



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 Wateen Telecom (Pvt.) Limited**

No. 04-01/11(AP/CA)PTA/199/2/114/434

Show Cause Notices: 1st February 2011 and
17th November 2016
Venue of Hearing: PTA HQs, Islamabad
Date of Hearing: 14th 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 01-02-2011 (“1st SCN”) and Show Cause Notice dated 17-11-2016 (“2nd SCN”) both issued to Wateen Telecom (Pvt.) Limited for non-payment of Access Promotion Contribution (“APC”) for Universal Service Fund (“USF”) (i.e. “APC for USF”) along with late payment charges, in pursuance to order dated 27-11-2024 passed in Suit No. 915/2011 and Suit No. 2604/2016 by the Hon’ble Sindh High Court, Karachi. As similar questions of law and facts relating to APC for USF are involved in both SCNs, therefore, both 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-10 (17)-2004 dated 26-07-2004 (the “license”) to Wateen Telecom (Pvt.) Limited (the “licensee”)

to establish, maintain and operate telecommunication system and to provide the licensed services, in particular, termination of international incoming calls in Pakistan.

1.2. In accordance with the terms and conditions of the license, the licensee was required to comply with the provisions of the prevailing regulatory laws, *inter alia*, comprising of the Pakistan Telecommunication (Re-Organization) Act, 1996 (the “**Act**”), the Pakistan Telecommunication Rules, 2000 (the “**Rules**”), the Access Promotion Rules, 2004 (the “**AP Rules**”), and the Access Promotion Regulations, 2005 (the “**AP Regulations**”). By virtue of section 21(4)(a) of the Act, 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:

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, sometime, 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. The licensee was required by the Authority to make payment of APC for USF contribution determined for the months of August, 2010 and September, 2010 vide its letters dated 22-11-2010 and 20-12-2010, respectively. Due to persistent default on the part of the licensee in making payment of APC for USF despite the aforementioned demand notes/letters, the Authority was constrained to issue show cause notice dated 01-02-2011 under section 23 of the Act, whereby the licensee was required to pay APC for USF in the sum of Rs. 38,373,293/- (for the period of August and September, 2010) within seven (07) days of the issuance of 1st 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 filed reply to 1st SCN received on 21-03-2011 mentioning therein that delay in payment is due to financial crunch and further, the licensee only demanded some time for payment on the ground of pendency of WP No.439/2011 before the Hon’ble Islamabad High Court. Subsequently, the licensee filed Civil Suit No.915/2011 against 1st SCN before the Hon’ble Sindh High Court, Karachi. On account of restraining order dated 02-07-2011 passed by the Hon’ble Sindh High Court, this matter could not proceed further.

2nd SCN:

1.5. With the advent of policy for International Clearing House (“**ICH**”) dated 13-08-2012, it was agreed by the licensee that 15% of its monthly revenue shall be deposited in the escrow account to settle/adjust outstanding dues relating to APC for USF. Thus, during the existence of

ICH policy, the Authority neither demanded outstanding dues relating to APC for USF nor issued any show cause notice followed by enforcement order. However, after the abolishment of ICH in 2014-15, the Authority decided to recover the outstanding dues relating to APC for USF from the defaulter licensees. In this regard, the Authority vide its letter No.04-01/11/(AP/CA) PTA/199/2 dated 19-08-2016 required the licensee to make payment of APC for USF for the period from October, 2009 to April, 2010 and from August, 2010 to September, 2012 amounting to Rs.3,729,781,529/- in the designated account administered by the Ministry of Information Technology & Telecommunication (“MoIT&T”) within ten (10) working days. However, the licensee did not pay heed to comply with the same.

1.6. Due to failure on the part of the licensee in making payment of APC for USF, 2nd SCN dated 17-11-2016 was issued whereby the licensee was required to pay APC for USF in the sum of Rs. 3,681,995,816/- as of 31-07-2016 within seven (07) days of the issuance of 2nd 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.

1.7. This time the licensee did not file reply to 2nd SCN and preferred to file Civil Suit No. 2604/2016 against 2nd SCN before the Hon’ble Sindh High Court, Karachi. Thereafter, the licensee responded to 2nd SCN on 14-12-2016 by simply stating that 2nd SCN has been challenged in Civil Suit No. 2604/2016 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, Karachi, the Authority could not undertake any further proceeding in the 2nd SCN.

1.8. Finally, the Hon’ble Sindh High Court, Karachi vide its consolidated order dated 27-11-2024 passed in Civil Suit No. 915/2011 relating to 1st SCN and Civil Suit No. 2604/2016 relating to 2nd SCN, 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.”

1.9. The Hon’ble Sindh High Court, Karachi has remanded back two Show Cause Notices (1st, 2nd) to the Authority for adjudication. It is pertinent to mention here that the amount and period dealt with by the 1st SCN had ultimately been merged and made part of the 2nd SCN. Hence, there is no need to proceed with the 1st SCN separately. Further, 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 amount to Rs. 49,412,483/- for the months of December, 2010 and January, 2011, which was assailed by the licensee in MA No.55/2012 before the Hon’ble Sindh High Court, Karachi. Since the matter is sub-judice, hence the same is not part of this 2nd SCN dated 17-11-2016.

1.10. After the aforesaid remand order, the Authority fixed the hearing of both SCNs on 14-04-2025 in order to proceed further for adjudication thereon. Mr. Adil Rasheed (CEO), Mr. Ghulam Mustafa (CFO), Mr. Amer Saleem- Director, Mr. Farhan Haider – CTO, Mr. Hassan Qureshi- Director, Mr. Fazley Rabi- Advocate, Ms. Halima Advocate and Mian Sami-ud-Din Advocate Supreme Court of Pakistan 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 hearing on behalf of MoIT&T as the matter pertains to APC for USF.

