



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 Telecard Limited**

No. 04-01/11/(AP/CA)PTA/206/113/438

Show Cause Notices: 10th March 2010, 21st September 2010
and 17th November 2016
Venue of Hearing: PTA HQs, Islamabad
Hearing Date: 15th 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 hereby seeks to dispose of Show Cause Notice dated 10-03-2010 (“1st SCN”), Show Cause Notice dated 21-09-2010 (“2nd SCN”) and Show Cause Notice dated 17-11-2016 (“3rd SCN”), issued to Telecard 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 consolidated order dated 27-11-2024 passed in Civil Suit No.2603/2016 and Civil Suit No.1727/2010 by the Hon’ble Sindh High Court, Karachi, whereby the proceedings on above-mentioned SCNs have been remanded back to the Authority for decision on merits. As similar questions of law and facts relating to APC for USF are involved in all the aforementioned SCNs, therefore, these SCNs are being disposed of/decided through this consolidated Enforcement Order.

1. Facts of the Case:

1.1. Precisely stated facts of the case are that the Pakistan Telecommunication Authority (the “**Authority**”) granted a Long Distance and International (“**LDI**”) non-exclusive license No.LDI-05 (10)-2004 dated 03-08-2004 (the “**license**”) to Telecard 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**”), 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.

1st SCN dated 10-03-2010:

1.3. As per the applicable regulatory framework, the licensee was required by the Authority to make payment of APC for USF determined for the months of June, July, August, September and October of 2009 vide letters dated 02-10-2009, 07-10-2009, 05-11-2009, 11-12-2009 and 11-01-2010, respectively. The licensee had failed to make the payment for the aforesaid months amounting to Rs.692,317,327/- (i.e. Rs.223,524,729/- + Rs.141,015,744/-+ Rs.174,252,699/- + Rs.123,933,399/ - + Rs.34,459/- respectively and late payment charges thereon i.e. Rs.29,556,296/- up to 31-01-2010) on account of APC for USF calculated on the basis of traffic data submitted by the licensee for the aforementioned months.

1.4. Furthermore, on the request of the licensee for installments vide its letter dated 09-04-2009, the Authority had allowed the request of the licensee for making payment of APC for USF in fifteen (15) equal monthly installments (Rs.23,093,758/- each) vide letter dated 15-04-2009 against outstanding amount of Rs.346,406,364/- till October 2008 (after making adjustment of Rs. 10,000,000/-). It is pertinent to note that the licensee even defaulted and failed to make the payment of four (4) installments i.e. 7th, 8th, 9th and 10th of Rs.95,838,001/- relating to the first schedule of installments of APC for USF, along with late payment charges up to 31-01-2010 (calculated for the aforesaid installments only).

1.5. Moreover, the Authority had also approved the request of the licensee for making payment of APC for USF in ten (10) equal monthly installments (Rs.20,221,425/- per month) vide letter dated 04-09-2009 against amount of Rs.202,214,246/- outstanding for the month of April 2009. The licensee again defaulted and failed to make the payment of four (4) installments i.e. 2nd, 3rd, 4th and 5th of Rs.103,109,046/- relating to the second schedule of installments, along with late payment charges up to 31-01-2010 (calculated for the aforesaid installments only).

1.6. Additionally, the licensee had also failed to make payment on account of late payment charges of Rs.27,545,237/- as per schedule for the months of November 2008, December 2008, January to May 2009 and 2nd Installment of the first schedule, calculated up to 31-01-2010.

1.7. Despite the aforementioned demand notes/letters, and providing the opportunity of making payment of outstanding APC for USF in installments, the licensee had miserably failed to comply with the same. Thus, due to persistent default on the part of the licensee in making payment of APC for USF including late payment charges, the Authority was constrained to issue show cause notice dated 10-03-2010 under section 23 of the Act, whereby the licensee was required to pay APC for USF including late payment charges in the sum of Rs.918,809,611/- immediately 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.

1.8. The licensee did not file any reply to 1st SCN and preferred to file the case bearing Civil Suit No.1727/2010 before the Hon'ble Sindh High Court, Karachi.

2nd SCN dated 21-09-2010:

1.9. As per applicable regulatory framework, the licensee was required by the Authority to make payment of APC for USF contribution determined for the months of January, February, March and April of 2010 vide letters dated 16-04-2010, 20-05-2010, 22-06-2010 and 21-07-2010 respectively. The licensee had failed to make the payment for the months of January, February, March and April of 2010 amounting to Rs.473,647,085/- (i.e. Rs.27,573,123/- + Rs.95,526,621/- + Rs.150,136,884/- + Rs.200,410,458/-) respectively and late payment charges thereon on account of APC for USF contribution calculated on the basis of traffic data submitted by the licensee for the aforementioned months.

