



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 Multinet Pakistan (Pvt.) Limited

No. 04-01/11/(AP/CA)PTA/206/125/437

Show Cause Notice: 1st December 2016
Venue of Hearing: PTA HQs, Islamabad
Hearing Date: 9th 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 01-12-2016 (“SCN”), issued to Multinet 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, in pursuance of consolidated order passed in Civil Suit No. 2612/2016 by the Hon’ble Sindh High Court at Karachi, whereby the proceeding on above-mentioned SCN has been remanded back to the Authority.

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-13(9)-2005 dated 29-11-2005 (the “license”) to Multinet Pakistan Pvt. Limited (the “licensee”) to establish, maintain and operate telecommunication system and to provide licensed services, in particular, termination of international incoming calls in Pakistan.

1.2. In accordance with the terms and conditions of the license read with other applicable regulatory laws, 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”), 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 applicable regulatory framework, the licensee was required by the Authority to make payment of APC for USF contribution determined and outstanding dues as on 31-07-2016, already determined and conveyed through several letters mentioned in the said notice. Due to persistent default on the part of the licensee in making payment of APC for USF dues despite the demand notes/letters, the Authority was constrained to issue show cause notice dated 01-12-2016 under section 23 of the Act, whereby the licensee was required to pay APC for USF of Rs. 4,540,754,110/- after excluding sum of Rs. 3,863,624,260 / - (being *sub judice*) from a total of Rs. 8,404,378,370 /- (for the period up to 31-07-2016), along with late payment charges, within seven (07) days of the issuance of Show Cause Notice dated 01-12-2016 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.

1.4. The licensee challenged the said SCN before the Hon’ble Sindh High Court, Karachi by filing another Civil Suit No. 2612/ 2016. The matter remained pending and was stayed. The Honorable High Court through order dated 27-11-2024 remanded the matter back to the Authority for adjudication. For ready reference relevant para of the said court order reproduced below:

“These suits essentially assail show cause notices and adjudication thereof in civil jurisdiction has been deprecated per the pronouncements of the Supreme Court in case of Commissioner Inland Revenue v. Jahangir Khan Tareen reported as 2022 SCMR 92, as approved by the Supreme Court subsequently in judgement dated 15.09.2022 rendered in DCIR vs. Digicom Trading (CA 2019 of 2016).

Respective learned counsel jointly submit that these suits may be disposed of with directions for the respective show cause notices to be adjudicated by the relevant issuing authority and pending adjudication thereof no coercive action be taken by the respective defendants against the plaintiff/s.

These suits, along with all pending applications, are disposed of as aforesought.”

Hence, the licensee has now filed a reply to show cause notice along with its written arguments. The same are now being considered while passing this enforcement order in terms of the remand order.

1.5. After the aforesaid remand order, the Authority fixed the hearing of SCN on 09-04-2025. Mr. Adnan Zaidi (CEO), Mr. Fahim Khan (Head of Legal) and Mr. Ahad Nadeem

(Advocate High Court) attended the hearing on behalf of the licensee. Mr. Faisal Ratyal - DG (Telecom), Mr. Zia Kasi - CFA&O, Dr. Mobeen Shah - Director General (Legal), Dr. Sajjad A. Mansha - Legal Executive, Mr. Hassan Aziz - Director Telecom also attended the hearing on behalf of MoIT&T as the matter pertains to APC for USF.

1.6. Before the date of hearing, the licensee filed a detailed reply/response dated 08-04-2025. The licensee submitted that SCN is misconceived, having been issued on a misreading of the law and are based on arbitrary and predetermined calculations made by the officials of the Authority. Further stated that the demands raised by the Authority towards the principal sum and fine/penalty levied on account of APC for USF as of 31-07-2016 is denied as being unlawful and baseless; the demands are not supported by any detailed working or calculation. As such, the allegations raised in the SCN are denied in their entirety. Main contentions of the licensee made in reply to SCN are as under:

