



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 Worldcall Telecom Limited**

No. PTA/Commercial Affairs/World Call/116/2006/126/435

Show Cause Notice: 1<sup>st</sup> December 2016  
Venue of Hearing: PTA HQs, Islamabad  
Date of Hearing: 10<sup>th</sup> April 2025

**Hearing Panel**

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

**THE ISSUE**

**“NON-PAYMENT OF APC FOR USF”**

This enforcement order seeks to dispose of Show Cause Notice dated 01-12-2016 (“SCN”) issued to Worldcall Telecom 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.2602/2016 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-02(01)-2004 dated 14-07-2004 (the “**license**”) to Worldcall Telecom Limited (the “**licensee**”) to establish, maintain and operate a 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 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, sometimes, it was delaying and/or avoiding the payment of APC for USF on one pretext or the other including under the guise of pending litigation, the detail whereof shall 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. Accordingly, the licensee was required by the Authority vide its letter dated 19-08-2016 to deposit Rs. 3,455,959,575/-. However, the licensee vide its email dated 23-08-2016 forwarded deposit slip of payment of Rs. 16,607,540/- on account of APC for USF. After deducting the above-mentioned deposited amount, the Authority vide its letter dated 24-08-2016 required the licensee to deposit revised amount of Rs. 3,420,469,969/- 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 demand note, the Authority was constrained to issue show cause notice dated 01-12-2016 under section 23 of the Act, whereby the licensee was required to pay APC for USF of Rs. 3,420,469,969/- within seven (07) days of the issuance of SCN and also to explain in writing, within thirty (30) days of the issuance of the notice as to why the license should not be suspended, terminated or any other enforcement order should not be passed against the licensee under section 23 of the Act.

1.4. The licensee did not file reply to SCN and preferred to file Civil Suit No.2602/2016 against 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.2602/2016 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.2602/2016 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 10-04-2025 in order to proceed further for adjudication thereon. Brig. (R) Syed Saeb Imam Zaidi (COO), Mr. Muhammad Ashraf, Head of Finance, Mr. Muhammad Shafique Director and Mr. Ahad Nadeem Advocate High Court attended the hearing on behalf of the licensee. Dr. Mobeen Shah, Director General (Legal), Dr. Sajjad A. Mansha, Legal Executive, Mr. Hassan Aziz, Director Telecom also attended the hearing on behalf of MoIT&T as the matter pertains to APC for USF.

1.7. Before the date of hearing, the licensee filed a detailed reply/response dated 09-04-2025 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 of 31-07-2016 is denied as being unlawful and baseless; the demand is not supported by any detailed working or calculation. 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 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/WTL 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 WTL 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. WTL 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. The licensee 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**

1. 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. 1.65 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.

2. 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.
3. 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).
4. 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.
5. 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.

6. 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.
7. 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.
8. 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.
9. In view of the foregoing, it is humbly submitted that no fine or penalty is payable by WTL 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 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 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.

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

2.4. It may not be out of place to mention here that all issues of APC *vis-à-vis* mode and manner of payment and legality of AP Rules and AP Regulations through which APC 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. 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 November, 2009 and partial payment of December, 2009. After making adjustment of payments made from time to time by the licensee, APC for USF is due from January, 2010 onward till September, 2012 along with late payment charges. 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 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 Rs. 223,018,239/- as partial payment of APC for USF for the period of January, 2005 till February, 2006 on its own. Thereafter, the Authority vide its letter dated 09-08-2006 demanded payment of the entire overdue amount of APC for USF up to April, 2006, followed by reminder dated 27-09-2006 requiring the licensee to pay dues latest by 09-10-2006. Upon failure of the licensee, the Authority was constrained to issue show cause notice dated 04-12-2006 under section 23 of the Act on account of non-payment of APC for USF dues of Rs. 92,008,687/- accrued till 30-04-2006. After completing the requisite formality of reply and providing opportunity of hearing, the Authority passed consolidated enforcement order dated 04-04-2008 in respect of show cause notice dated 04-12-2006.

