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PART II

Statutory Notifications (S. R. O.)

GOVERNMENT OF PAKISTAN

ACCESS PROMOTION REGULATIONS, 2005

NOTIFICATION

Islamabad, the 16h August, 2005

S. R. O. 1006 (I)/2005.—In exercise of the powers conferred under clause (o) of sub-section 2 of Section 5 of the Pakistan Telecommunication (Re-organization) Act, 1996 (Act XVII of 1996), the Pakistan Telecommunication Authority is pleased to make the following Regulations:—

PART - I

PRELIMINARY

1. **Short title and commencement.**—(1) These Regulations shall be called Access Promotion Regulations, 2005.

(2) These Regulations shall come into force at once.

2. **Definitions.**—(1) In these Regulations, unless there is anything repugnant in the subject or context:

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- (a) **“Access Promotion Rules”** means Access Promotion Rules, 2004 and includes any amendments thereto made by the Federal Government from time to time;
- (b) **“APC for USF”** means the mopped up amount of Access Promotion Contribution on cellular termination diverted to Universal Service Fund;
- (c) **“APC for USF Contribution”** means the amount determined by the Authority in accordance with sub-rule (4) of Rule 8 of Access Promotion Rules;
- (d) **“APCL”** means Access Promotion Contribution for fixed line Local Loop and Limited Mobility Communication Service or Wireless Local Loop;
- (e) **“APCL Contribution”** means the amount determined by the Authority in accordance with sub-rule (2) of rule 8 of Access Promotion Rules;
- (f) **“Approved Accounting Rate”** means Total Accounting Rate approved by the Authority under 6 of Access Promotion Rules;
- (g) **“Approved Settlement Rate”** means one half of Approved Accounting Rate, representing out-payments from one carrier to the other;
- (h) **“Authority”** means Pakistan Telecommunication Authority established under section 3 of the Pakistan Telecommunication (Re-organization) Act, 1996 (Act XVII of 1996) ;
- (i) **“Consortium”** means the consortium of LDI licensees approved by the Authority for the purposes of these Regulations;
- (j) **“Corresponding Operator”** means a foreign service provider that originates or terminates or arranges for the origination or termination of international telephony service outside Pakistan;
- (k) **“CDR data”** means call detail records data;
- (l) **“Delivering LDI Licensee”** means an LDI Licensee that transfers incoming international traffic to the Receiving LDI Licensee for onward termination on the network of an LL Licensee or Mobile Licensee, as the case may be;

- (m) **“Incoming International Telephony Service”** means international telephony service that originates from a calling party outside Pakistan, excepting Azad Jammu and Kashmir & Northern Areas, and that terminates in Pakistan including Azad Jammu and Kashmir & Northern Areas, on the telecommunication system of an LL Licensee or Mobile Licensee that assigns, or accepts, the telephone number representing the called party;
- (n) **“LDI Licensee”** means a person licensed under the Act to establish, maintain and operate a public fixed switched network for the provision of nation-wide long distance and international telephony service or has the same meaning as given in other PTA Regulations;
- (o) **“LDI Share”** means portion of per-minute Approved Settlement Rate, determined by the Authority from time to time, to be retained by an LDI Licensee;
- (p) **“LL Licensee”** means a person licensed under the Act to establish, maintain and operate a public fixed switched network for the provision of local exchange telecommunication service, and includes PTCL, National Telecommunication Corporation and any person licensed under the Act to provide Limited Mobility Communication Services, or has the same meaning as given in other PTA Regulations;
- (q) **“Mobile Communications Service”** means a wireless based telecommunication service where the terminal equipment may be connected to the telecommunication system by wireless means and used while in motion;
- (r) **“ Mobile Licensee”** means a person licensed under the Act to establish, maintain and operate a public switched network to provide Mobile Communications Service, but excluding a person that is licensed a provide a Limited Mobility Communication Device;
- (s) **“Mobile Termination Rate”** means a rate, determined by the Authority from time to time, payable to an operator of a public mobile switched network, in respect of termination of Incoming Telephony Service measured in time unit announced by the Authority from time to time;
- (t) **“Receiving LDI Licensee”** means an LDI Licensee that receives Incoming International Traffic from Delivering LDI Licensee for onward termination on the network of an LL Licensee or Mobile Licensee, as the case may be;

- (u) **“Total Accounting Rate”** means the bilateral rate that an LDI Licensee negotiates with a Corresponding Operator for handling one minute of international telephony service;
- (v) **“Universal Service Fund”** or **“USF”** means the Universal Service Fund as may be established by the Federal Government; and
- (w) **“Windfall Profits”** means profits that provide more than reasonable rate of return on investments to an LDI Licensee taking into account the cost of its operations.