1. Unlawful Notifications for the determination of APCL and APC for USF

- b. Historically, the Authority has been notifying APC as a fixed charge which is arbitrary and contrary to the intent and purpose of the regime. The formulae for calculating APCL and APC for USF Contribution are provided in Rule 8(2) and (4) of the APC Rules respectively. Rule 8 clearly identifies APCL and APC for USF Contribution as separate and distinct charges which the Authority was mandated to notify separately. Despite such a clear distinction, the Authority has always notified APC as one single charge, which was then paid by the Operators based on the calculation provided in Rule 8 of APC Rules and the demand notes issued by the Authority.
- c. The dispute between the LDI Operators/MPPL and the Authority, inter alia, stems from the notifications dated 31 March 2008, 06 January 2009 and 19 June 2009 (**'disputed notifications'**), pursuant to which the Authority only determined and notified the APCL rate. It is the position of MPPL and the LDI Operators that during the term of the disputed notifications, no separate rate for APC for USF was notified and the disputed notifications were also a deviation from the Authority's earlier, albeit incorrect, mode of notifying APC as a single charge. As such, it is submitted that in the absence of a determined and notified rate of APC for USF from March 2008 to June 2009, the Authority was not entitled to raise any demands in respect of same and the APC for USF rate for the entire period is to be considered as zero. Without prejudice to the submission that the SCN otherwise lacks any working/calculation to substantiate how the principal demand and penalty/fine was calculated, any amount included on account of APC for USF under the disputed notifications is liable to be subtracted from the same. In this regard, the Authority is again requested to provide a detailed working of its calculations of APC for USF over the years and calculations based on

which the principal amount and penalty has been computed in the SCN. MPPL has already demonstrated its calculations to the Authority which takes into account all the necessary elements including permissible range applicable to the ASR.

- d. The Authority's stance that when all components of APC were given in the disputed notifications, the LDI Operators could have calculated the rate for APC for USF and paid the same, is rejected as being misconceived. The Authority cannot delegate its responsibility or obligations under Rules 8 and 9 of the APC Rules to determine and notify the APC for USF. There is no provision under the 1996 Act, APC Rules and AP Regulations which require LDI Operators to independently carry out calculations for the Authority and pay charges which are neither determined nor notified. Even Section 8 of the 1996 Act allows PTA to delegate its powers to its own officers, but not the Licensees. Further, Rule 9(3) of the APC Rules clearly provides the mechanism by which any change to the APC for USF and APCL are to be notified separately for their applicability (thus signifying that both values are neither interchangeable, nor can the notification of one of them may be misinterpreted to mean that both have been notified) and further, that only the Authority can notify the same, thus establishing that such values of APCL and APC for USF cannot be calculated by Licensees at their discretion.
- e. It is further submitted that the Authority, as it was then, was obligated under Rule 9 of the APC Rules to review the levels of APCL and APC for USF Contribution not less than every six months and while doing so was under a duty to consider the recent changes in the Approved Accounting Rates, the margin available to a LDI Licensee from incoming international calls taking into account the Approved Accounting Rates and the levels of APCL and APC for USF. Additional factors which the Authority is required to take into consideration are provided under Regulation 5 of the AP Regulations which include but are not limited to assessing the impact of reduction in settlement rates on the overall telecom sector. However, since no such facts were taken into account in contravention of Regulation 5 of the AP Regulations, the Authority failed to maintain the ASR at a realistic level and unjustifiably continued to demand the APCL and APC for USF Contribution at the level arbitrarily, incorrectly and illegally notified by it.
- f. The illegality of the demand raised by the Authority under the disputed notifications was also recognized by the learned Auditor General of Pakistan (AGP) in its Special Audit Report dated 05 July 2011 wherein the learned AGP examined the APC Rules and the AP Regulations as well as the disputed notifications issued by the Authority and concluded that while issuing inter alia, the disputed notifications, no approval of the

Authority is available on record and the same requires clarification (which till date has not been rendered). The learned AGP further observed that the Authority had been issuing combined notifications for APC for USF and APCL; however, after the year 2008 PTA only issued APCL rates. The Special Audit declared the demand notes as unlawful by concluding that 'rates issued for APCL were also applied for APC for USF in violation of the Rules. Being an independent auditor working in the interest of the country, the contents of the Special Audit Report issued by the Auditor General of Pakistan cannot be ignored.

