



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 REDtone Telecommunications Pakistan (Pvt.) Ltd.**

No. 04-01/11/(AP/CA)PTA/202/2009/112/439

Show Cause Notice: 17th November 2016
Venue of Hearing: PTA HQs., Islamabad
Date of Hearing: 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 17-11-2016 (“SCN”) issued to REDtone Telecommunications 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 to order dated 27-11-2024 passed in Civil Suit No. 2601/2016 by the Hon’ble Sindh High Court, Karachi.

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-06 (02)-2004 dated 16-08-2004 (the “**license**”) to REDtone Telecommunications Pakistan (Pvt.) Limited (the “**licensee**”) to establish, maintain and operate telecommunication system and to provide the licensed services, in particular, termination of international incoming calls in Pakistan.

1.2. In accordance with the terms and conditions of the license, the licensee was required to comply with the provisions of the prevailing regulatory laws, *inter alia*, comprising of the Pakistan Telecommunication (Re-Organization) Act, 1996 (the “**Act**”), the Pakistan Telecommunication Rules, 2000 (the “**Rules**”), the Access Promotion Rules, 2004 (the “**AP**

Rules") and the Access Promotion Regulations, 2005 (the "**AP Regulations**"). By virtue of section 21(4)(a) of the Act, read with clause 8.1 of the Appendix B of the Rules and condition 3.1 of the license, the licensee was obliged to comply with the provisions of the Act, the Rules and the Regulations.

SCN:

1.3. As per the applicable regulatory framework, the licensee was required to make payment of APC for USF periodically. The Authority had been determining and demanding payment of APC for USF from time to time, and the licensee was making payment off and on since January 2005, however, sometime, it was delaying and/or avoiding the payment of APC for USF on one pretext or the other including under the guise of litigation, the detail whereof will appear in due course of this order. With the advent of International Clearing House ("**ICH**") policy in year 2012, the recovery of outstanding APC for USF for the pre-ICH period was initiated/effectuated as per the formula/percentage agreed in the ICH policy. After the abolishment of ICH regime in year 2014-15, the Authority once again reconciled the outstanding dues of APC for USF and noted that the licensee has failed to make payment of APC for USF of **Rs. 7,921,901,329/-** inclusive of late payment charges as on 31-07-2016, as calculated on the basis of traffic data submitted by the licensee. Accordingly, the licensee was required by the Authority vide its letter dated 19-08-2016 to deposit Rs. 7,921,901,329/- in the designated account administered by the Ministry of Information Technology & Telecommunication ("**MoIT&T**") within ten (10) working days but the licensee failed to deposit the required amount within the prescribed time. Due to persistent default on the part of the licensee in making payment of APC for USF despite the aforementioned letter, the Authority was constrained to issue show cause notice dated 17-11-2016 under section 23 of the Act, whereby the licensee was required to pay APC for USF in the sum of **Rs. 7,921,901,329/-** within seven (07) days of issuance of SCN and also to explain in writing, within thirty (30) days of 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 did not file reply to the SCN and preferred to file Civil Suit No. 2601/2016 against the SCN before the Hon'ble Sindh High Court, Karachi. Thereafter, the licensee responded to SCN on 14-12-2016 by simply stating that SCN has been challenged in Civil Suit No. 2601/2016 and the Hon'ble Court had restrained the Authority to cancel the license and from taking coercive action against the licensee. Due to restraining order dated 13-12-2016 passed by the Hon'ble Sindh High Court, the Authority could not undertake any further proceeding in the SCN.

1.5. Finally, the Hon'ble Sindh High Court, Karachi vide its consolidated order dated 27-11-2024 passed in Civil Suit No. 2601/2016 relating to SCN and other connected suits, remanded the matter back to the Authority for adjudication. For ready reference, relevant portion of the consolidated order dated 27-11-2024 is reproduced as under:

“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.”

1.6. After the aforesaid remand order, the Authority fixed the hearing of SCN on 09-04-2025 in order to proceed further for adjudication thereon. Mr. Nadeem Younas (Chairman), Mr. Ahsan Abbas (CTO), Mr. Ahad Nadeem (Advocate High Court), attended the hearing on behalf of the licensee. Mr. Faisal Ratyal, Director General (Telecom), Mr. Zia-ud-Din (CFA&O), Dr. Mobeen Shah, Director General (Legal), Mr. Hassan Aziz Director (Telecom) and Dr. Sajjad A. Mansha (Legal Executive), also attended the hearing on behalf of MoIT&T as the matter pertains to APC for USF.