(2) Words and expressions used herein but not defined shall have the same meaning assigned to them in the Act, Rules, and other PTA Regulations.

PART - II

INTERNATIONAL TELEPHONY SERVICE AGREEMENTS

3. **International Telephony Service Agreements.**—(1) Notwithstanding any thing contained in rules 7 and 10 of Access Promotion Rules, an agreement between an LDI Licensee and a Corresponding Operator respecting International Telephony Service shall comply with the following, namely:

- (a) The agreement shall be made with a Corresponding Operator that has obtained a license/permission for carriage, switching and termination of international telephony services from the regulatory authority/or competent authority of that country;
- (b) The Agreement shall adhere to the Approved Accounting Rates notified by the Authority from time to time;
- (c) The Agreement shall comply with one-country-one-rate principle;
- (d) The Agreement shall comply with symmetric settlement rates regime;
- (e) The Agreement shall be in accordance with the Access Promotion Rules; and
- (f) Any other requirements which the Authority may deem appropriate to be incorporated in the Agreement for the purposes of Access Promotion Rules and these Regulations.

(2) LDI Licensee shall submit copy of draft Agreement, duly signed by both the parties, to the Authority for information pursuant to sub-regulation (1).

(3) The Authority shall approve the draft international telephony service agreements between an LDI Licensee and the Corresponding Operator within sixty days from the date of its receipt.

(4) While approving the draft international telephony service agreement(s), the Authority may give regard to the following factors:

(a) The contents of the agreement are not inconsistent with the provisions of the Act, the Access Promotion Rules, these Regulations, the terms and conditions of the license and/or any relevant determination of the Authority issued for the purposes of these Regulations; and

(b) The agreement is not materially detrimental to the interests of any other licensed operators or the users of telecommunication services or does not defeat the purposes of these Regulations.

(5) Where the Authority does not approve the draft agreement, it shall inform the LDI Licensee in writing within sixty days alongwith reasons for such disapproval.

(6) The LDI Licensee shall submit the revised Agreement after fulfilling the requirements and meeting the deficiencies communicated to it within fifteen days of receipt of notice from the Authority to this effect.

(7) Where, the Authority does not formally notify the LDI Licensee of any such deficiencies in the agreement or disapproval in writing within sixty days of receipt of such agreement, the said agreement shall be deemed approved.

(8) Notwithstanding any thing contained in rule 6 of Access Promotion Rules, the international agreements with the Corresponding Operators respecting International Telephony Service entered into by the LDI Licensees may be amended subject to prior approval of the Authority.

(9) The LDI Licensees shall submit to the Authority, true copy of the duly signed international agreement(s) respecting International Telephony Service within a time period not exceeding thirty days from the date of finalization of the agreements or thirty days before commencement of business, which ever is earlier.

Explanation: The LDI Licensees, providing International Telephony Services before promulgation of Access promotion Rules or these Regulations, shall submit copy of their existing international agreement(s) with the Corresponding Operator(s) respecting International Telephony Service, within thirty days of notification of these Regulations.

(10) Where the agreement(s) are modified pursuant to sub-regulation (8), or renewed by an LDI Licensee, as the case may be, copy of the agreement(s) so modified or renewed shall be submitted to the Authority by that LDI licensee within thirty days of such modification/ or renewal.

Explanation: Where an LDI Licensee modifies the international telephony service agreement(s) pursuant to revision of Approved Settlement Rates by the Authority and accordingly amends the settlement rates in its agreement(s), a copy of the relevant part of agreement(s) so amended shall be submitted to the Authority by that LDI Licensee within 7 days of such amendment.

(11) Where an LDI Licensee terminates an International Telephony Service Agreement with a Corresponding Operator, it shall, within 15 days, inform the Authority in writing of such termination.

(12) Where an LDI Licensee enters into an agreement with a Corresponding Operator in contravention of requirements of rule 10 or sub-regulation (8), it shall be liable to a fine not less than Rupees two and a half million. Where compliance with the requirements of sub-regulation (9), (10) and (11) is not observed by an LDI Licensee, it shall be liable to a fine not less than Rupees Two Hundred Thousand.

(13) Where an LDI Licensee submits an international telephony service agreement(s) to the Authority containing any false or incorrect information, it shall be liable to a fine not less than Rupees one million.

4. Total Accounting Rate Negotiations.—(1) Notwithstanding any thing contained in rule 11 of Access Promotion Rules, the LDI Licensees shall constitute a Consortium with the approval of the Authority for the purposes of negotiating bilateral accounting rates with foreign carriers for international telephony services.

