested to make payment of Rs. 106,559,423 on account of APC for USF latest by September 30, 2010.

M. Saleem

Dr. Muhammad Saleem
Director General (Commercial Affairs)

To:
Mr. S. M. Yasir
Chief Financial Officer
Circlenet Communications Pakistan (Pvt) Ltd.

- Cc:
- Senior Project Manager (USF), MoIT
 - DG (Finance), PTA (For booking of Rs. 106,559,423 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. 04-01/10/(AP/CA)PTA

December 23, 2010

SUBJECT: REVISED DEMAND NOTE OF APC FOR USF FOR THE MONTH OF SEPTEMBER 2010

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 2010** is December 31, 2010. Based on the reported traffic by Circle Net Communications Pakistan (Pvt) Ltd. APC for USF obligation for the month of September 2010 is calculated as under:

Company/Month	Terminated Traffic on Mobile	APC (USD)	MTR (PKR)	Avg. Exchange Rate (PKR/USD)	APC for USF (PKR)
CircleNet (Sep 2010)	61,353,337	0.055	0.90	84.30	229,246,744

3. You are therefore requested to make payment of **Rs. 229,246,744 /-** on account of APC for USF latest by **December 31, 2010**.

MASHA BAIG

Deputy Director (Commercial Affairs)

To:
Mr. S. M. Yasir
Chief Financial Officer
Circle Net Communications Pakistan (Pvt) Ltd.

- Cc:
- Senior Project Manager (USF), MoIT
 - DG (Finance), PTA (For booking of Rs. 229,246,744/- 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. 04-01/11/(AP/CA)PTA

May 20, 2011

SUBJECT: DEMAND NOTE OF APC FOR USF FOR THE MONTH OF FEBRUARY 2011

1. 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 February 2011 is May 31, 2011. Based on the reported traffic by Circlenet Communications Pakistan (Pvt) Ltd., APC for USF obligation for the month of February 2011 is calculated as under:

Region/Month	Terminated Traffic on Mobile	APC (USD)	MTR (PKR)	Avg. Exchange Rate (PKR/USD)	APC for USF (PKR)
Pakistan (Feb 2011)	29,119,784	0.055	0.90	85.55	110,808,058

3. You are therefore requested to make payment of Rs.110,808,058 on account of APC for USF latest by May 31, 2011.

M. Saleem
20/05/11

Dr. Muhammad Saleem
Director General (Commercial Affairs)

To:
Mr. S. M. Yasir
Financial Consultant
Circlenet Communications Pakistan (Pvt) Ltd.

Cc:
• Senior Project Manager (USF), MoIT
• DG (Finance), PTA (For booking of above amounts in Finance Ledger)
• SO to Chairman, PTA
• PA to Member (Technical), PTA



PAKISTAN TELECOMMUNICATION AUTHORITY

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

No. 04-01/12/(AP/CA) PTA

December 21, 2012

SUBJECT: DEMAND NOTE OF APC FOR USF FOR THE MONTH OF SEPTEMBER 2012

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 2012** is December 31, 2012. Based on the reported traffic by Circlenet Communications Pakistan (Pvt) Ltd., APC for USF obligation for the month of September 2012 is calculated as under:

Region/Month	Terminated Traffic on Mobile	APC (USD)	MTR (PKR)	Avg. Exchange Rate (PKR/USD)	APC for USF (PKR)
Pakistan (Sep 2012)	253,485,955	0.0125	0.90	94.40	70,976,067

3. You are therefore requested to make payment of above mentioned amounts on account of APC for USF in respective bank accounts latest by **December 31, 2012**.


Ahmed Shamim Pirzada
Director (Commercial Affairs)

To:
Mr. S. M. Yasir
Financial Consultant
Circlenet Communications Pakistan (Pvt) Ltd.
Islamabad.

Cc:
1. Senior Project Manager (USF), MoIT
2. DG (Finance), PTA (For booking of above amounts in Finance Ledger)
3. SO to Chairman, PTA
4. PA to Member (Finance), PTA
5. PA to Member (Technical), PTA

5.18. Another very important aspect to note is the continuously changing stance of the licensee about the *vires* of AP Rules and AP Regulations. Initially, when the entire APC regulatory provisions/regime was challenged by various LDI licensees in the Islamabad High Court, Islamabad as *ultra vires* of the provisions of the Act, illegal and unlawful, the licensee chose not to make any such challenge and in fact accepted the legality of APC contribution and kept making the payments as per the demand raised by the Authority. Thus, 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 and even upheld and settled comprehensively up to the level of august Supreme Court of Pakistan in a judgement reported as 2016 SCMR 475.