2. Fine/Penalty levied by the Authority under SCN

- a. Regulations 10(4) and 10(6) of the AP Regulations create a distinction between a dispute and default under the APC regime. More specifically, when an LDI Operator creates a dispute under Regulation 10(4), a clear and precise process has been provided (i.e. the amount to be deposited in an escrow account), which is apart from the process for a defaulter who may not have any legally justifiable reasons for non-payment under Regulation 10(6) (imposition of a penalty). This distinction means that while the matter remains disputed under Regulation 10(4), the requirements of Regulation 10(6) cannot be applied and consequently, disputed matters do not attract any penalty of any nature. Notably, the imposition of a hefty fine amounting to Rs. 3.93 Billion- (alleged to be calculated till 31 July 2016) in the SCN is illegal, arbitrary, and grossly miscalculated, as it directly violates Regulation 10(4) of the AP Regulations. Without prejudice to our stance, even if a radical and unqualified misinterpretation is applied on AP Regulations, even then the applicability of any penalty cannot exceed the statutory limit prescribed under Section 23(3)(c)(i) of the 1996 Act, which explicitly restricts the maximum fine to PKR 350 million. As with the Principal amount, there is no clarity on how the fine has been computed by the Authority.
- b. In this regard, the following submissions are made for the assistance of the Authority:
 1. Under section 5(1) of the 1996 Act, the Authority is empowered to exercise powers as shall enable it to effectively perform its functions under Section 4. Section 5(2)(p) empowers the Authority to levy fee and other charges at such rates and in respect of such services as fixed by it from time to time not exceeding the limits as specified by a Committee of the Cabinet. None of the sub-sections of Section 5(2) of the 1996 Act empower the Authority to charge or impose LPAF on Licensees.
 - ii. The wordings of Section 5(2)(P) envisage that fees and other charges at such rates can be levied only in respect of services. It is a matter of

fact that LPAF is levied as a penalty for nonconformity with the terms of the License. No corresponding service is rendered by the Authority for the charge of LPAF (additional fee).

- iii. The Hon'ble Supreme Court in a case reported as **2014 SCMR 1630 SC** has defined "fee" as a charge exacted for a specific purpose and for rendering services or providing privilege to particular individuals or a class or a community or a specific area. Whereas in a case reported as **2016 SCMR 69** the Hon'ble Supreme Court explains that penalty implies the payment of money by way of punishment usually for breach of law/ contractual obligation. The words 'in respect of services' in Section 5(2)(P) limits the scope of the powers to levy fee and other charges. It cannot be read to cover "**additional fee by way of compensation**", as no additional service was rendered in lieu of such additional fee.
- iv. There is no scope for a levy of LPAF under the Act neither in the form of an additional fee nor a penal measure. The reason is that the provision of penalizing a Licensee is covered through a very specific procedure under Section 23 of the Act. Under Section 23(3), after inter alia service of show cause notice, the Licensee is to be given a chance to remedy the contravention within the time allowed, **only failing which, the Authority can levy fine which may extend to Rs. 350 million. A supplementary provision under Rule 9(5)(a) of the Pakistan Telecommunication Rules ('2000 Rules') also limits a levy of a fine to Rs. 350 million.**
- v. In a judgement reported as **2015 SCMR 1385** it was observed that extraction of money in any form may it be a tax, toll fee, charge or levy by whatever nomenclature it is classified could be extracted by the government and or public authority under a valid legislative instrument by the competent legislature. The Authority in no manner can enlarge the scope of Section 23(3)(c)(i) to impose a penalty or a fine that is beyond Rs. 350 million.
- vi. Without prejudice to the argument that LPAF is a penalty, in a judgement cited as **PLD 2006 SC 528**, it was observed that the executive wing of the state has itself no authority to levy and recover tax/fee unless the same is provided for in the parent statute. Reliance is also placed on the judgement reported as **1994 SCMR 1393** which provides that a charge cannot be made unless power to charge is given by express words or by necessary implication.
- vii. While Regulation 10(6) of the AP Regulations (relied upon by the Authority) prescribes a minimum fine of Rs. 500,000 with an

additional fine of 1.5% per month on the defaulted amount, it must be interpreted in conjunction with the parent statute and cannot override the statutory cap imposed by Section 23(3)(c)(i) of the 1996 Act. It is a well- established legal principle that delegated legislation cannot extend or override the scope of the enabling statute; therefore, any fine exceeding Rs. 350 million is ultra vires, excessive, and unenforceable. It is prudent to mention that that in terms of Regulations 10(6) of the 2005 Regulations no consequence other than levy of a fine can lie for nonpayment of APC for USF.