2.8. Being aggrieved, the licensee along with other LDI licensees challenged the Authority's consolidated enforcement order dated 04-04-2008 before the Hon'ble Islamabad High Court, Islamabad through FAO No.07/2008. Further, the licensee also filed WP No.706/2008 challenging the vires of AP Rules and AP Regulations before the Hon'ble Islamabad High Court. The Hon'ble Islamabad High Court, Islamabad vide its consolidated judgement dated 21-01-2009 (reported as PLD 2009 Islamabad 41) dismissed all FAOs filed by LDI licensees against consolidated enforcement order dated 04-04-2008 as well as all Writ Petitions challenging the vires of AP Rules and AP Regulations by declaring that enforcement order dated 04-04-2008 has been passed in accordance with law and that AP Rules and AP Regulations are *intra vires*. This judgement of the Hon'ble Islamabad High Court was subsequently upheld and further amplified by the august Supreme Court vide its judgement dated 22-12-2015, reported as 2016 SCMR 475. Thus, the issue relating to *vires* of AP Rules and AP Regulations has been settled once for all.

2.9. After announcement of judgement dated 21-01-2009 by the Hon'ble Islamabad High Court, the Authority vide its letter dated 24-02-2009 issued demand note for payment of outstanding APC for USF dues amounting to Rs. 562,818,751/- from January 2005 to October 2008 (after adjusting an amount of Rs. 223,018,239/-). This demand note was followed by a reminder dated 17-03-2009 to make payment of outstanding APC for USF. The licensee vide its letter dated 08-04-2009 made partial payment of Rs. 56,000,000/- out of Rs. 562,818,751/- and further requested the Authority to make installments of the remaining amount of Rs. 506,818,751/-. While considering request of the licensee, the Authority vide its letter dated 15-04-2009 granted approval for payment of remaining APC for USF till October, 2008 in fifteen (15) equal monthly installments i.e. Rs. 33,787,917/- per month. ***It is worthy to note that all fifteen (15) installments have been paid; meaning thereby that APC for USF till***

*October, 2008 has been paid willingly after judicial determination and has attained finality especially after the decision of august Supreme Court in December 2015.* It is pertinent to mention here that the payment of APC for USF for some months have been calculated in terms of notification dated 31-03-2008 whereby the Authority fixed the Approved Settlement Rate (“ASR”). This notification has subsequently been questioned by the licensee, however, presently no litigation is pending by the licensee vis-à-vis this notification 31-03-2008 and subsequent notifications dated 06-01-2009 and 19-06-2009 before any court of law.

2.10. After raising demand by the Authority, the licensee was paying APC for USF for different months till July 2009. However, APC for USF for the months of August and September, 2009 was not paid by the licensee on the due dates. Accordingly, APC for USF for the month of August, 2009 was determined and demanded by the Authority vide its letter dated 05-11-2009. Likewise, APC for USF for the month of September, 2009 was determined and demanded by Authority vide its letter dated 11-12-2009 followed by reminder dated 11-01-2010. Similarly, APC for USF for the month of October, 2009 was determined and demanded vide letter dated 11-01-2010. All the underlying basis/factors required for calculation of the sums determined as payable was clearly mentioned in the said demand letters/reminders by mentioning rates and number of minutes under the heads, “TERMINATED TRAFFIC ON MOBILE FOR THE MONTH”, APC, MTR, EXCHANGE RATE and, thereafter, exact amount of APC for USF determined on the basis of such data, which the licensee was required to pay. The said demand notes for the months of August, September and October 2009 stated as under (at page Nos. 11,12 &13):



PAKISTAN TELECOMMUNICATION AUTHORITY

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

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

November 5, 2009

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

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

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

Company/Month	Terminated Traffic on Mobile	APC (USD)	MTR (PKR)	Avg. Exchange Rate (PKR/USD)	APC for USF (PKR)
World call ( Aug 2009)	25,505,240	0.055	1.00	82.90	90,785,902

3. You are therefore requested to make payment of Rs.90,785,902 on account of APC for USF latest by November 30, 2009.

  
Meshan Gul  
Director (Commercial Affairs)

To:  
Mr. Sohail Qadir  
Director Operations  
World Call Ltd.  
LAHORE

- Cc:
- Senior Project Manager (USF), MoIT
  - DG (Finance), PTA (For booking of Rs.90,785,902 in Finance Ledger)
  - SO to Chairman, PTA
  - PA to Member (Finance), PTA
  - PA to Member (Technical), PTA