1.10. Furthermore, the licensee had defaulted and failed to make APC for USF payment of three (3) installments i.e. 13th, 14th, and 15th of Rs.69,281,274/- relating to first schedule, along with late payment charges, allowed by the Authority through letter dated 15-04-2009. Moreover, the licensee failed to make payment of APC for USF installments relating to second schedule of installments i.e. 7th, 8th, 9th, and 10th of Rs.71,262,786/- along with late payment charges, allowed by the Authority through letter dated 04-09-2009.

1.11. Despite the aforementioned demand notes/letters, and providing the opportunity of making payment of outstanding APC for USF in installments, the licensee had miserably failed to comply with the same. Thus, due to persistent default on the part of the licensee in making payment of APC for USF, the Authority was constrained to issue show cause notice dated 21-09-2010 under section 23 of the Act, whereby the licensee was required to pay APC for USF in the sum of Rs.614,191,145/- along with late payment charges immediately 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.

1.12. The licensee filed its reply on 20-10-2010 and took the plea that the vires of the AP Rules, the AP Regulations had been challenged by the licensee in CPLA No.459 of 2009 before the august Supreme Court of Pakistan and since the 2nd SCN alleges violation of the same, the proceedings be stayed for matter being sub-judice before Court. It also took the plea that the licensee deposited a sum of around Rs. 1200 million with the Authority during the time of its transfer of WLL licenses (3.5 GHz spectrum) which was pending with the Authority as the only way to complete the said transaction. The licensee also contended that the Authority was advised that an amount of Rs. 1,165,928,660/- out of Rs. 1200 million to be held in a profit bearing account strictly under protest and without prejudice to the fact as the matter of vires is sub-judice before the august Supreme Court. It further stated that the amount would be refundable in the event the august Supreme Court declares that AP Rules and AP Regulations as ultra vires. The licensee vide its letter dated 25-05-2010 demanded from the Authority to

adjust APC for USF for the months of January 2010 and February 2010 in the sum of Rs.27,573,121/- and Rs.106,506,000/- respectively from the amount of Rs.1,143,457,296/- and hold it in a profit bearing account. The licensee further contended to adjust eight (8) installments relating to the first and second schedule of installments in the sum of Rs. 184,750,064/- and Rs. 161,771,400/- respectively relating to APC for USF and hold it in a profit bearing account, till final adjudication of the vires of AP Rules and AP Regulations by the august Supreme Court. Further, the licensee contended that Approved Settlement Rate (ASR) was not prevalent in the market due to element of grey traffic and the Authority is required to refund the amount collected in the entire time where the market rate was below ASR. Hence, the amount of Rs.614,191,145/- is disputed by the licensee. It also referred the judgment passed by the Hon'ble Lahore High Court in WPNo.3211/2009 regarding suspension of international incoming traffic, whereby it was held that the imposition of late payment penalty was the only legal consequence and regulatory tool available to the Authority under the regime.

3rd SCN dated 17-11-2016:

1.13. The licensee was required by the Authority to make payment of APC for USF determined for the months of August, September, October of 2009 and January, February, March, April, May, June of 2010 vide letters dated 05-11-2009, 11-12-2009, 11-01-2010, 16-04-2010, 20-05-2010, 22-06-2010, 21-07-2010, 20-08-2010 and 23-09-2010 respectively. Thereafter, the APC for USF determined for the months of December, 2011 and January, February, March, April, May, June, July, August, September of 2012 was demanded by the Authority vide letters dated 22-03-2012, 19-04-2012, 21-05-2012, 21-06-2012, 23-07-2012, 17-10-2012, 20-11-2012 and 21-12 -2012 respectively.

1.14. Despite the aforementioned demand notes/letters, the licensee failed to comply with the same. Thus, due to persistent default on the part of the licensee in making payment of APC for USF, the Authority was constrained to issue show cause notice dated 17-11-2016 under section 23 of the Act, whereby the licensee was required to make the payment for the aforesaid months amounting to Rs. 3,904,240,526/- including late payment charges on account of APC for USF within seven (7) days 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.

1.15. The licensee filed its reply on 14-12-2016 and took the plea that show cause notice was challenged by it before the Hon'ble Sindh High Court in Civil Suit No. 2603 of 2016 and the Hon'ble Court through order dated 13-12-2016 restrained the Authority from cancelling the license or from taking any adverse action. Therefore, it was pleaded that if any further proceedings were conducted it would amount to contempt of the Court.

1.16. It may not be out of place to mention here that the Authority has passed an Enforcement order dated 30-06-2012 pertaining to the outstanding APC for USF for the period from July 2010 to November 2011, which was assailed by the licensee in MA No.54/2012 before the

Hon'ble Sindh High Court, Karachi. Since the matter is sub-judice, hence the same is not part of this SCN dated 17-11-2016.