1.7. Before the date of hearing, the licensee filed a detailed reply/response dated 08-04-2025 to SCN wherein it has raised objections relating to the demand of the Authority regarding payment of outstanding APC for USF. While making preliminary submissions on the issue of APC for USF regime, the licensee contended that SCN is misconceived, having been issued on misreading of the law and is based on arbitrary and predetermined calculations made by the officials of the Authority. Further stated that the demand raised by the Authority towards the principal sum and fine/penalty levied on account of APC for USF as on 31-07-2016 is denied as being unlawful and baseless; that the demand is not supported by any detailed working or calculation; and as such, the allegations raised in SCN are denied in their entirety. Main contentions of the licensee made in reply to SCN are as under:

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

- a. 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 formula 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.

- b. The dispute between the LDI Operators/RTPL 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 RTPL 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. RTPL has already demonstrated its calculations to the Authority which takes into account all the necessary elements including permissible range applicable to the ASR.
- c. 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 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.

- d. 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.

- e. 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.

ii. 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. 3.8 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. 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.
- c. 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).
- d. 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 the 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.
- e. 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.

- f. 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.
- g. 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.
- h. 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 non-payment of APC for USF.
- i. In view of the foregoing, it is humbly submitted that no fine or penalty is payable by RTPL 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.

2. Findings of the Authority:

- 2.1. Matter heard. Record perused. Since the instant matter relates to the payment of APC and recovery thereof from the licensee, therefore, before proceeding further with the instant

matter, it would be advantageous to have an overview/understanding of APC along with legal framework in which the APC regime operates.

2.2. The APC as introduced in the De-regulation Policy 2003, is part of revenue generated from international incoming traffic/calls terminated in Pakistan. As a matter of fact, international incoming traffic/call generate 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.

2.3. 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 contribution within ninety (90) days after the end of calendar month for which the payment obligation arises. Furthermore, the Authority in consultation with the industry including the licensee deliberated upon the mode and manner of collection of APC in its Minutes of Meeting dated 06-12-2004. Subsequently, through the proposal of all LDI Licensees including the licensee conveyed vide letter dated 05-01-2006, it was “*jointly recommended that APC should be fixed at US\$ 0.025 per minute for all countries of the world with effect from 8th November 2005*”. Accordingly, from time to time, APC was being fixed/revised for all countries of the world instead of each country separately from time to time.

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

2.5. Turning to the facts of the instant case, it is pertinent to clarify that there is no dispute with regard to figures relating to termination of international incoming telephony minutes, on the basis of which APC for USF has been calculated, as the data of the international incoming

traffic/calls had been provided by the licensee itself. In addition, it is also an admitted position that 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 June, 2009 (except partial payment of March 2009) and partial payment of July, 2009 without any objection. Thereafter, the licensee had made only partial payment of APC for USF for the months of October, November, 2009 and June, July, 2010. After making adjustment of payments made from time to time by the licensee, APC for USF is due from July, 2009 onwards till September, 2012 (including for the months mentioned above wherein partial payment was made). The total principal amount of APC for USF since January, 2005 till September, 2012 has been calculated in the sum of Rs. 4,553,171,021/-out of which only Rs. 448,497,203/- has been paid by the licensee, whereas, the total principal amount due on account of APC for USF is Rs. 4,104,673,818/- along with late payment additional fees in the sum of Rs. 10,213,998,586/- as on 18-07-2025. 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.

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

2.7. Firstly, the licensee was required to submit details for payment of APC for USF from January, 2005 up to June, 2005 vide letter dated 07-10-2005 by simply sharing the format for calculation of APC for USF. It may not be out of place to mention here that the licensee paid APC for USF on its own till the month of September, 2005 without any specific demand by the Authority. The Authority vide its letter dated 14-02-2006 demanded payment of APC for USF for the month of October, 2005, which was subsequently paid. As a matter of fact, the licensee paid full amount of APC for USF till the month of August, 2008 regularly without any objection. Thereafter, the licensee either defaulted payment on due date or made partial payment of APC for USF. It may not be out of place to mention here that the Authority vide its letter dated 12-05-2009 directed the licensee to make outstanding payment of APC for USF till January, 2009 amounting to Rs. 32,254,142/- after making adjustment of already paid amount on account of APC for USF. In response thereto, the licensee vide its letter dated 18-05-2009 stated in the manner that new management was never informed about the outstanding payments by old management. The licensee takes full responsibility to clear these outstanding payments and assure that they will clear these charges to the Authority. Further, the licensee requested to allow them to pay APC for USF charges in thirty-six (36) equal monthly installments starting from June 2009 considering these charges are old outstanding payments of last three years.