- viii. In view of the foregoing, it is humbly submitted that no fine or penalty is payable by MPPL in terms of the SCN or in any case and without prejudice, if a penalty or fine is to be imposed, such a penalty cannot exceed the statutory limits prescribed in the 1996 Act.

In written submissions, the licensee further submitted that it has made excess payments to the Authority on account of APC for USF, the recovery of which alongwith the legality of the disputed notifications remain *sub judice* in Suit No. 1429/2010 before the Hon'ble Sindh High Court, Karachi.

3. Findings of the Authority:

3.1. 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.

3.2. 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.

3.3. 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.

3.4. 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.

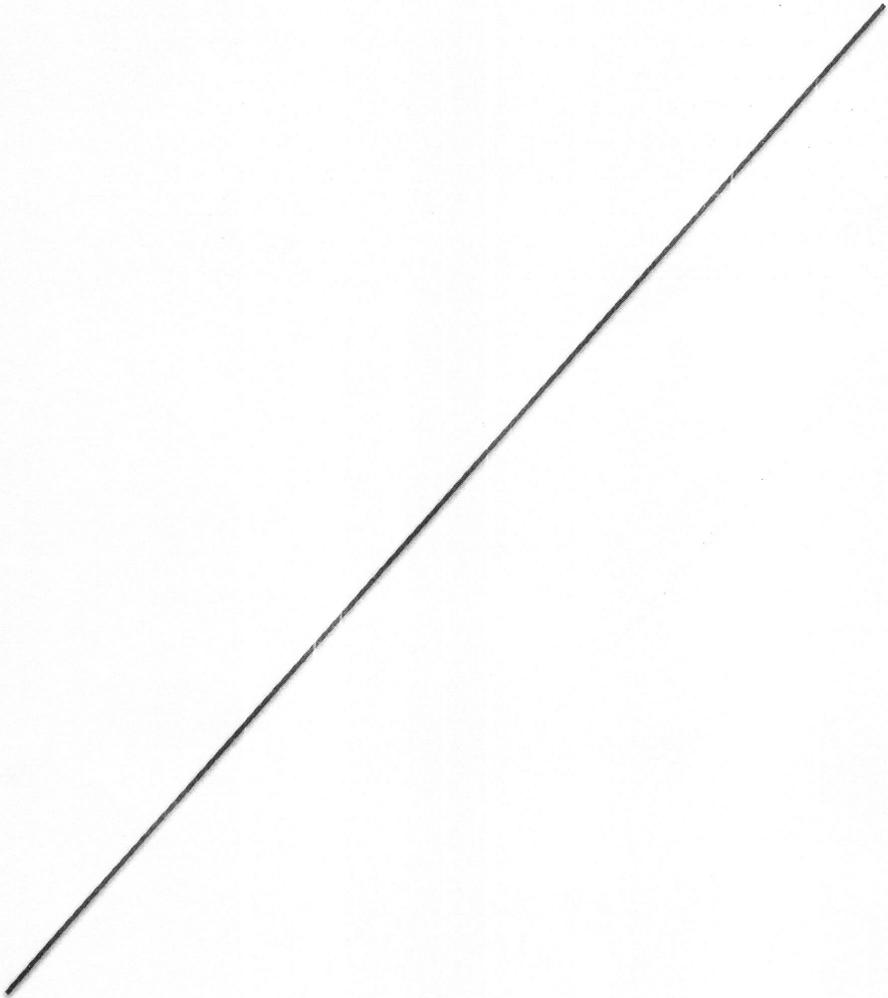
3.5. Turning to the facts of the instant case, it is pertinent to mention that there is no dispute with regards to figures relating to termination of international incoming telephony minutes, on the basis of which APC for USF has been calculated. In addition, it is also an admitted position that the licensee is under obligation to make contribution on account of APC for USF. As a matter of record, the licensee has also deposited APC for USF in accordance with AP Rules, AP Regulations and notifications issued by the Authority from time to time till August 2009 without any objection. While acknowledging this obligation, the licensee has also deposited contribution in pursuance to International Clearing House (“**ICH**”) policy directive issued in 2012 by the Ministry of Information Technology & Telecommunication (“**MoIT&T**”) with rates as prescribed in the ICH policy.