1.11. Before the date of hearing, the licensee filed a consolidated detailed reply/response to both SCNs wherein it raised objections relating to 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 it is not liable to make payment of APC for USF. Main contentions of the licensee made in reply to SCNs are as under:

- i. The Authority has no jurisdiction to initiate proceedings under section 23 of the Telecom Act in respect of outstanding APC for USF Contributions:
 - (a) The Lahore High Court in the case reported as *Wateen Telecom (Private) Ltd v PTA*, PLD 2010 Lahore 260 (paragraphs 8), has held that “*the obligation of an LDI Licensee to pay the APC within the timeframe of 90 days is created by Rule 5(2) or Regulation 10(2) and is not on account of Article 4.2.1 of the LDI License which being in conflict...must be ignored*” and “*it cannot be said that nonpayment of APC within 90 days by the LDI Licensee is a violation of the provisions of the Act or the terms and conditions of the LDI License.*”
 - (b) Further, the Court held (paragraph 9) that “*any delay in the payment of the APC cannot be regarded as a breach of Rule 5(2) or Regulation 10(2) in*

respect of which any consequence other than visualized in Regulation 10(6) would follow.”

- (c) The Lahore High Court finally held in the aforesaid case (paragraph 11) that the APC Regulations were “*deficient as they fail to provide any mechanism for recovery of the delayed APC but these Regulations do not in any way bar the respondent-Authority to recover such dues by filing a civil suit before the competent court.*”
- (d) In view of the above judgment of the Lahore High Court, it follows that a failure to pay outstanding dues pertaining to APC for USF Contributions raised in the Show Cause Notices, does not amount to a contravention of the Act, rules or any terms and conditions of the license such that section 23 of the Act would be attracted.
- (e) Without prejudice to Wateen’s other arguments, failure to pay any principal amount simply entails the consequence in Regulation 10(6) of the AP Regulations, the recovery of which can only be done through a civil suit by the Authority and not through the coercive power under section 23 of the Act.
- (f) Accordingly, the Authority does not have the jurisdiction to proceed against Wateen under section 23 of the Act and instead is required to file a civil suit if it is of the view that outstanding dues of APC for USF Contributions must be recovered.
- (g) In any event, without prejudice to the foregoing submission, the Show Cause Notices are vague and defective and violate section 23 of the Telecom Act and general due process requirements:
 - i. Sub-section (2) of section 23 requires a show cause notice to “*specify the nature of the contravention and the steps to be taken by the licensee to remedy the contravention*”.
 - ii. It is a fundamental principle of due process for Wateen to be fully aware of the underlying basis of the alleged contravention and the remedy demanded by the Authority. Without this, Wateen is unable to effectively present its case.

- iii. The Authority has failed to set out in the Show Cause Notices the underlying rates, calculation or formula adopted by it in determining that APC for USF Contribution in the amount of **Rs. 38,373,293** and **Rs. 3,681,995,816** is liable to be paid.

ii. **Incorrect Application of APCL Contribution rate:**

- a. The Show Cause Notices are premised on incorrect rates notified by the Authority, which do not apply to APC for USF Contributions for the relevant period.
- b. The correct applicable rate of APC for USF Contribution on a per minute basis was zero as the Authority had not notified such rate for the period 1 May 2008 to 31 March 2011. The Authority has wrongly applied the per minute rate notified for APCL Contribution in calculating Wateen's APC for USF Contributions.
- c. It is clear from the notifications of the Authority dated 31 March 2008, 6 January 2009, and 19 June 2009 (the "**APCL Notifications**") that the Authority only notified the per minute rate of APCL Contribution and not "APC" to include APC for USF Contribution as well. It was not until the Authority's notification dated 17 May 2011 that the Authority notified "APC" specifically to take effect from 1 April 2011.
- d. There is a clear distinction in the law between APCL Contribution and APC for USF Contribution. This is acknowledged by the Authority in its own practice and even otherwise is clear in the AP Rules and Regulations:
 - i. Rule 8 of the AP Rules governs the determination of both APCL Contribution and APC for USF Contribution. This Rule establishes two separate determination procedures for both APCL Contribution and APC for USF Contribution. Rule 8 is reproduced below:

"8. APCL Contribution and APC for USF Contribution. - (1) Within fifteen days of the issue of these rules, the Authority shall determine the APCL Contribution and the APC for USF Contribution, country by country.

(2) In making a determination of the APCL Contribution, measured on a per minute basis, unless the Authority determines that some other basis of

calculation is preferable, the Authority shall determine the APCL Contribution applicable to Incoming International Telephony Service from a country. The APCL Contribution of a country shall consist of the Approved Settlement Rate for that country, less LDI share, to be determined by the Authority which maybe an amount up to US\$0.06.

(3) APCL Contribution shall include the local termination charge of LL Licensee. Any other payment due to a LL Licensee, as a result of interconnection agreement, shall have to be paid by a LDI Licensee from his own share.

(4) In making determination of the APC for USF Contribution, measured on a per minute basis, unless the Authority determines that some other basis of calculation is preferable, the Authority shall determine the APC for USF Contribution applicable to Incoming International Telephony Service from a country. The APC for USF Contribution of a country 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.”

ii. It is clear that there are two separate contributions requiring separate determinations through separate formulas for calculation purposes. This is also evident from Rule 9 which provides:

“9. Review of APCL Contribution and APC for USF Contribution -(1) No less frequently than once every six months, the Authority shall review the levels of APCL Contribution and APC for USF Contribution:

...

(3) The Authority shall notify any change in the APCL Contribution or APC for USF Contribution at least thirty days before such change becomes effective.”

iii. Sub-rule (3) of Rule 9 leaves no room for a different view other than that the Authority has a positive obligation to notify changes to **both** APCL Contribution and APC for USF Contribution. It is also evident from the use of the word “**or**” that the Authority may opt to only notify a change in either APCL Contribution or APC for USF Contribution.

iv. Similarly, Regulation 5, 6, 7 and 10 of the AP Regulations clearly distinguish between APCL Contribution and APC for USF Contribution. Regulation 7 sets out two entirely different formulae for both APCL and APC for USF Contribution:

“7. APC Calculation. - (1) *The APCL Contribution for the Incoming International Telephony Service carried by an LDI Licensee and terminated on the telecommunication system of an LL Licensee during a month shall be calculated as per following formula, or as per any other criteria announced by the Authority or Federal Government from time to time:*

$$\text{APCL Contribution} = (\text{ASR} - \text{LDIS}) \times N$$

Where:

ASR = Approved Settlement Rate

LDIS = LDI Share

N = No. of call-minutes, for the month, of Incoming International Telephony Service

Explanation:

For the purpose of sub-regulation (1), APCL Contribution shall include the local termination charge of an LL Licensee. Any other payments due to the LL Licensee, as a result of interconnection agreement, shall be paid by the LDI Licensee separately.