2.8. Considering the request of the licensee, the Authority vide its letter dated 27-05-2009, approved six (6) monthly installments of Rs. 32,254,142/- (i.e. outstanding APC for USF till January, 2009). The licensee paid four (4) full installments, however, last two installments were

partially paid in the sum of Rs.3,384,620/- each instead of Rs.5,375,690/-. It is worthy to note that the licensee vide its letter dated 29-05-2009, while submitting the revised data of international terminating minutes, requested to issue revise amount so that the same can be paid until March, 2009. In response to the licensee's letter dated 29-05-2009 followed by meeting on 20-07-2009, the Authority vide its letter dated 24-07-2009 required the licensee to pay outstanding amount of APC for USF for the months of February and March, 2009 amounting to Rs. 9,829,649/-. This amount was calculated on the basis of Authority's notifications dated 31-03-2008 and 06-01-2009 fixing the Approved Settlement Rate ("ASR"); however, these notifications were questioned subsequently by the licensee in year 2011 through a civil suit and also in reply to the SCN. It is very important to note that payment of APC for USF calculated on the basis of such notifications were paid willingly without any objection. For ease of reference, the Authority letter dated 24-07-2009 along with annexure wherein APC for USF was calculated on the basis of aforesaid notifications is reproduced as under (at page No.11):



PAKISTAN TELECOMMUNICATION AUTHORITY

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

No: 02-01/09(AP/CA)PTA

July 24, 2009

Subject: Payment of Differential Amount on account of APC for USF

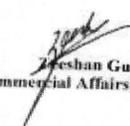
This is with reference to the meeting held with Redtone representatives at PTA HQs on July 20, 2009.

2. Redtone vide its letter dated May 29, 2009 provided its third submission of international incoming traffic to PTA for the months of October 2008 to March 2009 claiming that the difference in minutes occurred due to system faults. Subsequently, the revised traffic was forwarded to PTA Vigilance Cell in order to find out reasons of difference in minutes. Vigilance Cell in its preliminary examination of CDR found 60,000 missing CDRs in the third revision for the month of October 2008.

3. Resultantly, a meeting was held with representatives of Redtone on June 16, 2009 where they explained complete mechanism of CDR generation and its post-processing on Redtone's network. They further stated that the higher number of minutes in second submission was mainly because of duplication of CDRs during their transportation from distributed switching systems to centralized billing database, non-synchronization and frequent hang-ups. It may be noted that the analysis of the CDRs for the month of October 2008 revealed that the missing CDRs in third submission were in no-way duplicated in second submission. It was further noticed that non-synchronization and switch hang-ups cannot increase number of CDRs in the billing system as claimed by Redtone. The representatives of Redtone were unable to justify their arguments regarding PTA's observations and it was decided that Redtone will submit their comments within one day to justify their stance. It may be noted that despite extension of deadline to June 22, 2009, no response was received from Redtone and the issue remained pending.

4. In order to finalize the issue, a final meeting was held in PTA on July 20, 2009 and representatives of Redtone again could not justify revision in traffic minutes. During the meeting, it was decided that till finalization of difference in traffic minutes, Redtone will pay all its outstanding APC for USF dues for the months of February and March 2009 in accordance with the second submission and the difference in amount, if any, will be adjusted once Redtone satisfies PTA's Vigilance Cell along with supporting evidences.

5. Keeping in view the above, Redtone is advised to pay a total of Rs. 9,829,649 for the months of February 2009 and March 2009 (details attached at Annex-1) on account of APC for USF latest by August 17, 2009.


Director (Commercial Affairs)

To:
Mr. Iftikhar A. Bhatti
General Manager
Redtone

- Cc:**
- SO to Chairman, PTA
 - PA to Member (Finance), PTA
 - PA to Member (Technical), PTA

	Feb-09	Mar-09	Total
Int'l Mobile Traffic as per Second Submission	5,205,662	9,096,246	
Average Exchange Rate	78.75	80.00	
Mobile Termination Rate in PKR	1.00	1.00	
APC (US Cents per Minute)	7.50	7.50	
APC for USF in PKR	25,538,327	45,481,230	71,019,557
Payment made by Redtone	(22,729,486)	(38,460,422)	(61,189,908)
Amount Due on account of APC for USF	2,808,841	7,020,808	9,829,649

2.9. The compliant behavior of the licensee towards the Authority's directions and notifications relating to APC for USF is further evident from the licensee's letter dated 05-11-2009 wherein the new management, while mentioning issues on the purchase of REDtone (Pvt.) Ltd. requested for six (6) installments for payment of APC for USF for the month of July, 2009. It was specifically stated in the said letter that the licensee has "***been good paymasters and never defaulted and will not default inshalla...***" Ultimately, the licensee paid all amount of APC for USF till the month of June, 2009 and made partial payment for the month of July 2009, along with late payment charges. At the cost of repetition but to put emphasis, it is worthy to note that the licensee's letter dated 05-11-2009 was after the issuance of Authority's notifications dated 31-03-2008, 06-01-2009 and 19-06-2009, which are now being questioned without any rhyme or reason and in stark contradiction of the licensee's previous conduct and commitments.