3.6. There is no ambiguity about the basis and the calculations of the payment demanded from the licensee in the SCN. The SCN dated 01-12-2016 under adjudication was issued to the licensee with respect to the following payments and in the following terms;

“AND WHEREAS it has been taken notice of by the PTA that the licensee has failed to make the payment of outstanding dues of Rs. 8,404, 378,370 /- (principal Rs. 4,468,856,849/- + fine Rs. 3,935,521,521 as of 31st July, 2016) calculated on the basis of traffic data submitted by the licensee AND WHEREAS the license vide PTA letter No. 04-01 /11 (AP / CA) PTA / 200/ 1 dated 19th August, 2016 and 6th September, 2016 was required to deposit Rs. 4,540,754,110/- (excluding the amount of Rs. 3,863,624,260/- sub-judice in FAO 312 of 2011 and 323 of 2012 in Lahore High Court) at MoIT&T 's respective account within 10 days but the licensee failed to depositAND WHEREAS the aforementioned failure on part of the licensee in paying the APC for USF Contribution

*of Rs. 4,540,754,110/ as of 31st of July, 2016 amounts to grave violation
.....”*

3.7. The SCN thus clearly mentioned that licensee had failed to make payment for the months mentioned therein. The SCN also clearly mentioned that the licensee was instructed and required to make payment for the said months through letters specifically mentioned therein after determining the payment of APC for USF for the said months. All the underlying basis/factors required for calculation of the sums determined as payable was clearly mentioned in the said demand letters/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. The said demand notes stated as under;





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

2. This is to inform that the payment of APC for USF for the months of **May, June, July, August, September and October 2008** has yet not been paid by M/s Multinet. You are, therefore, requested to make payment of **Rs.15,903,221 /-** 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**.

Zeeshan Gul
Director (Commercial Affairs)

To:
Mr. Rashid Shafque, SVP
Multinet

- 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

MULTINET 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
May-08	880,472	65.60	1.25	5.00	1,787,358
Jun-08	1,192,605	67.10	1.10	5.00	2,689,324
July-08	1,950,002	69.63	1.10	5.00	4,643,442
Aug-08	2,132,215	73.40	1.10	5.00	5,479,793
Sep-08	27,551	77.15	1.10	5.00	75,972
Oct-08	426,527	79.55	1.10	5.00	1,227,331
TOTAL	6,609,372				15,903,221
Total Payments made					-
Balance Payable					15,903,221



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

No: 02-06/09/(AP/CA)PTA

June 17, 2009

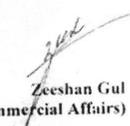
Subject: Payment of APC for USF – March 2009

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. This is to inform that as per AP Rules, payment of APC for USF has to be made within ninety days (90) after the end of the calendar month for which the payment obligation arises. In this regard, Multinet's last date for payment of APC for USF for the month of **March 2009**, (amounting to Rs.173,320/-) is June 30, 2009. Details of calculation are as under for your information:

Month	Mobile Traffic	APC in US cents	MTR in PKR	Average USD Rate	APC for USF in PKR
Mar.-09	34,664	7.50	1.00	80.00	173,320

3. You are, therefore, requested to make payment of **Rs.173,320/-** latest by **June 30, 2009**


Zeeshan Gul
Director (Commercial Affairs)

To:
Mr. Rashid Shafiq
SVP
Multinet (Pvt.) Limited

Cc:
1. Senior Project Manager (USF), MoIT
2. DG (Finance), PTA (For booking of Rs.173,320/- in finance ledger)
3. SO to Chairman, PTA
4. PA to Member (Finance), PTA
5. 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

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 **Multinet (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)
Multinet (Aug 2009)	19,376,155	0.055	1.00	82.90	68,969,424

3. You are therefore requested to make payment of **Rs.68,969,424** on account of APC for USF latest by **November 30, 2009**.


Zeeshan Gul
Director (Commercial Affairs)

To:
Mr. Rashid Shafiq
Senior Vice President
Multinet (Pvt.) Ltd.