High Court Cases:

1.17. The licensee had challenged the 1st and 2nd SCNs in Civil Suit No.1727/2010 and the 3rd SCN in Civil Suit No.2603/2016 before the Hon'ble Sindh High Court, Karachi. The matter remained pending and proceedings could not be concluded. The Hon'ble Sindh High Court through its consolidated order dated 27-11-2024 remanded the cases back to the Authority for adjudication. For ready reference relevant paragraph of the said order is 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.”

2. Proceedings after Remand:

2.1. The Hon'ble Sindh High Court, Karachi remanded back three Show Cause Notices (1st, 2nd and 3rd) to the Authority for adjudication. It is pertinent to mention here that the amount and period dealt with by the 1st SCN and 2nd SCN had ultimately been merged and made part of the 3rd SCN. Hence, there is no need to proceed with the 1st SCN and 2nd SCN separately. The 3rd SCN was with respect to all the payments outstanding till the date of issuance of said show cause notice, except the period covered in the litigation in MA No. 54/2012 pending before the Hon'ble Sindh High Court, Karachi.

2.2. In order to proceed further, the matter was fixed for hearing on 15-04-2025. Mr. Aamir Hussain (CEO), Mr. Waseem Butt (GM), Mr. Waseem Ahmed (Director), M Zakir Hussain (Senior Manager), Mr. Fawad Bhatti, (DGM- GR&RA) and Mr. Ahad Nadeem (Advocate High Court) attended the hearing on behalf of the licensee. Dr. Mobeen Shah Director General (Legal) and Mr. Hassan Aziz Director Telecom also attended the hearing on behalf of the Ministry of Information Technology & Telecommunication (“**MoIT&T**”) as the matter pertains to APC for USF.

2.3. Before the hearing, the licensee through its legal counsel submitted written/ reply to the SCN on 14-04-2025. The licensee submitted that the SCN is misconceived, having been issued on a misreading of the law and is based on arbitrary and predetermined calculations made by

the officials of the Authority. The demand 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. That the demand is not supported by any detailed working or calculation and 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

- 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 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.
- b. The dispute between the LDI Operators/TCL 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 TCL 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 Based on this, TCL has overpaid the APC for USF to PTA, and the excess amount is liable to be refunded.** 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. TCL has also prepared its calculations for the assistance of 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 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.

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.3.8 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. During the hearings, the Authority has taken a stance that the fine/penalty imposed under the SCN is distinguishable from the fine mentioned under Section 23(3)(C)(i) of the 1996 Act and is in fact Late Payment Addition Fee ('LPAF'). In this regard, the following submissions are made for the assistance of the Authority:
 - i. 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 SCMR1630 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.
- 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 non-payment of APC for USF. In a judgement cited as 1985 SCMR 365 reported in several other judgements of superior Courts such as 2018 LHC 2976, it was observed that rules framed under the statute could not go beyond and overreach the statute itself. In another case reported as 2016 SCMR 550, the Hon'ble Supreme Court held that Rules and or Regulations are the progeny or offspring of a Statute and are to be strictly in conformity with the provisions of the Statute where under same are framed. It is settled proposition of law that the rules framed under a Statute are to remain within the precinct of the Statute itself and cannot transgress the limits and parameters of the parent Statute itself.

In view of the foregoing, it is humbly submitted that no fine or penalty is payable by TCL 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. Even otherwise, LPAF (even if argued by the Authority as being applicable), is not mentioned in the SCN and as such cannot be charged as an independent form of penalty or fine.

3. Findings of the Authority:

3.1. Matter heard. Record perused. Since the instant matter relates to payment of Access Promotion Contribution and recovery thereof from the licensee, therefore, before proceeding further with the instant matter, it would be advantageous to have an overview 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 including the licensee conveyed vide letter dated 05-01-2006, it was *"jointly recommended that APC should be fixed at US\$ 0.025 per minute for all countries of the world with effect from 8th November 2005"*. Accordingly, from time to time, APC is being fixed/revised for all countries of the world instead of each country separately from time to time.

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 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. 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.

3.6. There is no ambiguity about the basis and the calculations of the payment demanded from the licensee. The 1st SCN, 2nd SCN and 3rd SCN under adjudication were issued to the licensee with respect to the payments of APC for USF by specifically referring to the letters through which the amounts were determined, calculated and conveyed in the following manner:

In 1st SCN:

"AND WHEREAS the licensee was required and instructed vide letters dated April 15, 2009, 22nd May 2009, 27th May 2009, 17th June 2009, 16th July 2009, 4th September 2009, 2nd October 2009, 22nd October 2009, 23 October 2009, 5th November 2009, 17th November 2009, 8th December 2009, 11th December 2009, 14th December 2009 and 11th January 2010 to make the payment on account of APC for USF..."