(2) The Consortium shall undertake negotiation in accordance with the framework prepared by PTCL in consultation with the LDI Licensees and approved by the Authority. The guiding principles for the Consortium shall be:

- (a) one country one rate principle;
- (b) symmetry between incoming and outgoing international termination rates; and
- (c) any other principles or mechanism determined by the Federal Government or the Authority from time to time.

(3) PTCL shall consult the Consortium before submission of its recommendations/reports to the Authority on proposed amendments in the bilateral accounting rates.

5. Review of APCL Contribution and APC for USF Contribution in special circumstances.—(1) Notwithstanding anything contained in rule 9 of the Access Promotion Rules, under special circumstances the Authority may, at any time, review and notify the change in the APCL Contribution rate and APC for USF Contribution rate by issuing determination.

(2) While reviewing the APCL Contribution and APC for USF Contribution under sub-regulation (1) the Authority may consider such factors including, but not limited to, the following:

- (a) International trends regarding change in settlement rates;
- (b) Estimated volume of illegal traffic termination and the financial impact thereof on telecom sector of Pakistan;
- (c) Impact of reduction in settlement rates on the overall telecom sector of Pakistan; and
- (d) Previous reduction in the settlement rates and the impact on traffic volumes thereof.

PART - III

ACCESS PROMOTION CONTRIBUTION

6. Applicability.— (1) An LDI Licensee shall pay to an LL Licensee the APCL Contribution calculated in accordance with regulation 7 (1), for the Incoming International Telephony Services carried by that LDI Licensee and terminated on the telecommunication system of the LL Licensee, within the timeframe referred in regulation 10 (1):

Provided that the Mobile Licensees shall not be entitled to receive the APCL Contribution.

(2) Where a Delivering LDI Licensee handovers incoming international traffic to a Receiving LDI Licensee for onward termination on the network of an LL Licensee; the Delivering LDI Licensee shall transfer to the LL Licensee the APCL Contribution relating to the incoming international traffic so transferred in accordance with sub-regulation (1).

Explanation:

Where, pursuant to sub-regulation (2), a Delivering LDI Licensee handovers incoming international traffic to the Receiving LDI Licensee for onward termination on the network of an LL Licensee; the Delivering LDI Licensee shall pay to the Receiving LDI Licensee the transit charges for the traffic so terminated from its own LDI Share.

(3) An LDI Licensee shall transfer to the APC for USF Contribution an amount, calculated in accordance with regulation 7 (2), for the Incoming International Telephony Services carried by that LDI Licensee and terminated on the telecommunication system of a Mobile Licensee within the timeframe mentioned in Regulation 10(2).

(4) Where a Delivering LDI Licensee handovers incoming international traffic to a Receiving LDI Licensee for onward termination on the network of a Mobile Licensee; the Delivering LDI Licensee shall transfer the amount of APC for USF Contribution relating thereto in accordance with sub-regulation (3).

Explanation:

Where, pursuant to sub-regulation (4), a Delivering LDI Licensee handovers incoming international traffic to the Receiving LDI Licensee for onward termination on the network of a Mobile Licensee; the Delivering LDI Licensee shall pay to the Receiving LDI Licensee the transit charges for the traffic so terminated from its own LDI Share.

(5) For the purpose of sub-regulation (3) and (4), the LDI Licensee shall deposit the amount of APC for USF Contribution into the designated bank account notified by the Authority.

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:

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

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:

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

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

8. **Currency of Measurement.**—(1) All payments to be made by LDI Licensees pursuant to regulation 7, shall be made in Pak Rupees.

(2) For the purpose of sub-regulation (1), the exchange rate to be used for conversion of US\$ into Pak Rupees shall be an average rate of the month, to which such payment relates; announced by the National Bank of Pakistan or any other exchange rate as determined by the Authority, from time to time.

Explanation:

For the purpose of sub-regulation (2), the average conversion rate shall be calculated as under:

$$(\text{Buying rate on first day of month} + \text{Buying rate on last day of month}) / 2$$

9. **Call Detail Record (CDR) data reconciliation and billing.**— (1) The LDI Licensee and LL/Mobile Licensee shall exchange CDR data within 15 days of close of month to which such data relates. The reconciliation of such data shall be made by the LDI and LL/Mobile licensees concerned within 30 days of close of month to which such data relates.

(2) Where, subsequent to CDR data reconciliation, a disagreement arises amongst the LDI and LL/Mobile licensee, these licensees shall conduct negotiations and resolve the dispute within a time period not exceeding 45 days of exchange of CDR data.

(3) Where these licensees are unable to resolve the dispute within the timeframe referred to in sub-regulation (2), the matter shall be resolved in accordance with dispute settlement mechanism available under their existing interconnect agreement.