(2) *The APC for USF Contribution for the Incoming International Telephony Service carried by an LDI Licensee and terminated on the telecommunication system of a Mobile Licensee during a month shall be calculated as per following formula, or as per any other criteria announced by the Authority or Federal Government from time to time:*

$$\text{APC for USF Contribution} = (\text{ASR} - \text{LDIS} - \text{MTR}) \times N$$

Where:

ASR = Approved Settlement Rate

LDIS = LDI Share

MTR = Mobile Termination Rate

N = No. of call-minutes, for the month, of Incoming International Telephony Service”

- e. In view of the above rules and regulations, the Authority's APCL Notifications cannot be read to mean that they also notify the applicable APC for USF Contribution rate. Besides being inconsistent with the scheme of the AP Rules and Regulations highlighted above, it would be a clear violation of sub-rule (3) of Rule 9 of the AP Rules, which places a positive statutory obligation on the Authority to specifically notify APC for USF Contribution separately.
- f. Further, the Authority's statutory obligation to notify APC for USF separately remains notwithstanding its notification of a change in the ASR. The Authority cannot claim that a new APC for USF should be assumed by LDI Operators simply due to a change in the ASR. In the absence of a specific rate for APC for USF being notified, there can be no obligation placed on Wateen or other LDI licensees to pay APC for USF Contribution during the relevant periods.
- g. Additionally, and without prejudice to the foregoing submissions, the Authority is obligated to separately notify APCL and APC for USF rates and a collective notification of "APC" is a violation of Rule 9(3) of the AP Rules as well. It is clear from the Rules and Regulations that APCL and APC for USF consist of different variables. Accordingly, the law intended for these two types of contributions to have different values requiring the Authority to separately notify them.
- h. The fact that the APCL Notifications do not apply to Wateen's APC for USF Contribution liability is evident from the Special Audit Report of PTA dated 5 July 2011 (the "**Special Audit Report**"), which concluded that rates issued for APCL being applied to APC for USF was "in violation of the Rules".
- i. In view of the above, the Authority's demands for Wateen to pay APC for USF Contributions based on rates of APCL Contribution per minute, is a violation of the AP Rules and Regulations, arbitrary, and irrational. Accordingly, for the period 1 May 2008 to 31 March 2011 there was no notified APC for USF Contribution rate on a per minute basis and therefore Wateen had no obligation to pay any APC for USF Contribution for the said period.

a. **Arbitrary determinations of ASR and APC contributions**

- i. Without prejudice to the above submissions, the Authority's determination of both types of APC contribution rates in general including

its determination of Approved Settlement Rates (through its approval of Approved Accounting Rates) is unlawful, irrational, arbitrary and unfair.

ii. Firstly, the Authority has an obligation to ensure that all components which are the basis of APC Contributions are maintained in accordance with the law, and the Authority has failed in that obligation:

- a. The Accounting Rates must be negotiated and approved in accordance with the AP Rules and Regulations as they provide the basis of APC for USF Contributions.
- b. Rule 6 of the AP Rules places an obligation on the Authority to maintain a list of Approved Accounting Rate AARs for different countries and update such list from time to time to be forwarded to each LDI Licensee.

The purpose of this AAR is to set the ASR, which is one half of the AAR as per Rule 2(1)(h). The Authority has failed to ensure that accounting rates are properly negotiated.

- c. In fact, no negotiation has taken place since 2005 thus resulting in persistent violation of Rule 11 of the AP Rules which requires PTCL to negotiate accounting rates in consultation with other LDI licensees. This is also contrary to Regulation 4 of the AP Regulations, which provides that notwithstanding Rule 11 of the AP Rules, LDI licensees are required to constitute a consortium approved by the Authority for the purpose of negotiating bilateral accounting rates with foreign carriers.
- d. These negotiations are the basis for the AARs maintained by the Authority under Rule 6 of the AP Rules, and the ASR which determines every LDI licensees' APC for USF obligations.
- e. Contrary to the AP Rules, on 24 January 2006, the Authority illegally decided through a notification (F.No.04-01/2004(AP)/PTA) to use a single rate for all countries for calculating APC Contributions. The Authority last approved a country wise accounting rate through notification dated 20 May 2005 (F. No. 04-01/2004 (Interconnect)/PTA).
- f. Not only does the Authority's decision to use a single rate for all countries violate the Rules and Regulations regarding negotiation of

accounting rates, but it also violates Rule 8(1), which places an obligation on the Authority to determine APCL Contribution and APC for USF Contribution “*country by country*”.

iii. Secondly, it is unclear on what basis the Authority has been determining ASR since 2006 when it decided to abandon its duty to ensure negotiations of accounting rates:

- (a) None of its determinations are reasoned in respect of the determination of AAR or ASR.
- (b) This arbitrary setting of the AAR or ASR also results in the arbitrary determination of APC for USF Contributions.
- (c) This is clear from Rule 8(4) of the AP Rules and Regulation 7(2) of the AP Regulations which provide for the formula for calculating APC for USF Contribution on a per minute basis.

iv. Thirdly, the Authority's failures in this regard have defeated the purpose of the review process in Rule 9 of the AP Rules and Regulation 5 of the AP Regulations:

- (a) Rule 9(2) sets out the factors to be taken into account by the Authority in its review of both types of the APC Contributions, which includes recent changes to the AAR. By omitting the process of negotiations of AAR and maintaining a list for each country, the Authority has rendered changes in AAR entirely redundant.
- (b) Regulation 5 also provides for review of APCL Contribution and APC for USF Contribution by the Authority and the relevant factors for such review. The factors here for the purpose of review do not include changes to AAR and to this extent the regulation is inconsistent with the aforesaid rule.

v. In view of the above, the Authority's determinations in respect of ASR since 2006 onwards and therefore its determinations of APC for USF Contribution are unlawful and arbitrary. Accordingly, Wateen cannot be held liable for APC for USF Contributions which are built upon an unlawful foundation.