In 2nd SCN:

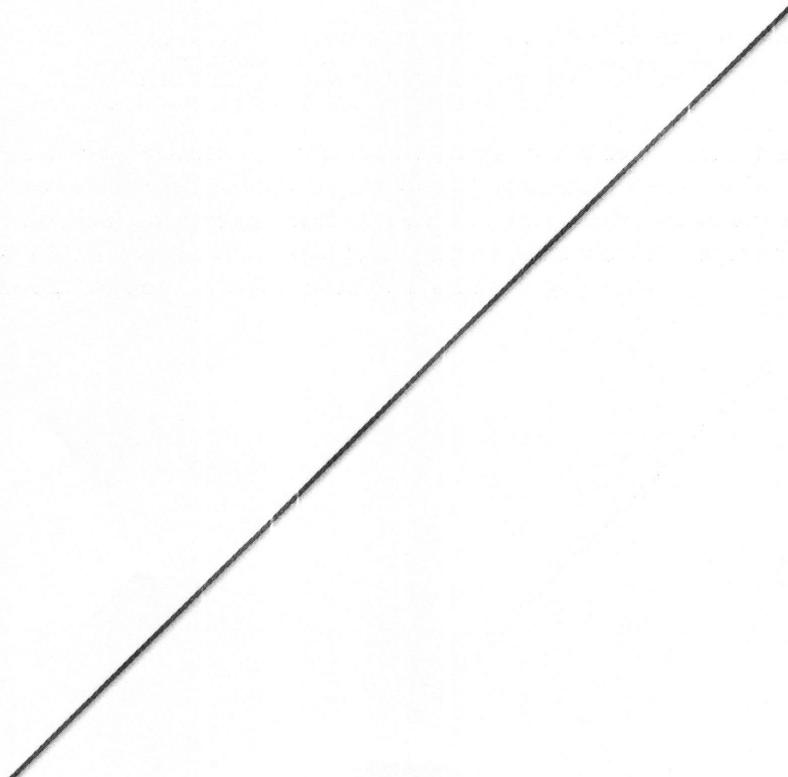
“AND WHEREAS the licensee was required and instructed vide letters dated April 16, 2010, May 20, 2010, June 02, 2010, June 22, 2010, July 21, 2010 and August 05, 2010 to make the payment on account of APC for USF for the abovementioned amount...”

In 3rd SCN:

“AND WHEREAS it has been taken notice of by PTA that the licensee has failed to make the payment of outstanding dues of Rs. 3,904,240,526/- (principal Rs. 1,304,900,671/- + fine Rs. 2,599,339,855/- as of 31st July 2016) calculated on the basis of traffic data submitted by the licensee ...

AND WHEREAS the licensee vide PTA letter No. 04-01/11/(AP/ CA) PTA / 206/ 1 dated 24th August 2016 was required to deposit Rs. 3,904,240, 526/- at MoIT's respective account within ten (10) working days”

3.7. The 1st SCN clearly mentioned that the licensee had failed to make payment for the months and period mentioned therein making a total payment of Rs. 918,809,611/- . Further, the licensee was instructed and required to make payment for the said months and period through letters mentioned therein after determining the payment of APC for USF for the said months. The said demand note is reproduced as under (at page No. 13):





PAKISTAN TELECOMMUNICATION AUTHORITY
Headquarters, F-5/1 Islamabad
www.pta.gov.pk

No. 04-01/2009/AP/PTA

May 22, 2009

Subject: **PAYMENT OF APC FOR USE**

This is with reference to our letter of even number dated April 15, 2009 and April 28, 2009 on the captioned subject.

2. Based on the international incoming traffic reported for the month of November 2008 and December 2008, an amount of Rs.150,720,274/- was outstanding against Telecard on account of APC for USF, which was allowed to be paid by April 30, 2009. In this regard, we have received your three post dated cheques of Rs.50,001,863/- each dated July 31, 2009, August 15, 2009 and August 30, 2009 against the payment due on April 30, 2009. We expect that Telecard will honour its payment commitments vis-à-vis post-dated cheques, otherwise strict action will be taken by the Authority.