- Cc:
- Senior Project Manager (USF), MoIT
 - DG (Finance), PTA (For booking of **Rs.68,969,424** 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/200/1

19th August 2016

Subject: Payment of APC for USF Dues

Reference:

- i. PTA's Demand Notes issued from September 2009 to June 2010 and October 2011 to April 2012.
- ii. MoIT's Policy Directive for Establishment of International Clearing House (ICH) Exchange for International Incoming Calls for LDI, Fixed-line LL, WLL and Mobile Operators dated 13th August, 2012.
- iii. MoIT's Office Memorandum dated 5th July, 2013 regarding payment of USF/R&D Fund related Contributions to Ministry of IT.
- iv. MoIT's Review of Policy Directive for Establishment of ICH Exchange for International Incoming Calls dated 17th June, 2014.
- v. Supreme Court order dated 22nd December, 2015 on cases pertaining to payment of APC for USF Contribution

2. It is to inform that as per PTA's record, total outstanding amount of Rs. 8,404,378,370/- (Principle: Rs.4,468,856,849 + Fine: Rs.3,935,521,521) on account of APC for USF is payable by Multinet Pakistan (Pvt.) Ltd. as of July 31, 2016. Furthermore, an amount of Rs. 3,863,624,260 is sub-judice in FAO 312 of 2011 and 323 of 2012 pending adjudication at Lahore High Court.

3. Multinet Pakistan (Pvt.) Ltd is required to deposit/pay Rs. 4,540,754,110/- at MoIT's respective account within ten working days from the of issuance of this letter.

4. This letter is issued with the approval of the DG (Commercial Affairs).

Aadil
Aadil Umar Khalil
Director (Commercial Affairs)

To:
Mr. Adnan Asdar
CEO
Multinet Pakistan (Pvt.) Ltd.

Copy for information to:

1. DG (CA), PTA
2. DG (L&R), PTA
3. DG (Coordination), PTA
4. DG (Licensing), PTA
5. Manager (Finance), MoIT
6. SO to Chairman, PTA
7. PA to Member (Finance), PTA
8. SO to Member (C&E), PTA
9. PS to Member Telecom, MoIT

3.8. It is worth noting that the demand notes / letters being part and parcel of the SCN were never questioned by the licensee nor the sums, basis of calculations and determination of APC for USF for the said months were ever disputed in fact, either in the reply to the SCN or at any other stage. 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 august 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/incorrect in the said demand notes. 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”.

3.9. 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 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 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.

3.10. 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 Approved Settlement Rates (“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 Headquarters on 24-03-2008, wherein all the LDI licensees participated 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 and 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.

3.11. It is noteworthy that originally the licensee had made all payments till August 2009 as per the applicable APC regime. Through letter dated 27-09-2009 it started to plead financial constraints. Again, through letter dated 26-10-2009 the licensee informed about its financial problems and promised that it was making efforts to arrange the payments and requested for time. The Authority vide its letter dated 16-11-2009 informed that the Authority will impose late payment charges in accordance with regulation 10 (6) of the AP Regulations. The Authority also issued the demand for late payment charges for the months of May and June 2009 vide letters dated 16-11-2009 and 17-11-2009. The licensee did not challenge the imposition of late payment charges but in fact after admitting that it was liable to make payment of APC for USF contribution, again through its letter dated 25-11-2009 cited financial constraints. Through letter dated 10-12-2009 the licensee sent a cheque of Rs.10,000,000/- against outstanding payment and requested for extension in time. The Authority vide letter dated 22-12-2009 approved the request of the licensee to make delayed payment for the month August 2009 on 15th January 2010, however, the same would result in imposition of late payment charges.