b. PTA's demands do not take into account the negotiated rate within the permissible range

i. Without prejudice to Wateen's other submissions, the Lahore High Court has held in its judgment dated 23 November 2015 in the *M/s ADG LDI (Pvt) Ltd* case (FAO No.340/2012) that the Authority's demands for APC for USF must be calculated based on the rate negotiated/price by the LDI operator within the permissible range.

ii. The amounts demanded in the Show Cause Notices are not calculated after taking Wateen's negotiated rate/price within the permissible range as opposed to the ASR notified by the Authority.

c. The APCL Notifications are illegal for being without the Authority's approval

i. The APCL Notifications are illegal for being without the Authority's approval. The APCL Notifications (and indeed other notifications) were issued without authority by certain officers of the Authority and not the Authority itself as required by the Telecom Act:

a. Pursuant to section 3(9) of the Telecom Act, any such decision for notifying APC contributions by the Authority must be taken with the concurrence of the majority of its members.

b. The Special Audit Report highlights that there is no record of the Authority approving the APCL Notifications (and others). Accordingly, they are not legally valid and therefore inapplicable.

d. Wateen cannot be held liable due to the fault of the Authority

i. Without prejudice to the previous submissions, Wateen's non-payment of APC for USF Contribution (if any) is a direct cause of the Authority's failure to expressly notify the APC for USF contribution rates separately in accordance with law, in particular sub-rule (3) of Rule 9 of the AP Rules.

ii. Pursuant to clause 8.2(c) of Appendix B (general conditions) of the PT Rules, Wateen "*shall have no liability for any failure or delay in*

complying with any provision of this License if, and to the extent and for so long as, that compliance is prevented or substantially hindered by... any other act of governmental or municipal authorities, or other national authorities, or international organisations, or any other cause whatsoever which is substantially beyond the control of the Licensee.”

e. The Authority cannot impose fines beyond the permissible limit

i. Further, without prejudice to the previous submissions, Show Cause Notice dated 17 November 2016 illegally imposes a fine amounting to **Rs. 1,717,635,240**. The quantum of this fine is beyond the permissible limit stipulated in section 23(c) of the Telecom Act, which sets a maximum limit of Rs. 350,000,000 for any fine.

ii. In *Pakistan Telecommunication Authority v. Pakistan Telecommunication Company Ltd.*, 2016 SCMR 69 (paragraph 24), the Supreme Court of Pakistan held that section 23 of the Act stipulates the “maximum limit” of a fine which the Authority can impose for a contravention. Thus, any fine issued by the Authority against Wateen cannot exceed the maximum limit of Rs. 350,000,000.

f. Wateen cannot be held liable for the period of the stay

i. Without prejudice to the previous submissions, Wateen cannot be held liable for payment of any fines for the period that the issue of its liability for APC for USF Contributions was pending in court, in particular during the time that the Sindh High Court had granted interim relief to it in Suit No. 915 of 2011 and Suit No. 2604 of 2016. Wateen denies the basis for the Show Cause Notices issued by the Authority, and the demanded sums stipulated therein, on the grounds set out above. Wateen reserves the right to submit further grounds at the time of hearing.

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 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.

2.4. It may not be out of place to mention here that all issues of APC *viz-a-viz* 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 judgment reported as 2016 SCMR 475.

2.5. Turning to the facts of the instant case, it is pertinent to clarify here that there is no dispute with regard to figures relating to termination of international incoming telephony minutes, on the basis of which APC for USF has been calculated, as the data of the international incoming traffic/calls had been provided by the licensee itself. In addition, it is also an admitted position that

the licensee is under obligation to make contribution on account of APC for USF. As a matter of record, the licensee has also deposited APC for USF payment in accordance with AP Rules, AP Regulations and notifications issued by the Authority from time to time till September 2009, partial payment for the month of October 2009 and payment for the months of May 2010 to July 2010 without any objection. While acknowledging this obligation, the licensee has even 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. There is no ambiguity about the basis and the calculations of the payment demanded from the licensee. The 1st SCN under adjudication was issued to the licensee with respect to the following payments and in the following terms;

“AND WHEREAS it has been taken notice of by the Authority that the licensee has failed to make the payments for the months of August, 2010 and September, 2010 amounting to Rs. 38,373,293/ - (Rs 18, 508,789/ - + Rs. 19,864,504/-) on account of APC for USF Contribution calculated on the basis of traffic data submitted by the licensee for the aforementioned months only, licensee was required and instructed vide letters dated 22nd November 2010, 1st December 2010, 20th December 2010, 5th January, 2011 to make the payment on account of APC for USF.....”

2.7. The 1st SCN thus clearly mentioned that the licensee had failed to make payment for the months of August, 2010 (Rs. 18,508,789/-) and September, 2010 (Rs.19,864,504 /-). The 1st SCN also clearly mentioned that the licensee was instructed and required to make payment for the said months through letter dated 22-11-2010 and letter dated 20-12-2010 after determining the payment of APC for USF for the said months. All the underlying basis/factors required for calculation of the sums determined as payable was clearly mentioned in the said demand letters/reminders by mentioning rates and number of minutes under the heads, “TERMINATED TRAFFIC ON MOBILE FOR THE MONTH”, APC, MTR, EXCHANGE RATE and, thereafter, exact amount of APC for USF determined on the basis of such data, which the licensee was required to pay. The said demands stated as under (at page Nos. 16 & 17):



PAKISTAN TELECOMMUNICATION AUTHORITY

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

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

November 22, 2010

SUBJECT: DEMAND NOTE OF APC FOR USF FOR THE MONTH OF AUGUST 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 **August 2010** is November 30, 2010. Based on the reported traffic by **Wateen Telecom (Pvt.) Ltd.** APC for USF obligation for the month of August 2010 is calculated as under:

Company/Month	Terminated Traffic on Mobile	APC (USD)	MTR (PKR)	Avg. Exchange Rate (PKR/USD)	APC for USF (PKR)
Wateen (Aug 2010)	4,858,747	0.055	0.90	85.63	18,508,789

3. You are therefore requested to make payment of **Rs. 18,508,789** on account of APC for USF latest by **November 30, 2010**.