3. It may be noted that as per clause 10 (6) of AP Regulations, 2005, where an LDI Licensee fails to make payments on account of APC for USF, it shall be liable to an initial fine of Rupees five hundred thousand and a further fine calculated as one and half percent per month, or a fraction thereof, of amount defaulted. Accordingly, the late payment charges of Telecard are as follows:

Amount Due In PKR	Due Date	Cheque Date	Cheque Amount In PKR	Days Overdue	Rate of Fine	Total Fine In PKR
150,720,274	30-Apr-09	31-Jul-09	50,001,863	92	1.5% per month	2,300,086
		15-Aug-09	50,001,863	107	1.5% per month	2,675,100
		30-Aug-09	50,001,863	122	1.5% per month	3,050,114
Initial Fine						500,000
Total						8,525,299

4. You are hereby requested to pay Rs.8,525,299/- at your earliest but not later than June 15, 2009.

Aadil Umar Khalil
Deputy Director (Commercial Affairs)

To:
Telecard
Through its CEO

Cc:

- Director (CA), PTA
- SO to Chairman, PTA
- PA to Member (Finance), PTA
- PA to Member (Technical), PTA

3.8. The 2nd SCN clearly mentioned that the licensee had failed to make payment of Rs. 614,191,145/-. Further, the licensee was instructed and required to make payment for the said months and period through letters mentioned therein after determining the payment of APC for USF for the said months. The said demand note is reproduced as under:



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 Tele Card 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)
Tele Card (Jan 2010)	7,376,684	0.055	0.90	84.33	27,573,123

3. You are therefore requested to make payment of Rs.27,573,123 on account of APC for USF latest by April 30, 2010.

M. Saleem
16/04/10

Dr. Muhammad Saleem
Director General (Commercial Affairs)

To:
Brig. (R) Shahid Naeem Butt
Director Regulatory Affairs
Telecard Ltd.

- Cc:
- Senior Project Manager (USF), MoIT
 - DG (Finance), PTA (For booking of Rs.27,573,123 in Finance Ledger)
 - SO to Chairman, PTA
 - PA to Member (Finance), PTA
 - PA to Member (Technical), PTA

3.9. The 3rd SCN clearly mentioned that the licensee had failed to make payment of Rs.3,904,240,526/- as of 31-07-2016. Further, 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 month. The said demand note is reproduced as under:



PAKISTAN TELECOMMUNICATION AUTHORITY

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

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

April 19, 2012

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

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

2. As per AP Rules, payment of APC for USF is payable within ninety (90) days after the end of the calendar month for which the payment obligation arises. In this regard last date for payment of APC for USF for the month of January 2012 is April 30, 2012. Based on the reported traffic by TeleCard Ltd. APC for USF obligation for the month of January 2012 is calculated as under:

Region/Month	Terminated Traffic on Mobile	APC (USD)	MTR (PKR)	Avg. Exchange Rate (PKR/USD)	APC for USF (PKR)
Pakistan (Jan 2012)	49,700,812	0.0125	0.90	89.80	11,058,431
AJK & GB (Jan 2012)	1,421,073	0.0125	0.90	89.80	316,189

3. You are therefore requested to make payment of above mentioned amounts on account of APC for USF in respective bank accounts latest by April 30, 2012.


Zafeshan Gul
Director (Commercial Affairs)

To:
Brig. (R) Shahid Naeem Butt
Director Regulatory Affairs
TeleCard Ltd.

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

3.10. The above demand notes relating to 1st, 2nd and 3rd SCNs have provided all the underlying basis/factors required for calculation of the sums determined as payable by delineating the 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.

3.11. The said demand notes/letters being part and parcel of the 3rd SCN was 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 any of the SCNs 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 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 to show how calculations or the total amount of APC for USF determined was wrong 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”.

3.12. 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.

3.13. From the chronology of the events, it surfaced that the licensee failed to make payment of Rs. 29,473,614/- on account of APC for USF, therefore, the Authority issued Show cause notice dated 07-06-2007. The proceedings of the said show cause notice resulted in Enforcement Order dated 04-04-2008. This Enforcement order was challenged by the licensee by filing FAO No.16/2008 before the Hon'ble Islamabad High Court. The said Appeal challenged the entire APC regime and the constitutionality as well legality of the AP Rules, the AP Regulations and the Act. The crux of the main grounds of FAO No. 16/2008 are as under;

- (i) *That under the license, the Appellant was nowhere expressly required to pay the APC for USF. No such obligation was imposed by any license condition and hence licensee was not liable to make the said payment.*
- (ii) *That the APC for USF has imposed under the AP Rules and is not in the nature of a fee but more akin to tax as it is being levied as part of a common burden upon all LDI licenses in the form of a compulsory exaction of money by the federal government for public purpose*
- (iii) *That without a modification in the terms and conditions of the license no such demand for APC for USF could be made and deregulation policy cannot be deemed to have amended the terms and conditions of license to include an obligation to pay APC for USF unless such an*

obligation is imposed through an act of parliament which was only done in March 2006.