2.10. Since APC for USF was required to be paid periodically, accordingly, the Authority determined and demanded APC for the months of August, 2009 and September, 2009 vide its letter dated 05-11-2009 and 11-12-2009 respectively. The Authority vide its letter dated 27-01-2010 demanded payment of outstanding amount of Rs. 139,766,126/- (after adjusting partial payment) for the months of July to September, 2009 on or before 03-02-2010, otherwise legal action under section 23 of Act was to be taken. The licensee being aggrieved, challenged the Authority's letter dated 27-01-2010 before the Hon'ble Islamabad High Court, Islamabad through WP No. 399/2010 mainly on the ground that due to lengthy process involved in change of management of the licensee during the period of 2009-2010, it was not possible to make payment on time. While accepting that the licensee had been making payment of APC for USF till June 2009, July, 2009 (partially paid) as per the table mentioned in the memo of writ petition and further, for late payment, it has been paying late payment charges, it was prayed that the letter dated 27-01-2010 be declared, *inter alia*, unlawful and of no legal effect. The said writ was subsequently dismissed with cost by the Hon'ble Islamabad High Court vide its judgement dated 24-06-2011 by observing that "*the only object of the instant writ petition appears to avoid the payment, as much as possible.*" The ICA No. 166/2011 filed by the licensee against judgement dated 24-06-2011 passed in WP No. 399/2010 was also dismissed in limine vide order dated 19-01-2012. Even CPLA No. 455/2012 filed by the licensee against the aforesaid order dated 19-01-2012 was dismissed by the august Supreme Court being not pressed vide order dated 27-02-2013.

2.11. The licensee failed to make payment of APC for USF for the months of July, August, September, and October, 2009 on due date despite specifically required to do so vide letters dated 22-10-2009, 05-11-2009, 08-12-2009, 11-12-2009, 27-01-2010 and 12-02-2010 and further there was no restraining order by the Hon'ble Islamabad High Court in WP No. 399/2010 to proceed under section 23 of the Act. Accordingly, upon persistent default, the Authority was constrained to issue show cause notice dated 19-03-2010 under section 23 of the Act to the licensee for non-payment of APC for USF of Rs. 199,419,074/- (Rs. 46,317,850/- + Rs. 50,871,281/- + Rs. 42,786,210/- + Rs. 59,443,733/-) for the months of July to October, 2009. The licensee filed reply on 14-04-2010 to the aforesaid show cause notice making

reference to the proceedings of WP No. 399/2010. In reply, the licensee itself admitted the liability and expressly stated that it "*is not disputed*", however, the licensee repeated the stance taken in WP No. 399/2010 regarding delay involved for change of management has caused delay in payment of APC for USF. After complying with the codal formalities, the Authority passed an enforcement order dated 22-04-2010 in respect of the show cause notice dated 19-03-2010. This enforcement order was challenged before the Hon'ble Islamabad High Court through FAO No. 97/2010, praying therein, *inter alia*, it be declared that delay in payment of APC for USF by the licensee cannot invite the Authority to exercise power under sections 23 and 30 of the Act. The Hon'ble Islamabad High Court vide its order dated 24-06-2011 dismissed the said FAO No. 97/2010 by "*finding no force in this appeal*".

2.12. For next periodic payment of APC for USF, the Authority determined and demanded APC for the month of November, 2009 vide letters dated 02-02-2010 and 12-02-2010 followed by reminder dated 04-03-2010. Likewise, APC for the months of December, 2009 and January, 2010 was determined and demanded vide its letter dated 09-03-2010 and 16-04-2010 respectively. For ready reference, the demand notes of APC for USF for months of November, 2009, December, 2009 and January, 2010 are reproduced as under (at page Nos.14, 15 &16):



PAKISTAN TELECOMMUNICATION AUTHORITY

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

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

February 02, 2010

SUBJECT: DEMAND NOTE OF APC FOR USF FOR THE MONTH OF NOVEMBER 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 November 2009 is February 28, 2010. Based on the reported traffic by Red Tone (Pvt) Ltd. APC for USF obligation for the month of November 2009 is calculated as under:

Company/Month	Terminated Traffic on Mobile	APC (USD)	MTR (PKR)	Avg. Exchange Rate (PKR/USD)	APC for USF (PKR)
Red Tone (Nov 2009)	12,959,209	0.055	1.00	83.45	46,520,321

3. You are therefore requested to make payment of Rs.46,520,321 on account of APC for USF latest by February 28, 2010.

M. Saleem
04/02/10
Dr. Muhammad Saleem
Director General (Commercial Affairs)

To:
Mr. Iftikhar A. Bhatti
General Manager
Red Tone (Pvt.) Ltd.
ISLAMABAD

- Cc:
- Senior Project Manager (USF), MoIT
 - DG (Finance), PTA (For booking of Rs.46,520,321 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

