



**Enforcement order under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 read with Rule 9 of the Pakistan Telecommunication Rules, 2000 against M/s Multinet Pakistan (Pvt.) Limited**

Date of Issuance of Show Cause Notice: 1<sup>st</sup> February 2011, 14<sup>th</sup> April 2011, 10<sup>th</sup> May 2011, 24<sup>th</sup> May 2011, 16<sup>th</sup> August 2011, 16<sup>th</sup> August 2011, 9<sup>th</sup> September 2011, 14<sup>th</sup> October 2011, 3<sup>rd</sup> November 2011, 30<sup>th</sup> November 2011, 18<sup>th</sup> January 2012 and 23<sup>rd</sup> February 2012

Venue of Hearing: PTA HQs, Islamabad

Date of Hearing: 6<sup>th</sup> May 2011, 20<sup>th</sup> October 2011 and 29<sup>th</sup> May 2012

The Authority present:

Dr. Mohammad Yaseen: Chairman  
Dr. Khawar Siddique Khokhar: Member (Technical)

The Issue:

**“Non-payment of APC for USF Contribution”**

**DECISION OF THE AUTHORITY**

**BRIEF FACTS:**

1.1 Multinet Pakistan (Pvt.) Limited (the "licensee") is a company incorporated under the Companies Ordinance, 1984 and is engaged in the business of operating telecommunication system as a Long Distance International (LDI) Operator pursuant to the non-exclusive License No. LDI-13(9)-2005 Dated 29<sup>th</sup> November 2005 (the "license") issued by Pakistan Telecommunication Authority (the "Authority") to establish, maintain and operate a Telecommunication System and provides the licensed services in Pakistan subject to the terms and conditions contained in the license.

1.2 Under section 4(1)(k) of the Pakistan Telecommunication (Re-organization) Act, 1996 (the "Act"), the Pakistan Telecommunication Authority (PTA) is mandated to regulate Access Promotion Contribution (APC). In accordance with sub-rule 2 of rule 5 of Access Promotion Rules, 2004 (AP Rules) and sub-regulations (3) and (4) of regulation 6 and sub-regulation (2) of regulation 10 of Access Promotion Regulations, 2005 read with license condition 4.1.3 and 9.1.3 of the license, the licensee is obliged to deposit APC for USF contribution (the "Contribution") within ninety (90) days after the end of the calendar month for which the payment obligation arises.

1.3 In performance of statutory functions, PTA demanded and required APC for USF Contributions for the months of July 2010 (Rs. 40,036,402/-), August 2010 (Rs.96,985,602/), September 2010 (Rs.187,046,552/-), October 2010 (Rs.248,378,987/-), November 2010 (Rs.254,842,253/-), December 2010 (Rs.295,730,159/-), January 2011 (Rs.306,782,161/-), February 2011 (Rs.393,647,781/-), March, 2011 (Rs.459,127,977/-), April 2011 (Rs.183,359,975/-), May 2011 (Rs.188,682,568/-), June 2011 (Rs.319,854,130/-), July 2011 (Rs.273,293,592/-), August 2011 (Rs.323,058,642/-) and September 2011 (Rs.292,797,479/-) from the licensee. Despite various demands, the licensee did not pay the said Contribution within due dates. Subsequently, due to aforesaid contravention, the Authority under section 23 of the Act issued twelve (12) Show Cause Notices (SCNs) on 1<sup>st</sup> February 2011, 14<sup>th</sup> April 2011, 10<sup>th</sup> May 2011, 24<sup>th</sup> May 2011, 16<sup>th</sup> August 2011( 2 SCNs), 9<sup>th</sup> September 2011, 14<sup>th</sup> October 2011, 3<sup>rd</sup> November 2011, 30<sup>th</sup> November 2011, 18<sup>th</sup> January 2012 and 23<sup>rd</sup> February 2012 to the licensee requiring it to pay the outstanding Contribution of the said months within seven days from the date of issuance of SCNs, respectively, and explain in writing within thirty days of the issuance of SCNs as to why the license should not be suspended, terminated or any other enforcement order should not be passed against the licensee under the section 23 of the Act.

1.4 The licensee replied the said SCNs wherein it relied upon the Writ Petition No. 2356 of 2010 of Multinet Pakistan, Lahore High Court order an Writ Petition No. 2997 of 2009 dated 24<sup>th</sup> December, 2009 and Civil Suit No.1429 of 2010 of Multinet (Pakistan) Limited versus the Federation of Pakistan and others challenging the Access Promotion Contribution regime, in its entirety. In particular, Multinet has *inter alia* challenged: (a) the implementation of the APC Regime in violation of the De-Regulation Policy for the Telecommunication Sector, 2003; and (b) the *vires* of the very Access Promotion Rules, 2004 relied upon by the Authority and submitted to withdraw the aforesaid show cause notice immediately.

1.5 In addition, the licensee further contended that Federal Government may direct PTA to collect and remit APC for USF to the Ministry of Information Technology (IT & Telecom Division) ("Ministry"), no such directions have in fact been given. To the contrary the Ministry has issued a S.R.O 846(1)/2007 dated 20-8-2007 ("S.R.O"), directing all LDI Operators, including Multinet to deposit the APC for USF payments directly into the "USF Designated Account No.5453-6 of the National Bank of Pakistan, Marriott Branch, Islamabad" and not with PTA. In light of the above, it is respectfully submitted that payment on account of APC for USF to PTA will not only frustrate the purpose of Multinet's legal efforts and render them infructuous but will also be a clear violation of the S.R.O. from the Ministry. Furthermore, for reasons stated in the judgment of the Lahore High Court in the Wateen case, PTA cannot lawfully take any action against Multinet under section 23 of the Act. Multinet requested PTA to withdraw the aforesaid show-cause notices immediately.