- (iv) That APC for USF could not be charged or imposed validly under the AP Rules till the time universal service fund was lawful established.*
- (v) That collection and levy of APC for USF could not be lawfully made under the access promotion Rules since the Rules were ultra vires the provisions of the Act.*
- (vi) That access promotion contribution was in the nature of Tax and Levy as opposed to being a fee for services rendered and in terms of article 77 of the constitution of Pakistan it could not be imposed except by and under the authority of the act of parliament.*
- (vii) That the amendments in the parent Act of 1996 by the amending act, on their own, did not render the access promotion rules as valid, which could not be held as retrospectively imposing APC for USF on LDI licenses*
- (viii) That APC for USF was a levy of the federal government and PTA was merely authorised to regulate the same, AND this Power to regulate could not be construed as a power to act as a collecting agent on behalf of the federal government.*

3.14. The FAO No. 16//2008 was dismissed by the Hon'ble Islamabad High Court vide order dated 22-04-2009 in the terms of the consolidated judgment reported as PLD 2009 Islamabad 41, whereby all such challenges had been dismissed. It is important to mention here that during these proceedings and challenge to the legality of the demand of APC for USF, the licensee abandoned any challenge to the notifications which are now being termed as defective and challenged the legality of the demand on the grounds of APC for USF being itself illegal. It is clear that piecemeal legal challenges and legal pleas cannot be allowed to be raised. The licensee had fully challenged the very legality of the demand in the first round of litigation in WP No.741/2008 before the Hon'ble Court. It was bound to raise all possible legal pleas and challenges to all the legal regime and even the notifications (now being termed as defective) wherefrom it felt aggrieved. The licensee cannot be allowed to raise same legal arguments against the demand of APC for USF at this stage, which it forgot to raise in the said first round of litigation. The notifications on the basis of which the APC for USF was being calculated were in field at the time of filing and pendency of FAO No.16/2008 and WP No.741/2009. However, these were never challenged. The licensee also challenged the consolidated judgment before the august Supreme Court of Pakistan through CA No.142/2013 and CA No.144/2013 which were also dismissed vide judgment dated 22-12-2015 reported as 2016 SCMR 475. However, again no such pleas were raised about any of notifications which are now being questioned for the first time.

3.15. That meanwhile the Authority had been calculating the APC for USF contribution for each month in accordance with the data supplied by the licensee itself, in accordance with the formula prescribed in the AP Rules read with the AP Regulations. During the period from April 2008 to 30-10-2009, the Authority kept on determining and making demand for the same.

Subsequent to the judgment reported as PLD 2009 Islamabad 41, the Authority after making adjustment of Rs. 4,805,945/- (already paid by the licensee) through its letter dated 24-02-2009 required the licensee to pay Rs. 356,406,364/- (for period June 2005 to October 2008) on account of APC for USF. It is worth mentioning here that the licensee was allowed by the Authority vide its letter dated 15-04-2009 to make payment of APC for USF after adjustment of Rs. 10,000,000/- (already paid by licensee), the remaining amount i.e. Rs. 346,406,364/- (for the period from June 2005 to October 2008) to be paid in fifteen (15) equal monthly installments i.e. Rs.23,093,758/-. Further, the licensee was also informed that its payment for the months of November and December 2008 amounting to Rs. 160,720,274/- is already overdue and has to be paid by 30-04-2009, otherwise international incoming traffic will be suspended without further notice. Later on, the licensee submitted cheques for the payment of APC for USF of Rs. 10,000,000/- dated 25-05-2009 and Rs. 104,733,755/- dated 05-06-2009.

3.16. At this stage, it must be mentioned that the licensee made a payment of Rs. 25,000,000/- in July 2009 and then paid sum of Rs. 300,000,000/- in August 2009 towards settlement of its outstanding APC for USF dues. The licensee vide its letter dated 03-09-2009 committed that it will endeavor to pay the amount of Rs. 167,000,000/- by due date and mentioned some challenges in fulfilling its obligations, with a request for extension of about two weeks. The Authority through its letter dated 14-09-2009 acknowledged two post-dated cheques dated 15-09-2009 and 30-09-2009 amounting to Rs. 60,000,000/- and Rs. 107.97 million respectively against the payment of APC for USF for the month of May 2009. The Authority further informed that it had already allowed ten (10) installments with penalty for the outstanding payments for the month of April 2009. Further, the licensee was required to pay the remaining balance of Rs. 107,975,755/- on account of APC for USF for the month of May 2009 on or before September 2009. The aforesaid demand of determined amount of APC for USF was repeated through letter dated 16-09-2009 and thereafter the licensee paid a sum of Rs. 107,975,755/- against the remaining payment for the month of May 2009 vide letter dated 17-09-2009. However, substantial default continued and through another letter dated 26-09-2009, the licensee requested the Authority not to deposit its cheque of Rs. 107,975,755/- as it was in process of organizing alternative sources of funds due to financial hardships. Through letter dated 02-10-2009, the Authority again determined and demanded payment of APC for USF of Rs. 399,112,066/- outstanding for the period mentioned in the letter (reproduced below at page No.19). The licensee through its letter dated 13-10-2009 had made partial payments and informed that it was unable to pay the amount of Rs. 223,524,729/- due as on 15-10-2009 and submitted cheques for Rs. 20,221,425/- and Rs. 23,093,758/- dated 05-10-2009 and post-dated cheque of Rs. 223,524,729/- dated 15-11-2009 on account of APC for USF. The Authority through letters dated 22-10-2009 and 23-10-2009, again directed the licensee to deposit the outstanding amounts of APC for USF.