M. Saleem
23/11/10

Dr. Muhammad Saleem
Director General (Commercial Affairs)

To:
Brig. (R) Mazhar Qayyum Butt
General Manager (Govt. & Reg. Affairs)
Wateen Telecom (Pvt.) Ltd.

- Cc:**
- Senior Project Manager (USF), MoIT
 - DG (Finance), PTA {For booking of **Rs. 18,508,789** in Finance Ledger}
 - SO to Chairman, PTA
 - PA to Member (Finance), PTA
 - PA to Member (Technical), PTA



PAKISTAN TELECOMMUNICATION AUTHORITY

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

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

December 20, 2010

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

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

2. As per AP Rules, payment of APC for USF is payable **within ninety (90) days** after the end of the calendar month for which the payment obligation arises. In this regard last date for payment of APC for USF for the month of **September, 2010** is December 31, 2010. Based on the reported traffic by **Wateen Telecom (Pvt.) Ltd.** APC for USF obligation for the month of September 2010 is calculated as under:

Company/Month	Terminated Traffic on Mobile	APC (USD)	MTR (PKR)	Avg. Exchange Rate (PKR/USD)	APC for USF (PKR)
Wateen (Sep 2010)	5,316,340	0.055	0.90	84.30	19,864,504

3. You are therefore requested to make payment of **Rs. 19,864,504/-** on account of APC for USF latest by **December 31, 2010.**

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

To:
Brig. (R) Mazhar Qayyum Butt
General Manager (Govt. & Reg. Affairs)
Wateen Telecom (Pvt.) Ltd.

- Cc:
- Senior Project Manager (USF), MoT
 - DG (Finance), PTA {For booking of **Rs. 19,864,504/-** in Finance Ledger}
 - SO to Chairman, PTA
 - PA to Member (Finance), PTA
 - PA to Member (Technical), PTA

2.8. The said letters being part and parcel of 1st SCN notice 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 1st 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 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”.

2.9. The determination of the payment for the months of August, 2010 and September, 2010 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) and the total payment required of APC for USF for the respective months is also correctly determined therein. All legal objections of the licensee raised in reply to SCN vis-à-vis APC for USF are misconceived in view of the judgment passed by the august Supreme Court of Pakistan. The licensee has failed to understand that APC for USF is in the nature of the contribution and not a fee or tax and not an amount, which is being extracted from their revenue/income/LDI share as notified. 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.

2.10. It is a matter of record that for the first time, the licensee filed a Writ Petition No.2997/2009 before the Hon'ble Lahore High Court, Rawalpindi Bench, Rawalpindi challenging PTA letters dated 01-10-2009, whereby the Authority had demanded payment of APC for USF for the months of June 2009 latest by 15-10-2009, failing which it was conveyed that international incoming traffic terminated by the licensee would be suspended without further notice. Before filing the said writ petition, the licensee vide its letter dated 08-04-2009 had in fact requested for making fifteen (15) equal monthly installments for the outstanding dues of APC for USF as determined for the months of September 2008 till December 2008 i.e. Rs. 741,795,302/- and showed its willingness to pay APC for USF for July & August 2008 amounting to Rs. 161,707,268. Subsequently, the amount for the months of July & August 2008 was paid by the licensee. The request of the licensee

with regards to fifteen (15) equal monthly installments was approved by the Authority, but later on due to default in making due payments, the letter dated 23-10-2009 was issued, withdrawing the facility of installments. The above-referred demands were based upon the same notifications dated 31-03-2008, 06-01-2009 and 19-06-2009. However, the licensee opted not to challenge or question the validity of determination of APC or the said notifications while filing W.P. No.2997/09. The only prayer made to the Court was that the Authority could not suspend the international traffic and could only impose a fine on non-payment or delayed payments. In this regard, reference is made to the prayer clause of W.P. No.2997/09 which is reproduced as under:

“It is, therefore, respectfully prayed that this Honorable court may be pleased to make the following order: -

- i. Declare that, Respondent No. 2's impugned letters dated October 1, 2009 and October 7, 2009 are mala fides, ultra vires, unlawful and without legal affect and are set aside;*
- ii. Declare that, Respondent No. 1's decision mentioned in Respondent No. 2's impugned Letter dated October 7, 2009 is ultra vires, unlawful and without legal effect and is set aside;*
- iii. Direct Respondent No.1 and 2 that any licensee failing to make payment under and in accordance with the Access Promotion Regulation, 2005 shall only be to fine in accordance with the provision of Reg.10(6) of Access Promotion Regulations;*
- iv. In the meanwhile, and until final decision upon this Writ Petition this Honorable Court may be grant interim relief to the Petitioner whereby Respondent No.1 and 2 are restrained from taking any action against the Petitioner for any failure to make payment under and in accordance with the Access Promotion Regulation except in accordance with the provision of Reg. 10(6) of Access Promotion Regulation;*
- v. Cost may also be awarded; and*
- vi. Any other relief which this Honorable Court deem appropriate.”*

2.11. From the above, it is clear that when the APC for USF was determined and demanded in terms of the said notifications and the licensee challenged the same before the Court, it chose to abandon all pleas with regard to the validity of the said notifications and the payment determined as APC for USF under the AP Rules and the AP Regulations. Thus, in fact and in law, the licensee acquiesced to and conceded the said notifications and had no qualms about the imposition of APC for USF itself.

2.12. That the fact of abandonment of any plea regarding these notifications is clear from the instance that thereafter the licensee & six (6) other 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.