**PAKISTAN TELECOMMUNICATION AUTHORITY**

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

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

December 11, 2009

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

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

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

Company/Month	Terminated Traffic on Mobile	APC (USD)	MTR (PKR)	Avg. Exchange Rate (PKR/USD)	APC for USF (PKR)
World call ( Sep 2009)	30,401,036	0.055	1.00	82.95	108,296,090

3. You are therefore requested to make payment of Rs.108,296,090 on account of APC for USF latest by December 31, 2009.

M. Saleem  
11/12/09

Dr. Muhammad Saleem  
Director General (Commercial Affairs)

To:  
Mr. Sohail Qadir  
Director Operations  
World Call Ltd.  
LAHORE

- Cc:
- Senior Project Manager (USF), MoIT
  - DG (Finance), PTA (For booking of Rs.108,296,090 in Finance Ledger)
  - SO to Chairman, PTA
  - PA to Member (Finance), PTA
  - PA to Member (Technical), PTA



**PAKISTAN TELECOMMUNICATION AUTHORITY**

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

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

January 11, 2010

**SUBJECT: DEMAND NOTE OF APC FOR USF FOR THE MONTH OF OCTOBER 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 **October 2009** is January 31, 2010. Based on the reported traffic by **World Call Ltd.** APC for USF obligation for the month of October 2009 is calculated as under:

Company/Month	Terminated Traffic on Mobile	APC (USD)	MTR (PKR)	Avg. Exchange Rate (PKR/USD)	APC for USF (PKR)
World Call (Oct 2009)	53,553,419	0.055	1.00	83.28	191,727,934

3. You are therefore requested to make payment of **Rs.191,727,934** on account of APC for USF latest by **January 31, 2010**.

*M. Saleem*  
11/11/10

Dr. Muhammad Saleem  
Director General (Commercial Affairs)

To:  
Mr. Sohail Qadir  
Director Operations  
World Call Ltd.  
LAHORE

- Cc:
- Senior Project Manager (USF), MoIT
  - DG (Finance), PTA {For booking of **Rs.191,727,934** in Finance Ledger}
  - SO to Chairman, PTA
  - PA to Member (Finance), PTA
  - PA to Member (Technical), PTA

2.11. It was observed that the licensee has failed to make the above referred payments on the due date despite specifically required to do so. Accordingly, upon persistent default, the Authority was constrained to issue show cause notice dated 22-02-2010 under section 23 of the Act to the licensee for non-payment of APC for USF of Rs. 396,157,944/- for the months of August to October, 2009 including the late payment charges calculated up to 31-01-2010. The licensee filed reply on 18-03-2010 to aforesaid show cause notice making reference to the proceedings of WP No.3349/2009 and made partial payment of Rs. 84,000,000/- in compliance with the Court order. After complying with the codal formalities, the Authority passed enforcement order dated 07-05-2010 in respect of the show cause notice dated 22-02-2010. This enforcement order was challenged before the Hon'ble Islamabad High Court through FAO No.103/2010, which has been disposed of vide order dated 10-04-2015 passed by the Hon'ble Islamabad High Court on the statement of the counsel for the licensee to the following effect:

*"Learned counsel for the appellant apprised that no live issue remains in the appeal as the outstanding payment have been made to the respondent authority.*

*Learned counsel for the respondent testifies effect. Order accordingly. Appeal stands disposed of."*

It may not be out of place to mention here that the licensee, apart from filing FAO No.103/2010, also filed WP No.9578/2010 before the Hon'ble Lahore High Court, Lahore impugning the enforcement order dated 07-05-2010.

2.12. During the pendency of FAO No.103/2010 and WP No.9578/2010, the licensee through its email dated 16-08-2010 admitted the liability of outstanding payment of APC for USF but requested for installments. Further stated that upon arrangement of funds, 100% outstanding dues will be paid. In response to this email, the Authority vide its letter dated 23-09-2010 approved payment of outstanding amount of APC for USF dues from July, 2009 to June, 2010 amounting to Rs.1,425,915,742/- in ten (10) equal monthly installments of Rs.117,591,574/- each with certain conditions including upfront payment of Rs.250 million. The licensee vide its email dated 24-09-2010 accepted the schedule of payment with slight changes. Accordingly, the licensee started to act upon the settlement/schedule of payment on 28-09-2010 by submitting ten (10) post-dated cheques and made payment of Rs. 250 million as upfront along with an undertaking in pursuance of the Authority's payment plan approved on 23-09-2009. The licensee paid the first installment of Rs.117,591,574/- on 16-03-2011 and second installment on 30-06-2011. Thereafter, the licensee made partial payment of installment of Rs. 76,308,716/- on 08-12-2011, Rs. 152,617,432/- on 15-03-2012. Thereafter, the licensee defaulted the payment plan approved by the Authority vide its letter dated 28-09-2010. Out of Rs.1,425,915,742/- an amount of Rs.714,109,296 was paid through installments.