PAKISTAN TELECOMMUNICATION AUTHORITY

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

October 2, 2009

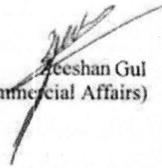
SUBJECT: PAYMENT ON ACCOUNT OF APC FOR USE

This is with reference to our letters dated 22nd May 2009, 27th May 2009, 17th June 2009, 2nd September 2009, 4th September 2009, 14th September 2009 & 16th September 2009 and with reference to AP Rules 2004 and AP Regulation 2005 regarding payment of APC for USF.

2. Teletcard is liable to pay a sum of **Rs.399,112,066** on account of APC for USF as per following details:

	Amount (Rs.)	Due Date
APC for USF ~ May 2009	107,975,755	Overdue
1st Installment against April '09 dues	20,221,425	5 th October 2009
6th Installment against dues till Oct '08	23,093,759	
APC for USF ~ June 2009	223,524,729	15 th October 2009
Late Payment Charges	24,296,398	Overdue- Details attached
Total	399,112,066	

3. You are hereby directed to settle your overdue amounts without further delay and to pay APC for USF dues by the given deadlines to avoid any legal complications.


Zeeshan Gul
Director (Commercial Affairs)

To:
Mr. Shahid Feroz
Chief Executive Officer
Teletcard Ltd.

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

TELECARD LTD.

Late Pmt for the month	Amt. Due	Date Due	Cheque Presentation Date	Check Amt.	Days Over-due	Rate of Fine	Fine for days over-due	Initial Penalty	Total Fine
Nov-Dec 08 APC	150,720,274	30-Apr-09	31-Jul-09	50,001,863	92	1.50%	2,300,086	500,000	2,800,086
	150,720,274	30-Apr-09	15-Aug-09	50,001,863	107	1.50%	2,675,100	-	2,675,100
	150,720,274	30-Apr-09	30-Aug-09	50,001,863	122	1.50%	3,050,114	-	3,050,114
Jan - APC	114,733,755	30-Apr-09	26-May-09	10,000,000	26	1.50%	130,000	500,000	630,000
	114,733,755	30-Apr-09	05-Jun-09	104,733,755	36	1.50%	1,885,208	-	1,885,208
Jun Installment	23,093,758	05-Jun-09	15-Jun-09	23,093,758	10	1.50%	115,469	500,000	615,469
Feb - APC	117,758,553	31-May-09	15-Jul-09	25,000,000	45	1.50%	562,500	500,000	1,062,500
	117,758,553	31-May-09	31-Aug-09	92,758,553	92	1.50%	4,266,893	-	4,266,893
Mar - APC	199,921,725	30-Jun-09	31-Aug-09	199,921,725	62	1.50%	6,197,573	500,000	6,697,573
Apr - APC	209,533,968	31-Jul-09	31-Aug-09	7,319,722	31	1.50%	113,456	500,000	613,456
TOTAL									24,296,398

3.17. The Authority vide its letter dated 29-09-2009 suspended international incoming traffic and authorization of the licensee to terminate international traffic in Pakistan, on account of non-payment of APC for USF. This particular action was challenged by the licensee before the Hon'ble Lahore High Court, Rawalpindi Bench, Rawalpindi by filing WP No.3211/2009 on 28-10-2009 with the following prayers:

"It is therefore most respectfully prayed that the order dated 29-09-2009 passed by the respondents suspending services of the petitioner may kindly be declared as illegal, unwarranted and without lawful authority and the same may be set aside.