2.13. That thereafter, the licensee again filed another W.P No.3280/2009 before the Hon'ble Lahore High Court, Rawalpindi Bench, Rawalpindi challenging PTA's letter dated 23-10-2009 whereby PTA had withdrawn the relaxation of fifteen (15) installments for payment of APC for USF. The licensee contended in ground (v) of this writ petition that Regulation 10(6) of AP Regulations was the only action available to the Authority against the non-payment of APC for USF. The licensee being the Petitioner prayed that the impugned letter be set aside and the Authority be directed to comply with the concession allowed to the Petitioner vide letter dated 15-04-2009. Even during the pendency of W.P No.3280/2009, the licensee through its letter dated 05-03-2010, made a settlement proposal for APC for USF payments to explore the possibility of out of court settlement. In the said letter, the liability to pay APC for USF was admitted and the licensee pleaded that it should be permitted to make payments for the months of June 2009 to May 2010 in twenty-four (24) equal monthly installments in view of global financial crises and credit crunch and recession affecting LDI industry in Pakistan. It was specifically pleaded that *"Wateen Telecom shall make payment of APC for USF in respect of the month of June 2010 and thereafter in accordance with the usual regime. PTA shall also undertake not to unlawfully and unreasonably withdraw or threaten to withdraw the aforementioned payment plan."*

2.14. Subsequently, through letter dated 03-05-2010, the licensee in its fresh proposal to settle the matter during pendency of W.P No.3280/2009, while admitting its liability to pay APC for USF and without questioning legality or validity of any notifications prescribing the same, stated as under;

"Wateen telecom is now initiating a request for kind consideration to facilitate us through a schedule of 18 equal monthly installments starting from August 1, 2010 (immediately after the last installment of the previous schedule) so that modality for the payment of newly accumulated APC for USF could be finalized. We undertake to make all future APC-USF payments as soon as these are due along with every installment."

2.15. The Hon'ble Lahore High Court vide its order dated 17-05-2010 disposed of the writ petition on the statement of the licensee being the Petitioner that *"...the petitioner company states that the monthly installments of Rs. 48,000,997/- have been regularly paid since 2009 and the petitioner company has so far paid the 13 of these installments and the remaining two shall be paid in June and July, 2010. Learned counsel for PTA confirms that the petitioner company has made the said APC payments in accordance with PTA's letter dated 15.4.2009..."*

2.16. From abovementioned facts regarding concluded litigation in the past, it is established that the licensee never raised any plea or prayer regarding the validity of the levy of APC for USF in

these first two rounds of litigation on the subject of APC for USF and in fact its entire case revolved around the plea that only certain kind of penalty and fine could be imposed but neither the installment plan could be withdrawn nor its international incoming traffic could be stopped. Thus, it abandoned / waived of its right to challenge the levy of APC for USF or challenge to the legality of demand itself and acquiesced and agreed to pay APC for USF as notified through notifications dated 31-03-2008, 06-01-2009 and 19-06-2009. In fact, the plea of all LDI licensees including the licensee were merely seeking reduction in APC rates.

2.17. Thereafter, due to persistent default in payment of APC for USF, the Authority issued Show Cause Notice dated 10-05-2010 to the licensee for payment of APC for USF for the months of June to December 2009 (principal amounting to Rs.711,322,779/- and late payment charges amounting to Rs. 53,488,487/-). On 09-06-2010, the licensee responded to the said Show Cause Notice stating therein that due to ending of premium, it was not able to pay APC for USF for the requisite period. Moreover, in para 8 of the said reply, the licensee admitted that in light of judgement dated 21-12-2009 passed by the Hon'ble Lahore High Court in W.P No.2997/2009, it was only liable to pay the fine in terms of regulation 10(6) of the AP Regulations. It was for the very first time when the licensee took the plea about the vires of AP Rules and AP Regulations. It is noteworthy that except the plea of vires of AP Rules and AP Regulations, the only contention of the licensee in response to SCN was that since the premium was steadily declining in line with the global trends, the Authority should review and make downward revision in the APC rates and review its continuation in its present form. Hence, no question regarding the imposition of APC for USF through notifications dated 31-03-2008, 06-01-2009 and 19-06-2009 and any notifications prior thereto was raised nor disputed by the licensee. Regarding the stance of the licensee about the vires of AP Rules and AP Regulations, it is stated that the Hon'ble Islamabad High Court vide its judgment dated 21-01-2009 reported as PLD 2009 Islamabad 41 has declared the AP Rules and AP Regulations *intra vires* the Act and upheld APC levy. This was also subsequently upheld by august Supreme Court in its judgment dated 22-12-2015 reported as 2016 SCMR 475. Consequently, the Authority through its Enforcement order dated 09-08-2010, accepted the request of the licensee to make payment in installments and passed the order in the following manner;

“Keeping in view the aforesaid facts, the written commitment/undertaking, positive attitude of the licensee and assurance that it will make the current payments regularly, payment of first installment of Rs. 172,000,000 and on receiving the payment plan of the payable amount on account of APC for USF, the Authority has accepted the revised plan of payments alongwith postdated cheques with some change to the extent of late payment charges as mentioned below and hereby dispose of the subject show cause notice in the following terms:

(a) The licensee is directed to submit the post dated cheques of the difference of the amounts, in addition to already provided cheques, on account of APC for USF charges as per the following schedule agreed to by the licensee and submit its aforesaid undertaking duly notarized on stamp within seven days of the issuance of this enforcement order:

<i>Amount in Million</i>	<i>To be Paid by</i>
Rs. 165.00	30, Sep 2010
Rs. 170. 00	31, Dec 2010
Rs. 180.00	31, March 2011
Rs. 135.39	30, June 2011

The licensee is further directed to pay the late payment charges levied/accrued on the payment of the aforesaid principal amounts in terms of regulation 10(6) of the AP Regulations, as and when becomes due. However, the licensee may approach PTA for getting back such already provided cheques which are not in accordance with the above mentioned schedule:

(b). In case of failure to submit the aforesaid post dated cheques alongwith duly notarized undertaking as directed in Para 8.1 (a) or non-encashment/dishonoring/bouncing of any of the aforesaid cheque(s), its license No.LDI-10(17)-2004 dated 26 July, 2014 **shall stand suspended** from the date of occurrence of any of the events as: (i) its failure to submit the aforesaid post dated cheques alongwith duly notarized undertaking, or (ii) non encashment/dishonoring/bouncing of each cheque alongwith non-payment of late payment charges thereon, without further notice, which shall be restored on receiving the said post dated cheques alongwith duly notarized undertaking or the defaulted amount, whichever the case may be.