2.13. It is very pertinent to note here that terms of settlement/schedule of payment approved by the Authority on 23-09-2010 and acted upon by the licensee by depositing upfront payment and ten (10) post-dated cheques on 28-09-2010 has also received judicial sanction/ acknowledgment. This settlement became the reason of disposal of WP No.9578/2010, however, despite clear undertaking not only before the Authority but also before the Hon'ble High Court, the licensee has failed to honor its own commitment by defaulting the payment plan after making few payments. The said WP No.9578/2010 was disposed of vide order dated 28-10-2010 in the following manners:

*“Learned counsel for respondent/PTA submits that they have settled their terms in letter dated 27.09.2010 by the PTA. Learned counsel for the petitioner submits that the petitioner has accepted the terms of settlement given in his letter dated 28.09.2010 as per undertaking and schedule of payment attached thereto. Precise terms of settlement are not material for these proceedings. Disposed of in the foregoing terms.”*

2.14. The licensee, as a matter of strategy to avoid payments of APC for USF, resorted to all possible litigation. In this regard, the licensee also filed WP No.728/2011 before the Hon'ble Islamabad High Court on 10-03-2011 against different demands or claims from the licensee for payment of APC, APCL and APC for USF praying that all such demand notes be declared patently illegal and void; rules under which such recoveries are made be declared unconstitutional and the Authority be restrained from collecting the same. The said writ petition was held to be “*not maintainable and is accordingly dismissed, with cost*” vide judgement dated 24-06-2011 by the Hon'ble Islamabad High Court. Thereafter, the license was suspended by the Authority vide its letter dated 30-06-2011. Being aggrieved, the licensee also filed WP No. 15226/2011 before the Hon'ble Lahore High Court, Lahore on 02-07-2011 against order dated 30-06-2011 regarding suspension of the license. Initially, an interim relief was granted, however, finally the said writ petition was disposed of on 20-10-2011 on the ground that “*controversy between the parties have been settled. Accordingly, learned counsel for the petitioner does not press this petition. Dismissed as not pressed.*”

2.15. The licensee further defaulted in payment of APC for USF despite issuance of demand note/letter and reminder thereafter, as a consequence thereof, the Authority issued another show cause notice dated 26-05-2010 for non-payment of APC for USF of Rs.293,728,414/- including late payment charges for the months of November and December, 2009. Ultimately, the Authority passed an enforcement order dated 14-04-2011 in respect of show cause notice dated 26-05-2010. The licensee filed Civil Suit No.914/2011 before the Hon'ble Sindh High Court, Karachi in July 2011, *inter alia*, against enforcement order dated 14-04-2011 and suspension order dated 30-06-2011, wherein an interim injunction against the Authority was issued. The said Civil Suit No.914/2011 has now been returned under order VII Rule 10 CPC vide order dated 27-11-2024 by the Hon'ble Sindh High Court, Karachi.

2.16. On account of persistent default by the licensee in payment of APC for USF, the Authority demanded APC for USF for the month of September, 2010 vide letter dated 22-12-2010, followed by reminder dated 05-01-2011. Upon non-payment within prescribed time, the Authority issued show cause notice dated 01-02-2011 for non-payment of APC for USF for the month of September, 2010. Further, the Authority demanded APC for USF for the month of December, 2010 vide letter dated 22-03-2011, followed by reminder dated 07-04-2011. Likewise, the Authority demanded APC for USF for the month of January, 2011 vide letter dated 25-04-2011, followed by reminder dated 06-05-2011. Upon failure of the licensee to make due payment, the Authority issued show cause notice dated 29-06-2011 for non-payment of APC for USF for the months of December, 2010 and January, 2011.