It is also prayed that operation of the impugned order dated 29-09-2009 may kindly be suspended or any other relief to which the petitioner is found entitled may also be granted"

In the said case, the licensee urged that the only action possible against the licensee was to impose a fine in accordance with regulation 10(6) of AP Regulations, and the Authority could not suspend the services of the licensee under the law. In this regard, the licensee made

reference to the fact that a similar order was passed in WP No.2997/2009 in the case of Wateen Telecom and prayed for similar order. It is pertinent to mention here that in paragraph 5 of the memorandum of the said writ petition, the licensee conceded the demand and the payment and also admitted that it was liable to make payment and was diligently fulfilling its obligations of APC for USF. The WP No.3211/2009 was filed in October 2009 when all the demands were being determined in accordance with the law, AP Rules, AP Regulations and notifications which were in field till that time and are now being challenged again. However, the licensee did not challenge any of the notifications or the demands based on the data supplied by the licensee itself and application of the formula as prescribed by the AP Rules and AP Regulations. The licensee requested that only fine could be imposed by the Authority for any delayed payment of APC for USF but the license could not be suspended. It is clear that the licensee was obliged to challenge the levy or demand of APC for USF being determined and calculated by the Authority in terms of the said demand letters, notifications (now being termed defective) and regulations in field at the time, however, it waived / abandoned any such plea and challenge and decided not to take any such legal plea as it is raising at this point in time. It is clear that it omitted to sue in respect of a cause of action accrued and available at the time of filing of the aforesaid writ petition in October 2009 and thus any subsequent challenge in subsequent cases before the Court is barred by principles of Order II Rule 2 CPC (waiver & abandonment) and is now therefore estopped from raising any such plea. This was clearly an afterthought as the licensee started an exercise of forum shopping and after first approaching the courts at Islamabad High Court and Lahore High Court Rawalpindi bench, it started a new exercise of filing cases before Sindh High Court with respect to the same cause of action which was already available to it at the time of filing WP No.3211/2009 in October 2009.

3.18. It is clear that at that time the licensee had already taken the option of challenging the entire APC regime and had not taken any such ground to challenge the demand of APC either in WP No. 3211/2009 or FAO No.16/2008. All these legal grounds were available as the demands being challenged in both these petitions were based upon these notifications, however, the licensee choose not to raise any such plea. However, it cannot happen that it could turn around and file another case before a different court and now take up additional legal grounds with respect to the same cause of action and same demands which were subject matter of WP No.3211/2009 or FAO No.16/2008. It is clear that the matter attained finality till that stage and the demands subject matter of these cases could not be challenged again in subsequent challenge before the Court on any legal or factual ground. That the fact of abandonment of any plea regarding these notifications is clear from the instance that LDI licensees 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.

3.19. Despite the fact, the Authority vide letter dated 15-04-2009 approved the payment plan of APC for USF in fifteen (15) equal monthly installments for the period from Jun 2005 to Oct 2008, however, the licensee only paid six (6) installments and the sixth installment was received

on 13-10-2009. Later on the licensee vide letter dated 25-05-2010, made a request for adjustment of its liability of APC for USF in the following manner;

“Rs. 1,143,457,296 for APC. This amount pertains to the months of June 2009 through October 2009 in the sum of Rs. 662,856,711 and also for January and February 2010 amounting to Rs. 27,573,121 & Rs. 106,506,000 respectively. It further includes 8 installments relating to the first and second schedule of installments amounting to Rs. 184,750,064 and Rs. 161,771,400 respectively. Please note that we are giving this amount strictly under protest. The existence of APC is contested in the Supreme Court through CPLA 459 of 2009, which is pending adjudication. Therefore, do take note that this amount is refundable to Telecard in the event that the Supreme Court rules in favour of Telecard. We request PTA to withhold this money in a separate profit bearing account until the final decision of the Supreme Court.”

3.20. The Authority through its letter dated 16-05-2011 informed the licensee that out of Rs. 1200 Million, it had adjusted an amount of Rs. 906,502,807/- on account of outstanding dues of APC for USF. It is pertinent to mention here that the licensee has paid dues of APC for USF for the months of November 2009 and December 2009, however, partial payment of August 2009 and full payment of September 2009 and October 2009, January to June 2010 and December 2011 to September 2012 are still outstanding.

3.21. That the argument of the licensee 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 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 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.

3.22. 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.

3.23. 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.

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

3.25. 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 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.

3.26. 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.

3.27. 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.

3.28. Regarding late payment charges, same are being claimed in terms of AP Regulations, which has been declared *intra vires* by the august Supreme Court of Pakistan in its judgement reported as 2016 SCMR 475. The distinction sought to be created by the licensee between the regulation 10(4) and 10(6) of AP Regulations is incorrect exposition of law and completely misconceived. Hence, there is no substance in the argument of the licensee on this aspect of the case. Further, the stance of the Authority for late payment addition fee has been upheld by the Hon'ble Islamabad High Court in a case reported as PLD 2017 Islamabad 177 titled "*DV Com Data Vs PTA, etc.*".

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.4,075,287,206/- (Principal: Rs.1,297,580,949/- + LPAF: Rs.2,777,706,257/- 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.