(c) Without prejudice to the aforesaid the Authority, in case of dishonoring/bouncing of any of the cheques provided by the licensee in compliance of this enforcement order, also reserves the right to initiate proceedings under section 489(f) PPC and by filing suit for recovery under Order XXXVII of CPC or to recover the amount as arrears of land revenue under section 30 of the Act."

2.18. This enforcement order dated 09-08-2010 was not challenged by the licensee before any forum and attained finality. The demand of payment of APC for USF as determined through the notifications under discussion was paid without any objection and the licensee accepted the legal position of the Authority regarding validity of APC for USF dues and paid the same in terms of

the Enforcement order. Therefore, the matter became past and closed with respect to all APC dues till the Enforcement order dated 09-08-2010. This was acknowledged by the licensee in its letter dated 30-08-2010, titled “*Post dated Cheques as per determination*”, in the following manner;

“2. It is therefore requesting that cheques issued amounting of Rs. 152.63 million as surcharge may kindly be accepted as such and case may be closed accordingly.”

2.19. It is noteworthy that after the issuance of 1st SCN on 01-02-2011, the licensee filed Civil Suit bearing CS No.46/2011 (new No CS No.81/2011) before the Hon’ble Islamabad High Court, Islamabad on 10-02-2011. In this suit, the licensee being plaintiff sought declaration, permanent injunction, accounts and recovery by contending that APC was only to be made by LDI licensees if the rates are over and above the LDI licensees’ cost and margin; that the Authority failed to follow the formula as envisaged under rule 8(2)&(4) of AP Rules; that ASR cannot be determined without first determining the Approved Accounting Rates (“AAR”) and the ASR notified by the Authority was arbitrarily high and as the amount has been demanded illegally thus the plaintiff was entitled for recovery of the same. In para 30 of the plaint, the plaintiff contended that regulation 10(6) of AP Regulations was without lawful authority as it has not been provided in the Act. The plaintiff prayed (i) for recovery of Rs.5,147,351,911 from the defendants, (ii) PTA be restrained from levying and collecting APC from the plaintiff. The most important thing to note is that the licensee started a *mala fide* exercise of pick and choose and non-disclosure before Courts. In spite of the fact that 1st SCN had already been issued on 01-02-2011, the licensee peculiarly omitted to challenge this SCN in its suit being filed on 10-02-2011 before the Hon’ble Islamabad High Court. It is clear that it omitted to sue in respect of a cause of action accrued and available at the time of filing of suit on 10-02-2011 and thus any subsequent challenge in a subsequent suit was barred by principles of Order II Rule 2 CPC (waiver & abandonment).

2.20. It is to note that due to pecuniary jurisdiction, the suit was initially heard by the Hon’ble Islamabad High Court, later on, the case was transferred to Civil Court on account of pecuniary jurisdiction and finally decided by the learned Civil Judge in a detailed judgment dated 05-01-2021. The civil Judge was pleased to dismiss the suit after framing issues and adducing evidence of the respective parties. At para 11 of the judgment, the Court observed that the plaintiff has made comprehensive assertions but during his examination, not even deposed that defendant (PTA) has committed any violation of rule 5(2), 8(2), 9(a) of the AP Rules. Further observed that the Authority continued to follow the old trends and increased the ASR and kept LDI share stagnant. The plaintiff wishes the Court to believe that ASR and APC was enhanced and determined inconsistent with the policy but merely stating that the international incoming traffic was decreased is not sufficient by any means. It was held that there is absolutely no evidence to prove that plaintiff has suffered any grave loss due to constant LDI share. The contention that APC

and APCL rates have not been reviewed considering the factors set out in Regulation 5 have not been proved by documentary evidence.

2.21. That further *mala fide* of the licensee is clear from the fact that now it started to change its stance in spite of its all-previous admissions and as a matter of strategy started filing further cases by altogether reversing its previous positions. Side by side to the filing of Suits in the Hon'ble Islamabad High Court seeking declaration that APC amounts were being demanded against the provisions of the Act, it also filed W.P No.439/2011 before the Hon'ble Islamabad High Court on 14-02-2011 (just 4 days after filing of Civil Suit No.46/2011) challenging the APC regime on similar grounds as taken in Civil Suit No.46/2011. The licensee prayed that APC regime as a whole be declared *ultra vires*, further prayed that all demands (without specifying any period) or claims by the Authority for payment of APC for USF be declared illegal and void. The Hon'ble Islamabad High Court vide its order dated 09-10-2017 dismissed the petition as not maintainable. It is again noted that even in said order it was mentioned that 1st SCN dated 01-02-2011 was not even challenged in the said W.P No.439/2011.

2.22. From the above, it is clear that the licensee with *mala fide* intention got involved in forum shopping and while deliberately and consciously omitting to challenge the 1st SCN dated 01-02-2011 in CS No.46/2011 and W.P No.439/2011 before the Hon'ble Islamabad High Court filed on 10-02-2011 and 14-02-2011 respectively, and with *mala fide*, filed 2nd Civil Suit bearing No.915/2011 before the Hon'ble Sindh High Court, Karachi on 02-07-2011 challenging the 1st SCN dated 01-02-2011 in spite of abandoning and omitting to sue in respect of this cause in the earlier suit and Writ Petition at Islamabad High Court. Thus, the challenge to 1st SCN was clearly barred by law. All the pleas regarding validity of the APC for USF levy have in fact been waived and abandoned.

2.23. Another important aspect is that the licensee did not choose to challenge any notifications and recovery of APC for USF in 2008 when for the first time many other LDI licensees challenged the vires of the AP Rules and AP Regulations on the ground that they were inconsistent with the provisions of the Act. This silence was due to the reason that in fact by April 2008 when Show cause notices, proceedings against many other LDI licensees were concluded through enforcement orders and they started filing appeals and writ petitions before the Hon'ble Islamabad High Court, the licensee as a matter of fact cleared all its outstanding payments of APC for USF and also implemented and accepted the validity of APC for USF regime. All these challenges before the Hon'ble Islamabad High Court were dismissed through a consolidated judgement dated 21-01-2009 reported as PLD 2009 Islamabad 41, holding the AP Rules and AP Regulations as *intra vires* of the provisions of the Act. Therefore, conceding the legal position, the licensee did not challenge any demand from the Authority and continued making payments by accepting the APC for USF as validly demanded under the law.