(4) Where, these Licensees are unable to resolve the dispute under sub-regulation (3), any LDI or LL/Mobile Licensee may file an application to the Authority for the resolution of the dispute. The Authority shall decide the dispute in accordance with Interconnection Dispute Resolution Regulations, 2004.

(5) Where a disagreement arises between an LDI Licensee and the Corresponding Operator regarding CDR data reconciliation, the LDI Licensee shall make payment of APCL Contribution or APC for USF Contribution, as the case may be, in accordance with the timeframe mentioned in regulation 10 without regard to the disputed or un-disputed call minutes.

10. Timeframe for payment.—(1) An LDI Licensee shall make payment to LL Licensee, referred to in regulation 7 (1), within a time period not exceeding ninety days from the close of the month to which such payment relates.

(2) An LDI Licensee shall make payment, referred to in regulation 7 (2), into the designated bank account within a time period not exceeding ninety days from the close of the month to which such payment relates.

(3) In case of dispute referred to in regulation 9 (2), the LDI Licensee shall pay undisputed amount to the LL Licensee pursuant to sub-regulation (1) or into the bank account pursuant to sub-regulation (2) within 90 days of close of the month to which such payment relates.

(4) An LDI Licensee shall make payment, relating to disputed amount, into an escrow account, to be opened separately for APCL Contribution and APC for USF Contribution, as the case may be, within 90 days of close of the month to which such payment relates. The escrow bank account shall be maintained in the National Bank of Pakistan. Upon resolution of dispute, the winning party shall withdraw the amount from the escrow account along with the profit/mark-up thereon, if any.

(5) The detailed operational mechanism of the escrow account shall be recommended by PTCL in consultation with the Consortium and approved by the Authority.

Explanation:

For the purpose of these Regulations, "payment" includes credit to designated bank account.

(6) Where an LDI Licensee fails to make payments in accordance with sub-regulation (1), (2), (3) or (4), it shall be liable to a fine not less than Rupees five hundred thousand and a further fine calculated as one and half percent per month, or a fraction thereof, of amount defaulted by that LDI Licensee for each month the default continues.

(7) Where an LDI Licensee makes payment pursuant to sub-regulation (1) to (4), as the case may be; it shall inform to the Authority in writing within seven days of such payment.

11. Reporting Requirements.— (1) the LDI, LL and Mobile Licensee shall submit the report/information to the Authority in accordance with rule 12 of Access Promotion Rules.

(2) The information referred to in sub-regulation (1) shall be submitted by the LDI and LL/Mobile Licensee, as the case may be, within thirty days of close of the month to which such information/report relates.

(3) Where an LDI Licensee has obtained approval of the Authority pursuant to rule 10 of Access Promotion Rules, but has not commenced business or where there is no business activity of the LDI Licensee or LL/Mobile Licensee during a month, such Licensee shall submit the "nil traffic" information to the Authority in accordance with the requirements of sub-regulation (1) and (2).

(4) Where pursuant to regulation 9, the Licensees determine traffic data that is different from the information initially submitted to the Authority pursuant to sub-regulation (1), the Licensees shall submit to the Authority the revised information so agreed subsequently amongst the Licensees within ten days of resolution of dispute.

(5) Where a Licensee fails to provide the information as referred to in sub-regulations (2), (3) or (4), it shall be liable to a fine not less than Rupees five hundred thousand and a further fine of Rupees ten thousand for each day if the default continues.

12. Separate Bank Account.—(1) All LDI Licensees shall open separate bank account wherein the proceeds/receipts from Corresponding Operator(s) respecting Incoming International Telephony Services shall be initially deposited.

The payment pertaining to APCL Contributions and APC for USF Contributions referred to in regulation 7 shall be paid from the same bank account.

(2) Where a Licensee fails to comply with the requirements of sub-regulation (1), it shall be liable to a fine not less than Rupees five hundred thousand and a further fine of Rupees ten thousand for each day if the default continues.

13. **Windfall profits:**— Pursuant to an analysis of the reports submitted by LDI and LL/Mobile Licensees under the Act, Access Promotion Rules or these Regulations or on the basis of information obtained from other sources it establishes that the LDI Licensee is enjoying windfall profits, the Authority shall intervene in public interest by following a fair and transparent process and issue such directions in the form of directives or determinations as the Authority deems fit.

14. **Miscellaneous Provisions.**— (1) APC shall be utilized by LL licensee to foster, promote and develop telecommunication infrastructure and to increase teledensity in the licensed regions.

(2) LL Licensee shall provide annual reports to the Authority regarding the use of APC and the steps taken by it for development of telecommunication infrastructure and increase in teledensity in the respective licensed region.

Sd/-
NIAZ H. BROHI,
Director (Law).