3.12. Interestingly, the licensee vide its letter dated 13-01-2010 paid an amount of Rs.50,000,000/- through demand draft dated 16-01-2010 and admitted that a sum of Rs.219,121,636/- was outstanding as APC for USF and proposed a payment plan starting from February 2010 till July 2010. When the Authority informed the licensee that such an extended delay was not acceptable and directed the licensee to make payment by or before 09-10-2010, the licensee responded through its letter dated 09-02-2010 with a deferred payment proposal and requested a schedule for late payment in installments on account of bad cash flow situation. It also reaffirmed that it was ready to comply with the terms and conditions of its license and had an excellent record. The Authority vide its letter dated 25-02-2010 accepted the request and allowed the installments subject to late payment charges as per AP Regulations. Through letter dated 26-02-2010, the licensee thanked the Authority and intimated payment of first installment of Rs.109,560,818/- before 31-03-2010 which was subsequently paid. The licensee through its letter dated 11-03-2010 and 01-04-2010, again sought time for payment and requested that payment of Rs.18,969,424/- out of total of Rs.109,560,818/- should be treated as payment against late payment charges. The licensee through its letter dated 07-05-2010 informed the Authority that the default is due to instability of ASR in the market and financial losses, however, the licensee admitted its liability up to February 2010 as Rs.319,787,326/- and requested for twelve (12) monthly installments of its outstanding amount. Not only the licensee admitted all calculations of outstanding APC for USF payment of Rs.319,787,326/- but also expressed its endeavor to fulfill its obligations with the promise that it will not accumulate any current liability but will make payments on time from March 2010 onwards. However, such an extended twelve (12) monthly installment plan was not accepted by the Authority and the licensee was directed through letter dated 19-05-2010 to pay all outstanding APC for USF payments within ten (10) days. Thereafter, the licensee started filing cases in Courts and changed its stance with regard to its liability earlier clearly admitted and paid, although irregularly.

3.13. The Authority directed the licensee to deposit APC for USF for the months of November, December of 2009 and January, 2010 through letters dated 17-03-2010, 12-04-2010 and 05-05-2010 respectively. This demand was challenged by the licensee through filing WP No. 2356/2010 before the Hon'ble Lahore High Court, Rawalpindi Bench, in May 2010. In paragraphs 6 and 7 of the said writ petition, the licensee itself calculated the APC for USF payment due till that date, the payments made by it till that date as well as the outstanding balance of Rs. 286,070,992/-. The important admission was made in paragraph 7 of the said writ petition wherein the licensee itself admitted that balance of payment situation and explained the reason for its inability to make this payment on the ground that its various applications for grant of approval of various facilities were not granted which resulted in less revenue and default in payment. It was asserted by the licensee that non-payment may be condoned on ground of *force majeure* clause in the license by pleading unreasonable delay in approving the licensee's application and inability to make payment demanded through impugned letters. The second leg of argument was based upon the imposition of fine under Regulation 10 (6) of AP Regulations and therefore, it also relied upon the judgment passed by Hon'ble Lahore High Court, Rawalpindi Bench, in WP No. 2997/ 2009 in case titled 'Wateen Telecom Vs. PTA' wherein the Hon'ble Lahore High Court, Rawalpindi Bench, held that the Authority could only proceed under regulation 10(6) of AP Regulations for imposing fine and not to take any other action.

3.14. From the above narration of facts, it is clear that not only in the litigation before the Hon'ble Lahore High Court, Rawalpindi Bench, the licensee admitted its liability and responsibility to pay APC for USF but also submitted its own proposal while calculating the outstanding dues. The licensee's only plea was that the Authority had not allowed it to generate sufficient revenues and thus made it unable to pay the APC for USF. Further, the licensee agreed/showed its willingness with the imposition of fine/ late payment charges, in terms of regulation 10 (6) of AP Regulations. The relevant prayer of the licensee in WP No. 2356/2010 is reproduced as under:

"ii. declare that only penalty for late payment of APC for USF by any LDI licensee is regulation 10 (6) of the 2005 Regulations."

The said writ petition was finally dismissed by the Hon'ble Islamabad High Court on 24-06-2011 with costs. This order was not challenged by the licensee and attained finality. From June to November 2010 onward, the Authority kept on directing the licensee for making payment of APC for USF after determining the amounts due for each month but the licensee did not make any payment.

3.15. 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 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. Ultimately all these challenges were dismissed by the Hon'ble Islamabad High Court vide its judgment dated 21-01-2009 reported

as PLD 2009 Islamabad 41 and the High Court declared the AP Rules and AP Regulations *intra vires* the Act and upheld APC contribution. This judgment was also subsequently upheld by the August Supreme Court in its judgment dated 22-12-2015 reported as 2016 SCMR 475. The licensee even did not challenge the judgment of the Islamabad High Court before the august Supreme Court, although it was entitled to it, if it felt aggrieved of the same and wanted to raise the plea that the APC for USF was illegal and it was not liable to pay the same at rates demanded by the Authority. As such it is clear that the licensee had no qualms about payment of APC contribution or legality of any notifications (now being disputed) during all this time before filing the suit before the Hon'ble Sindh High Court and during pendency of its Writ Petition No. 2356 / 2010. The licensee clearly started a *mala fide* exercise of pick and choose and non-disclosure before the Hon'ble Courts. The licensee had been regularly paying APC for USF and only wanted some delay and time in the payment. This was also noted by the Hon'ble Islamabad High Court in its order dated 24-06-2011 while dismissing the writ petition:

Admitted position in the present cases in that vires of the Access Promotion Rules, 2004 and the Access Promotion Regulations, 2005 were challenged by the petitioner and the writ petition was dismissed; against the said dismissal order, CPLA is pending before the Honorable Supreme Court of Pakistan; therefore, at present there is a judgment of this Court, regarding vires rules and regulations, wherein it had already been decided that the demands of APC for USF Contribution, were legal; the petitioner, as such cannot question, the demand made by the respondents. Furthermore, mere impugned letters cannot be taken as a ground for issuance of a writ. No adverse order has been passed against the petition. The petitioner, being a licensee, is under obligation to make all payments, as provided in the license. The only object of the instant writ petition appears to avoid the payment, as much as possible. Finding no force in the instant writ petition, the same is accordingly dismissed, with costs."

Therefore, it clearly opted not to challenge any of the notifications regarding APC in field at the time of filing of the Writ Petition No. 2356 / 2010 although the demand challenged in the said writ petitions was determined in accordance with the same. It is clear that the licensee omitted to sue in respect of a cause of action accrued and available at the time of filing of the said writ petition and thus any subsequent challenge in cases filed later on before the Courts was barred by principles of Order II Rule 2 of the Code of Civil Procedure, 1908 (waiver & abandonment). All the pleas now being raised were available to the licensee at the time of filing of the said writ petition and challenging the demand of APC for USF, however, it abandoned all such pleas and is now therefore estopped from raising any such plea.

3.16. From the above, it is clear that when the APC for USF was determined and demanded in terms of the said notifications and the licensee challenged the same before the Court, it chose to abandon all pleas with regard to the validity of the said notifications and the payment determined as APC for USF under the AP Rules and AP Regulations. Thus, in fact and in law, the licensee acquiesced to and conceded the said notifications and had no qualms about the imposition of APC for USF itself. It is important to note that all demands of APC for USF from the year 2008 onwards till May, 2011 were based upon the notifications dated 31-03-2008,

06-01-2009 and 19-06-2009. Despite multiple litigations by the licensee before different fora, the licensee did not expressly challenge these notifications till the filing of CS No. 1429/2010.

3.17. That the fact of abandonment of any plea regarding these notifications is clear from the instance that the LDI Licensee kept on making various proposal/changes in APC through joint industry letter dated 17-06-2009 and 19-06-2009, however, they never questioned the legality of notifications dated 31-03-2008, 06-01-2009 and 19-06-2009.

3.18. 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 licensees in ASR upto 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.

3.19. 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.

3.20. 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.

3.21. 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, Approved Accounting Rates (“AAR”), Total Accounting Rates (“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 started questioning the notifications/determinations which were now past and closed by that time, simply in order to avoid making payments which were due under the law. 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.

3.22. 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.

3.23. 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.

3.24. 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.

3.25. 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 (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 *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 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.

3.26. 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 and 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.

3.27. 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.". Additionally, the licensee itself admitted in WP No. 2356/2010 that regulation 10(6) of AP regulations provides the mechanism where an LDI licensee fails to make the payment of APC for USF in accordance with regulation 10(2) of AP Regulations. Moreover, the licensee admitted that only penalty prescribed by law for non-payment or late payment of APC for USF is regulation 10(6) of AP Regulations. Lastly, the licensee in the said petition, has specifically sought prayer for declaration that only penalty for late payment of APC for USF by an LDI licensee is regulation 10(6) of AP Regulations. Meaning thereby, the licensee has accepted the applicability of the late payment charges/additional fee, etc. as provided in various regulations issued by the Authority including the AP Regulations.

4. Order:

4.1. 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.1,414,224,701/- (Principal: Rs.605,232,589/- + LPAF:Rs.808,992,112/- as of 18-07-2025) along with Late Payment Additional Fee on account of delay, if any, in depositing contribution to the designated accounts 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 21 pages only.