2.17. On one hand, the licensee was resorting to all possible litigation to avoid making payment of APC for USF but on the other hand, the licensee admitted its liability regarding APC for USF and accordingly vide its letter dated 08-07-2011 requested the Authority that it may be allowed to pay Rs.1,417,422,960/- on account of APC for USF in sixty (60) equal monthly installments. The Authority vide its letter dated 30-8-2011 facilitated the licensee by allowing payment of outstanding APC for USF of Rs.1,373,556,896 (principal) in thirty-six (36) equal monthly installments subject to certain conditions. Accordingly, the licensee made payment of 1<sup>st</sup> installment of Rs.38,154,358/- as APC for USF on 29-09-2011. Total six (6) installments were paid as per approved schedule. Thereafter, the licensee defaulted the remaining thirty (30) installments. By the time, International Clearing House (“**ICH**”) policy was introduced in year 2012, wherein 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.335,002,425/- in the escrow account as per ICH policy, however, it has been increased to Rs. 649,748,997/- due to profit as on 31-12-2024 in the escrow account during the period ICH regime.

2.18. From the abovementioned facts regarding concluded litigation in the past, it is established that the licensee has never been successful to get ultimate finding 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 licensee related to APC for USF.

2.19. 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 litigation by the licensee before different fora, the licensee did not expressly challenge these notifications. The fact of abandonment of any plea regarding these notifications is clear from the instance that the 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. 914/2011 in Sindh High Court on 02-07-2011, it was bound 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 to the Authority’s latest notification/ determination dated 17-05-2011. Throughout the pendency of the said suit, it has never pleaded that said notification/determination was illegal and created no liability and therefore, APC for USF could not be demanded in terms thereof. It is thus clear that in absence of any such challenge this notification/determination hold the field and was to be acted upon and implemented for all intent and purposes. Similar is the situation with respect to subsequent review/ determination of PTA dated 17-08-2011.

2.20. 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.

2.21. The share of LDI licensees is clearly determined and they cannot retain any amount beyond their notified share. Keeping a sum over and above their notified share, amounts to misappropriation and siphoning of the public money. 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.

2.22. 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 notices. The basis of calculations was the data supplied by the licensee itself and calculations to determine the demand for each month were made through formula prescribed by the AP Rules read with AP Regulations. It would be apt to reproduce below the relevant portion of rule 8(4) of the AP Rules, which deals with calculation of APC for USF:

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

2.23. 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.

2.24. 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.

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

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

Moreover, in the minutes of the meeting dated 2004 at the time of introduction of APC, the industry was informed that the purpose of introduction of this concept was to “provide LDI operators some flexibility to enter into agreements with foreign carriers” and “the Authority may allow LDI operators to offer discounts to foreign operators from their own share (i.e. upto US 6 cents). However, they will be required to pass the approved APC to LL operators or USF, as the case may be.” Similarly, the same was clearly understood by the 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 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.

2.26. 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.

2.27. 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.

2.28. 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.

2.29. 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.

2.30. Regarding late payment charges, the same are being claimed in terms of AP Regulations, which has been declared *intra vires* by the august Supreme Court of Pakistan in its judgement reported as 2016 SCMR 475. The distinction sought to be created by the licensee between the regulation 10(4) and 10(6) of AP Regulations is incorrect exposition of law and completely misconceived. Hence, there is no substance in the argument of the licensee on this aspect of the case. Further, the stance of the Authority for late payment addition fee has been upheld by the Hon'ble Islamabad High Court in a case reported as PLD 2017 Islamabad 177 titled "*DV Com Data Vs PTA, etc.*". Additionally, the licensee itself challenged the demand and vires of late payment charges, additional fee, etc. as provided in various regulations issued by the Authority including the AP Regulations through WP No. 2553/2011 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 as withdrawn by the Hon'ble Islamabad High Court vide its order dated 13-02-2020. Meaning thereby, the licensee has accepted the applicability of the late payment charges, additional fee, etc. as provided in various regulations issued by the Authority including the AP Regulations.

**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.5,693,679,045/- (Principal: Rs.1,766,190,453/- + LPAF: Rs.3,927,488,592/- 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.

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

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**Muhammad Naveed**  
Member (Finance)

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

Signed on 18<sup>th</sup> July, 2025 and comprises 21 pages only.