1.6 After evaluation of reply filed by the licensee, the matter was fixed for hearing on 6<sup>th</sup> May, 2011 and 25<sup>th</sup> October, 2011. Ms. Ruqia Ismail, Legal Counsel on behalf of the licensee attended the hearing on the said date. She asserted and reiterated the same points as mentioned in the reply. Crux of the arguments advanced by legal counsel and written arguments filed during hearing is that due to court orders in cases as mentioned above PTA can not take any coercive action. The learned counsel contended that SCNs sent to the licensee may be withdrawn and PTA should refrain from taking any adverse/coercive action under section 23 of the Act against the licensee.

1.7 In view of the above stated facts, the Authority has examined the arguments made and filed by legal counsel of the licensee during the hearing and reached to the followings findings:

- i. The licensee is under an obligation to pay Access Promotion Contribution for USF (APC for USF Contribution), as defined under the Access Promotion Rules, 2004 (the “AP Rules”), the Access Promotion Regulations, 2005 (the “AP Regulations”) and the terms and conditions of Long Distance & International (LDI) License issued to the licensee.
- ii. In fact, the APC and USF regimes were introduced in furtherance of and within the dictates of De-regulation Policy of July 2003 (the “Policy”) by the Federal Government for the telecom sector of Pakistan through which the licensee along with other operators became eligible and got Long Distance & International (LDIs) *vis-à-vis* Local Loop (LLs) Licenses. The Policy under its clauses 4.3 and 5 introduced the regimes / obligations of APC and USF respectively and both these regime are covered under the terms and conditions of licenses, i.e. LDIs & LLs. The licensee along with other operators/licensees agreed and accepted all the terms and conditions of licenses; including both the regimes/obligations of APC and USF respectively by virtue and mandate of their licenses. In addition, the questions of law and facts concerning the *intra-vires* and/or *ultra-vires* of the AP Rules, AP Regulations and the regimes enumerated therein have been decided in favor of the Authority by the Islamabad High Court in its judgment dated 21-01-2009 on the subject which is already *subjudice* and *pending adjudication* for final decision / judgment before the august Supreme Court of Pakistan in CPLA’s 438,439,451,459/2009 against the orders of the Islamabad High Court. No stay order has been granted by the Supreme Court of Pakistan.
- iii. The Authority is of the view that the licensee is under obligation to pay APC for USF. Non-payment of dues by the licensee is a contravention of license conditions and therefore, in such circumstances, the Authority under section 23 of the Act is empowered to take action as per applicable special law on the subject.
- iv. It would not be out of context to mention here that the APC regime has been validly implemented and there is no discrimination or preferential treatment in respectful compliance of all the applicable provisions of law on the subject ranging from the Policy, the AP Rules, the AP Regulations, the USF Rules of 2006 (the “USF Rules”) and the license conditions as per the functions, powers and responsibilities given to the Authority under the Act. The Authority believes that the licensee itself assumed that it is not in accordance with Access Promotion Rules 2004 and Access Promotion Regulations 2005, despite the fact that the Honorable Islamabad High court in its decision dated January 21, 2009 held the AP Rules a valid law. Hence, the same can be enforced. Regarding the objection raised by the licensee that Federal Govt. has not issued direction to PTA to collect and remit APC for USF is based on incorrect information of law on the subject. Rule 5 of USF Rules, 2006 clearly mandate PTA to collect and remit the said amounts in the designated account without any deduction within one month of receipt. In addition, PTA has to enforce the implementation of AP Rules, USF Rules and AP Regulations including license conditions under section 23 of the Act. If the licensee has deposited any amount directly in the designated bank account and informed the Authority that the due amount has been paid within the due date, then there is no reason to proceed with show cause notice and the same will be

dropped, but unfortunately the licensee has neither made the due payments to MoIT nor to PTA, hence, delayed the payment on mere conjectures and surmises.

- v. The writ petitions filed by Multinet (2356/2010 and 2997/2009) have been disposed of whereas civil suit No. 1429/2010 is still sub-judice before Sindh High Court at Karachi. Since, there is no stay order against demanding APC for USF contribution as per applicable rules/ regulations and even no restraining order for enforcing the provisions of license and rules/regulations, hence, the Authority can proceed under section 23 of the Act.
- vi. That the fact of the case titled; Multinet v/s PTA decided by Lahore High Court Bench, are distinct from the facts mentioned in the captioned show cause notices. In the above referred judgment, the issue of suspension of incoming international traffic was involved, however in the subject case the powers under section 23 of the Act in case of contravention of the provision of the Act/rules/ license conditions was not dilated upon, hence, the aforesaid judgment is not applicable in disposing the aforesaid show cause notices

## 2. ORDER

2.1 In view of the aforementioned, the Authority is of the view that the licensee is under an obligation to make payments of outstanding dues of Rs.3,863,624,260/- on account of APC for USF for the months of July, August, September, October, November, December 2010 and January, February, March, April, May, June, July, August and September 2011 and require the licensee to make the aforesaid payment IMMEDIATELY without any further delay.

2.2 However, the issue related to imposition of fine under regulation 10 (6) of the AP Regulations for the defaulted period shall be decided after recalling of restraining orders/disposal of the case, whichever is earlier.

2.3 In case of non-payment of the aforesaid dues as per Para 2.1 above, the matter shall be further processed as per applicable laws.

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(Dr. Khawar Siddique Khokhar )  
Member (Technical)

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(Dr. Mohammad Yaseen)  
Chairman

This enforcement order is signed on \_\_\_\_\_ and comprises 04 pages.