March 09, 2010

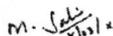
SUBJECT: DEMAND NOTE OF APC FOR USF FOR THE MONTH OF DECEMBER 2009

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 December 2009 is March 31, 2010. Based on the reported traffic by Red Tone (Pvt) Ltd. APC for USF obligation for the month of December 2009 is calculated as under:

Company/Month	Terminated Traffic on Mobile	APC (USD)	MTR (PKR)	Avg. Exchange Rate (PKR/USD)	APC for USF (PKR)
Red Tone (Dec 2009)	10,475,364	0.055	1.00	83.73	37,762,378

3. You are therefore requested to make payment of Rs.37,762,378 on account of APC for USF latest by March 31, 2010.

M. 
Dr. Muhammad Saleem
Director General (Commercial Affairs)

To:
Mr. Iftikhar A. Bhatti
General Manager
Red Tone (Pvt.) Ltd.
ISLAMABAD

- Cc:
- Senior Project Manager (USF), MoIT
 - DG (Finance), PTA (For booking of Rs.37,762,378 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

April 16, 2010

SUBJECT: DEMAND NOTE OF APC FOR USF FOR THE MONTH OF JANUARY 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 January 2010 is April 30, 2010. Based on the reported traffic by Red Tone (Pvt) Ltd. APC for USF obligation for the month of January 2010 is calculated as under:

Company/Month	Terminated Traffic on Mobile	APC (USD)	MTR (PKR)	Avg. Exchange Rate (PKR/USD)	APC for USF (PKR)
Red Tone (Jan 2010)	13,662,239	0.055	0.90	84.33	51,067,742

3. You are therefore requested to make payment of Rs.51,067,742 on account of APC for USF latest by April 30, 2010.

M. Saleem
16/04/10
Dr. Muhammad Saleem
Director General (Commercial Affairs)

To:
Mr. Iftikhar A. Bhatti
General Manager
Red Tone (Pvt.) Ltd.
ISLAMABAD

- Cc:
- Senior Project Manager (USF), MoIT
 - DG (Finance), PTA (For booking of Rs.51,067,742 in Finance Ledger)
 - SO to Chairman, PTA
 - PA to Member (Finance), PTA
 - PA to Member (Technical), PTA

2.13. On account of non-payment of APC for USF, the Authority was constrained to issue show cause notice dated 02-06-2010 under section 23 of the Act against the licensee for non-payment of APC for USF amounting to Rs. 149,954,474/- (Rs. 57,309,964/- + Rs. 37,762,378/- + Rs. 51,067,742/- and late payment charges thereon of Rs. 3,814,390/-calculated up to 30-04-2010) for the months of November 2009, December, 2009 and January, 2010. The licensee filed its reply on 01-07-2010 to aforesaid show cause notice making reference to the proceedings of WP No. 399/2010 and FAO No. 97/2010. It was stated in the reply that APC for USF was being paid without any default till July, 2009, however, default in payment of

APC for USF in the subsequent months was caused due to delay in approval for change of management of the licensee. Further, it was stated and acknowledged in the reply that the licensee in accordance with regulation 10(6) of AP Regulations is paying late payment charges @ 1.5% of the outstanding amount and MoIT&T had been accepting the same. The breakdown of such late payment charges was given in tabulated form in the reply.

2.14. During the pendency of proceedings of show cause notice dated 02-06-2010, the licensee made three different proposals for payment of outstanding APC for USF in installments. Firstly, the licensee vide its letter dated 19-08-2010 proposed that payment of outstanding APC for USF till August, 2010 should be allowed to be made through thirty (30) installments, second proposal was made vide letter dated 24-08-2010 to the effect that said outstanding amount be allowed to be paid through eighteen (18) installments. However, the licensee's final proposal vide its letter dated 30-08-2010 was that outstanding APC for USF be allowed to be paid through ten (10) installments. The Authority vide its letter dated 30-09-2010 approved the third proposal relating to making of outstanding payment of APC for USF from July 2009 to August, 2010 in ten (10) equal monthly installments. Even the learned counsel representing the Authority in pending proceedings of WP No. 399/2010, FAO No. 81/2010 and FAO No. 97/2010 was apprised vide letter dated 04-10-2010 about the acceptance of the licensee's proposal to make payment in installments, by the Authority. The Counsel was further instructed to bring this fact into the notice of the Hon'ble Court, as one of the conditions was to withdraw the pending cases by the licensee. This all shows that the licensee was willing at all time till end of year 2010 to make payment of APC for USF and was exploring possible ways to discharge its contractual and statutory liability.