2.24. Therefore, the judgment of Islamabad High Court reported as PLD 2009 Islamabad 41 was treated as a legally binding judgment in rem and although the licensee was not party to said challenge, however, it was bound by the law declared by the said judgment. The licensee even did not feel aggrieved of this judgment and therefore, did not file any appeal before august Supreme Court of Pakistan like other LDI licensees, although it was legally entitled to. This also points out towards acceptance of the declaration of Islamabad High Court by the licensee regarding AP Rules and AP Regulations as *intra vires* of the Act.

2.25. It is worth mentioning that in compliance of the Enforcement order dated 09-08-2010, the licensee had made all payments of APC for USF, it also never joined other LDI licensees in the second set of litigation before the Hon'ble Islamabad High Court where different LDI licensees challenged Enforcement orders against them on the ground that APC for USF was illegal. These writ petitions again challenged APC for USF as being illegal. This second round of litigation was again decided against the LDI licensees and all these challenges were dismissed by the Hon'ble Islamabad High Court vide its order dated 24-06-2011 with costs. Therefore, even till this time, the licensee had no objections about demand of APC for USF and since 2005 till 2011 chose to remain contended, satisfied and abandoned/waived all such pleas while approaching the Courts and only demanding that installments be made or only fine be imposed for any delay for non-payment of APC for USF. In fact, the letter of the licensee dated 14-12-2009 was a glaring instance of its acceptance and acquiescence wherein it boasted that its conduct has been exemplary in fulfilling obligations about APC dues and assured that all such dues will be paid.

2.26. That in spite of complete abandonment of all such pleas in previous round of litigations, some of which were even pending before the Hon'ble Islamabad High Court at that time, the licensee thereafter filed CS No.915/2011 before the Hon'ble Sindh High Court challenging the 1st SCN dated 01-02-2011 on the same plea that the determination of APC for USF is against the AP Rules and the AP Regulations, De-Regulation Policy and Information Memorandum. After repeating all the grounds and issues which it had already raised in cases pending at that time before the Hon'ble Islamabad High Court and were directly and substantially in issue before the Hon'ble Islamabad High Court, the licensee challenged the 1st SCN before the Hon'ble Sindh High Court adding the prayer that the 1st SCN be declared illegal. The prayer clause of CS No.915/2011 clearly shows that all other prayers were same as already made in the writ petitions and civil suits pending before the Hon'ble Islamabad High Court. Hence, it was clear that it was only forum shopping since at the time of filling of CS No.46/2011 on 10-02-2011 and W.P No.439/2011 on 14-02-2011, it had abandoned to challenge the 1st SCN dated 01-02-2011. Moreover, on merits all these objections have also been dismissed by the Civil Court at Islamabad. This judgment and decree have attained finality and never challenged in appeal. Hence, now these objections cannot be raised at all before the Authority.

2.27. Another important milestone was the Authority's determination on the review of AAR, ASR & APC whereby new rates were notified on 17-05-2011. As such when the licensee filed CS No. 915/2011 challenging the 1st SCN 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 these suits, it has never pleaded that the said notification/determination was illegal and created no liability and therefore, APC for USF could not be demanded in terms thereof. Similar is the situation with respect to subsequent review/determination of the Authority dated 17-08-2011.

2.28. 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. Till year 2011, such calculations and demands were never disputed and always paid by the licensee with delay but without any challenge to their correctness or any dispute about calculations. 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 onward 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.

2.29. 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 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 licensee 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.

2.30. It is pertinent to note that 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. 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 USF in order to enable the infrastructure development alongwith 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.

2.31. That the argument about permissible range is 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. upto 6cents). 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 & six (6) other LDI licensees and was being applied by them in calculation of APC without any objection, this amounted to admission through their own conduct that they accepted and implemented that the discounts to foreign operators will be given by LDI licensees from their own share. The letter dated 19-06-2009 written by the licensee and six (6) other LDI licensees contained the proposal and the chart in the proposal itself showed that they were deducting the permissible range discounts from their own

share. This admission of the legal position and their understanding clearly depicts that after 2011, the licensee and other LDI licensees took a U-turn and started to take a completely contradictory stance against their own previous admission just in order to avoid their liability which was previously always admitted and undisputed.

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

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

2.34. With respect to the contention of the licensee that proceedings under section 23 of the Act cannot be initiated for non-payment of APC for USF on the ground that non-payment of APC within ninety days (90) by the LDI licensee is not a violation of the provision 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 days (90) 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 in case of a conflict, the provisions of the Act, Rules and Regulations will prevail and the said condition require the strict compliance of the Act, Rules and Regulations. Hence, the argument of the licensee is misplaced and misconceived.

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

2.36. Regarding late payment charges, same are being claimed in terms of AP Regulations, which has been declared *intra vires* by the august Supreme Court of Pakistan in its judgement

reported as 2016 SCMR 475. The distinction sought to be created by the licensee between the regulation 10(4) and 10(6) of AP Regulations is incorrect exposition of law and completely misconceived. Hence, there is no substance in the argument of the licensee on this aspect of the case. Further, the stance of the Authority for late payment additional fee has been upheld by the Hon'ble Islamabad High Court in a case reported as PLD 2017 Islamabad 177 titled "*DV Com Data Vs PTA, etc.*". Additionally, the licensee itself challenged the demand and *vires* of late payment charges, additional fee(s), etc. as provided in various regulations issued by the Authority including the AP Regulations through WP No. 759/2011 and sought a relief that all such regulations be declared *ultra vires*, *void ab initio* and without legal effect. The said writ petition was dismissed for non-prosecution by the Hon'ble Islamabad High Court vide its order dated 06-10-2016.

3. Order:

3.1. In view of the factual and legal discussion made above, the Authority has reached to a conclusion that there is no ambiguity in terms of applicability of rules, regulations, notifications and demands issued by the Authority and its officers and rates notified therein etc. *vis-à-vis* APC for USF. Accordingly, the Authority hereby directs the licensee to pay Rs.6,249,786,617/- (Principal: Rs.2,002,733,988/- + LPAF: Rs.4,247,052,629/- 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 29 pages only.