5.19. As to the facts of the instant case, there is no dispute with regard to “figures” relating to number of calls i.e., termination of international incoming telephony minutes. It is also an admitted position that the licensee is under an obligation to make contribution on account of APC for USF. While acknowledging this obligation, the licensee has also deposited contribution in pursuance to ICH policy directive issued in 2012 by the MoIT&T with rates as prescribed in the ICH policy and has never challenged any such payment made pursuant to ICH policy in any court of law.

5.20. During these proceedings, the Authority has again examined all the demands, calculations and found that the data regarding the monthly international incoming minutes is correct and in accordance with the prescribed formula. The calculations in the above referred letters / demand notes have clearly been made in accordance with the formula laid down in rule 8 (4) of the AP Rules and the total payment required of APC for USF for the respective months is also correctly determined therein. All legal objections of the licensee raised in reply to SCN vis-à-vis APC for USF are misconceived in view of the judgment passed by the august Supreme Court of Pakistan. The licensee itself admits 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 (LDI 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 the licensee. Hence, the assertions of the licensee are clearly without any substance.

5.21. 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. In the present case the LDI licensees are asking for an illegality to be introduced / 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 licensees in ASR upto US 6 cents per minute. If APC for USF is treated as or against the ratio fixed by relevant notifications at the time , the result is that all amount goes into the pocket of the LDI licensee and thereby LDI notified share increases from US 5 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. Anything above notified share of LDI licensee is not its money. 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.

5.22. 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 (90) 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 observed that the obligation to pay APC within a period of ninety (90) 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, condition 3.1 of the license clearly envisages that provisions of the Act, Rules and Regulations are part of the terms and condition of the license and in case of a conflict, the provisions of the Act, Rules and Regulations will prevail and the said condition requires the strict compliance of the Act, Rules and Regulations. Hence, the argument of the licensee is misplaced and misconceived.

5.23. Likewise, the argument of the licensee that recovery of APC for USF can only be made through a Civil Suit filed by the Authority and not under section 23 of the Act, is devoid of merit. At the cost of repetition, the obligation for payment of APC for USF arises under the AP Rules is non-compliance of AP Rules and terms of license is proceedable under section 23 of the Act. Hence, it is made clear that the Authority is well within its power and jurisdiction under section 23 of the Act to initiate and conclude proceedings for non-payment of APC for USF.

5.24. Regarding late payment charges, the 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 additional 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.*".

5.25. Lastly the contentions of the licensee that observations of the Hon'ble Lahore High Court, Lahore order dated 23-11-2015 passed in FAO No.346/2012 must be taken into consideration. Suffice to say that while setting aside all observations on merit in the said judgment of the Hon'ble Lahore High Court, the august Supreme Court in CA No. 207/2016 & other connected cases vide its order dated 25-10-2019 held as under:

"As far as these appeals are concerned, they are disposed of along with the listed CMAs, for the reasons given above, with the direction that the Authority (three members) will hear the matters afresh and decide the same within a period of fortnight from the date of receipt of this order. The impugned judgment of the Lahore High Court dated 23.11.2015 has not been examined by us on merits because these matters have been

decided on the jurisdictional question of the constitution of the Authority. Therefore, the impugned judgement deciding the merits of the case, will not be treated as a precedent and will not influence the Authority while deciding the matters afresh. It is clarified that this order will have no bearing on the decisions / orders of the Authority that stand post and closed."

Hence, it is clear that the matter has to be examined afresh on merits without reference to any such observations.

5. Order:

5.1 In view of the factual and legal discussion made above, the Authority has reached to a conclusion that there is no ambiguity in terms of applicability of rules, regulations, notifications and demands issued by the Authority and its officers and rates notified therein etc. *vis-à-vis* APC for USF. Accordingly, the Authority hereby directs the licensee to pay Rs.5,900,626,961/- (Principal: Rs.1,646,980,693/- + LPAF: Rs.4,253,646,268/- as of 18-07-2025) along with Late Payment Additional Fee on account of delay, if any, in depositing contribution to the designated account within thirty (30) days from the receipt of this order.

Maj. Gen. Hafeez Ur Rehman (R)

Chairman

Muhammad Naveed

Member (Finance)

Dr. Khawar Siddique Khokhar

Member (Compliance & Enforcement)

Signed on 18th July, 2025 and comprises 24 pages only.