2.15. Despite showing grace and leniency by the Authority by approving payment plan in installments, the licensee did not honor its commitment rather withdrew its proposal of payment through ten (10) installments. In these circumstances, the Authority was left with no choice except to proceed with adjudication of show cause notice dated 02-06-2010. Accordingly, after complying with the codal formalities, the Authority passed enforcement order dated 24-11-2010 in respect of the show cause notice dated 02-06-2010 wherein approval for payment by installments and renege on by the licensee from its commitment was elaborately discussed. This enforcement order was challenged before the Hon'ble Lahore High Court, Lahore through FAO No. 529/2010, seeking declaration to the effect, *inter alia*, that delay in payment of APC for USF cannot be made basis for invoking the Authority's power under sections 23 and 30 of the Act. The Hon'ble Lahore High Court vide its interim order dated 29-11-2010 directed that "*subject to notice and deposit of Rs. 20 million with the respondents within one week from date of order, the respondent authority shall not collect the balance payment for 30 days following the date of the impugned order*". In compliance with Court Order, the licensee made payment of Rs. 20 million on account of APC for USF. In a subsequent order dated 24-12-2010, the Hon'ble Lahore High Court observed that "*In the present case, Rs. 126/- million remain outstanding from the petitioner. The respondent PTA shall consider and decide the appellant's [i.e. licensee] application for payment of the said amount in installments*". On 06-01-2011, the licensee requested for payment of outstanding

APC for USF in fifteen (15) installments. Thereupon, the Authority vide its letter dated 01-02-2011 approved payment of APC for USF dues for the months of November, 2009 to January 2010 in ten (10) equal installments of Rs. 12,614,008 starting from February, 2011 to December, 2011 subject to condition of submitting post-dated cheques and an undertaking.

2.16. Though the licensee paid first installment of Rs. 12,614,008/- on 04-02-2011 out of ten (10) installments. However, thereafter, the licensee defaulted to make further payment as per agreed scheduled. Thus, the Authority vide its letter dated 31-03-2011 pointed out to the licensee about its default and further informed that if due installment was not received within seven (7) days, the licensee would be exposed to grave legal consequences. The licensee, apprehending consequences of default, already filed WP No. 759/2011 on 12-03-2011, challenging the vires of AP Rules and AP Regulations and prayed that payment of, *inter alia*, APC for USF be declared illegal and void. The said writ petition was dismissed by the Hon'ble Islamabad High Court vide judgement dated 24-06-2011. The licensee filed ICA No. 148/2011 against judgement dated 24-06-2011 before the Hon'ble Islamabad High Court as well as also assailed the same judgement before the august Supreme Court. The matter was remanded by august Supreme Court for decision afresh. After remand order, the said WP No. 759/2011 was dismissed for non-prosecution vide order dated 06-10-2016 by the Hon'ble Islamabad High Court. Turning to the default by the licensee in making payment of agreed installments, it is worthy to note that the default in making remaining nine (9) installments is also reflected in Hon'ble Lahore High Court's order dated 16-08-2011 passed in FAO No. 529/2010 and Hon'ble Court gave one further opportunity to cure the default. However, the licensee did not avail this opportunity, accordingly the Hon'ble Lahore High Court recalled its interim relief/order vide its order dated 13-10-2011. Upon the vacation of stay order, the Authority vide its letter dated 17-11-2011 directed the licensee to deposit nine (9) overdue installments, but of no avail. Thus, the Authority was left with no choice but to appoint an administrator vide its letter/order dated 09-12-2011 for non-compliance of enforcement order dated 24-11-2010. The licensee filed CMA No. 11843/2011 in pending CS No. 716/2011 before the Hon'ble Sindh High Court, Karachi against order dated 09-12-2011 appointing administrator. Thereupon, the Hon'ble Sindh High Court suspended the Authority's letter dated 09-12-2011 vide its order dated 10-12-2011. The FAO No. 529/2010 remained pending for few years without any development and the same was finally dismissed being not pressed by the Hon'ble Lahore High Court, Lahore vide its order dated 26-09-2022 in the following manners:

“Learned counsel for the appellant is confronted with the factum of acknowledgement of liability as observed in the order impugned. After arguing the matter, learned counsel, on instructions, for the appellant does not press this FAO due to some litigation pending before Hon'ble Sindh High Court at Karachi.

Dismissed as having not pressed.”

2.17. The above description of litigation relating to enforcement order dated 24-11-2010 and conclusion thereof upon dismissal of all litigation in favor of the Authority as well as conduct

of the licensee makes it abundantly clear that the amount adjudicated through enforcement order dated 24-11-2010 has attained finality and the licensee has no justification whatsoever to withhold such payment.

2.18. The licensee further defaulted periodic payment of APC for USF for the months of August, September, October and November, 2010 despite the fact, it was determined and demanded by the Authority vide letters/demand notes mentioned in the show cause notice dated 14-04-2011. Thus, the Authority issued show cause notice dated 14-04-2011 under section 23 of the Act to the licensee for non-payment of APC for USF of Rs. 179,668,775/- (Rs. 28,735,799/- for partial unpaid amount of August 2010 + Rs. 47,992,495/- for September 2010 + Rs. 46,532,643/- for October 2010 and Rs. 56,407,838/- for November 2010). The licensee filed reply dated 25-04-2011 to the aforesaid show cause notice. The proceedings in the aforesaid show cause notice could not be concluded, however, the amount of the said show cause notice has subsequently been included in the SCN under adjudication.

2.19. Since the licensee defaulted in making outstanding payments against APC for USF, therefore, the Authority vide its letter dated 30-06-2011 suspended the license after judgement dated 24-06-2011 passed by the Hon'ble Islamabad High Court dismissing FAO No. 81/2010 and thereby upholding the Authority's enforcement order dated 23-04-2010 relating to concealment of international minutes. In the said enforcement order dated 23-04-2010, the license was suspended till further orders of the Authority. In order to avoid the payments of APC for USF, the licensee had decided to resort to all possible litigation. In this regard, the licensee on 19-05-2011 filed Civil Suit No. 716/2011 for declaration and recovery of Rs. 1,033,107,045/- before Hon'ble Sindh High Court, Karachi wherein the licensee challenged Authority's letters dated 11-09-2006, 31-08-2007, 31-03-2008, 06-01-2009, 19-06-2009 and 23-02-2011 and prayed that APCL and APC for USF be determined for all years as per AP Rules and AP Regulations. While passing the *interim order* dated 19-05-2011, the Hon'ble Sindh High Court was pleased to issue directions that "*...in the meantime, the plaintiff license shall not be cancelled/suspended and no coercive action shall be taken against them till the next date.*" Subsequently, on account of another *interim order* dated 01-07-2011 passed in CMA No.7643/2011 in CS No.716/2011 by Hon'ble Sindh High Court, Karachi whereby the Authority's letter dated 30-06-2011 was suspended. The Authority vide its letter dated 04-07-2011 restored all telecom services/facilities of the licensee. The said Civil Suit has now been transferred to the Civil Court, Karachi in view of recent amendment in law dealing with pecuniary jurisdiction of Civil Court of Karachi and the same is still pending adjudication.

2.20. The Authority determined and demanded APC for USF for the months of December, 2010 and January, 2011 vide its letters dated 28-03-2011 and 25-04-2011 respectively. Due to non-payment of Rs. 584,081,426/- on account of APC for USF for the months of December, 2010 and January, 2011, the Authority was constrained to issue show cause notice dated 16-08-2011 under section 23 of the Act. The licensee filed its reply on 30-08-2011 to the aforesaid show cause notice making reference to the proceedings of CPLA No. 1452/2011 pending before the august Supreme Court of Pakistan and Civil Suit No. 716/2011 pending

before the Hon'ble Sindh High Court Karachi. The proceedings in the aforesaid show cause notice could not be concluded, however, the amount of the said show cause notice was subsequently included in the SCN under adjudication.

2.21. Since, the issue relating to payment of outstanding APC for USF was pending, therefore, in order to resolve the same, meeting between the Authority, MoIT&T and LDI licensees including the licensee was held. Accordingly, the Authority as a goodwill gesture after consulting the stakeholders, offered vide its letter dated 15-11-2011 thirty-six (36) monthly installments for payment of outstanding APC for USF in favour of the licensee. The licensee has even failed to avail this concession and continued as a defaulter.

2.22. The licensee was fully aware of its obligation to pay APC for USF as the Authority had been determining and demanding APC for USF periodically from the licensee till September 2012. Thereafter, the ICH policy came into being and under the said ICH policy, the licensee was obliged to deposit 15% of its revenue in the escrow account in order to settle the outstanding amount of APC for USF. Thus, admission of liability of APC for USF is further evident from the fact that the licensee even deposited APC for USF contribution in pursuance to ICH policy. The licensee has deposited Rs.186,631,541/- in the escrow account as per ICH policy, however, it has been increased to Rs.362,101,584/- due to profit as on 31-12-2024 in the escrow account during the period of ICH regime.

2.23. From the abovementioned facts regarding concluded litigation in the past, it is established that the licensee has never been successful to get ultimate findings in its favor for non-payment of APC for USF rather it has only been able to get interim relief by approaching different High Courts as forum shopping. All interim reliefs have ultimately been vacated upon dismissal/disposal of all court cases of the licensee related to APC for USF except CS No.716/2011 which is pending adjudication before the Civil Courts, Karachi.

2.24. 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.716/2011. The amount of APC for USF calculated on the basis of the aforesaid notifications has been adjudicated by the Authority and the same has attained finality upon the dismissal of FAO No.97/2010 and FAO No.529/2010. The fact of abandonment of any plea regarding these notifications is clear from the instance that the licensee and six (6) other LDI licensees kept on making various proposals/changes in APC through joint industry letters 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. Further, there is another important aspect of the case that vide notification dated 17-05-2011, the Authority determined new rates of Approved Accounting Rates ("AAR"), ASR & APC with effect from 01-04-2011. As such when the licensee filed CS No.716/2011 in Sindh High Court, Karachi on 19-05-2011, it was supposed to challenge the notification/determination in field dated 17-05-2011. However, it omitted to sue and in fact

intentionally relinquished its claim and challenge the Authority's latest notification / determination dated 17-05-2011 and also subsequent notification dated 17-08-2011.

2.25. Another very important aspect to note at this stage 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 being *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 sent to it 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 Hon'ble Islamabad 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. Though the licensee changed its mind as it filed WP No.759/2011, *inter-alia*, challenging the *vires* of AP Rules and AP Regulations. The said writ petition was ultimately dismissed for non-prosecution by the Hon'ble Islamabad High Court vide its order dated 06-10-2016.

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

2.27. 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.

2.28. 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”.

2.29. 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.

2.30. It is pertinent to note that the amount of APC for USF is not being extracted from the revenue/income of LDI rather it is contribution out of the amount received by LDI from foreign operators. As a matter of fact, it is the international caller who has to pay the price of the international incoming call(s). In 2006, as the market started to expand, a need was felt that more revenue was required to be given to the Local Loop licensee and the USF in order to enable the infrastructure development along with the expanding private sector in Pakistan. This was discussed in the meeting/hearing of the Authority held on 12-03-2008 and letter dated 14-03-2008 for review of ASR/LDI share and APC. It was informed and agreed by all LDI licensees (including the licensee) that the APC was being increased from US 2 cents to US 5

cents per minute. Another important event was that a meeting was held at PTCL on 24-03-2008, wherein all the LDI licensees 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, APC, etc. As a consequence thereof, the notification dated 31-03-2008 was issued, increasing the APC from US 2 cents to US 5 cents per minute. Further, the Authority vide its letter dated 21-04-2008 clarified that ASR for Pakistan incoming traffic (fixed & mobile) is USD 0.10 per minute with effect from 01-05-2008.

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

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

Moreover, in the minutes of the meeting dated 06-12-2004 at the time of introduction of APC, the industry was informed that the purpose of introduction of this concept was to “provide LDI operators some flexibility to enter into agreements with foreign carriers” and “the Authority may allow LDI operators to offer discounts to foreign operators from their own share (i.e. up to US 6 cents). However, they will be required to pass the approved APC to LL operators or USF, as the case may be.” Similarly, the same was clearly understood by the licensee and six (6) other LDI licensees and was being applied by them in calculation of APC without any objection, this amounted to admission through their own conduct that they accepted and implemented that the discounts to foreign operators will be given by LDI licensees from their own share. The letter dated 19-06-2009 written by the licensee and six (6) other LDI licensees contained the proposal and the chart in the proposal itself showed that they were deducting the permissible range discounts from their own share. This admission of the legal position and their understanding clearly depicts that after 2011, the licensee and other LDI licensees took a U-turn and started to take a completely contradictory stance against their own previous admission just in order to avoid their liability which was previously always admitted and undisputed.

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

2.33. 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.

2.34. 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 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 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.

2.35. 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.

2.36. Regarding late payment charges, it is stated that same are being claimed in terms of AP Regulations, which has been declared *intra vires* by the august Supreme Court of Pakistan in its judgement reported as 2016 SCMR 475. The distinction sought to be created by the licensee between the regulation 10(4) and 10(6) of AP Regulations is incorrect exposition of law and completely misconceived. Hence, there is no substance in the argument of the licensee on this aspect of the case. Further, the stance of the Authority for late payment 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 challenged the demand and *vires* of late payment charges, additional fee(s), etc. as provided in various regulations issued by the Authority including the AP Regulations through WP No. 759/2011 and sought a relief that all such regulations be declared *ultra vires*, *void ab initio* and without legal effect. The said writ petition was dismissed for non-prosecution by the Hon'ble Islamabad High Court vide its order dated 06-10-2016.

3. Order:

3.1. 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.14,318,672,404/- (Principal: Rs.4,104,673,818/-+LPAF: Rs.10,213,998,586/- 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 25 pages only.

