



**Enforcement order under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 against M/s Dancom Pakistan (Pvt.) Ltd.**

Date of Issuance of Show Cause Notice: 16<sup>th</sup> March 2011, 6<sup>th</sup> May 2011,  
24<sup>th</sup> May 2011, 15<sup>th</sup> June 2011,  
and 12<sup>th</sup> July 2011  
Venue of Hearing: PTA HQs, Islamabad  
Date of Hearing: 13<sup>th</sup> October 2011

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 Dancom Pakistan (Pvt.) Limited (the "licensee") is a private limited 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-05(10)-2004 dated 3<sup>rd</sup> August 2004 (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 the 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 contribution for the months of August 2010 (Rs.72,530,969/-), September 2010 (Rs.107,136,027/-), October 2010 (Rs.145,346,449/-), November 2010 (Rs.119,772,825/-), January 2010 to December 2010 (Rs.354,292,451/-) (additional amount on account of APC for USF contribution), January 2011 (Rs.118,137,537/-) and February 2011 (Rs.80,332,983/). Despite various directions for making payment of the Contribution, the licensee did not pay the APC for USF contribution as stated above. Subsequently, due to contravention of the aforesaid provision, Show Cause Notice(s) under section 23 of the Act were issued on 16<sup>th</sup>

March 2011, 6<sup>th</sup> May 2011, 24<sup>th</sup> May 2011, 15<sup>th</sup> June 2011, and 12<sup>th</sup> July 2011 to the licensee. It would be pertinent to mention here that the licensee has replied only two SCNs issued on 15<sup>th</sup> June 2011 and 12<sup>th</sup> July 2011 wherein it submitted that High Court vide order dated 20<sup>th</sup> May 2011 in Civil Suit No.123 of 2011 has maintained status quo hence requested for withdrawal of notices issued to the licensee.

1.4 In order to proceed further the matter was fixed for hearing on 13<sup>th</sup> October 2011 before the Authority. Lt.Col ( R ) Aurangzeb, G.M and Mr. Mian Irfan Akram, Advocate attended the hearing on the said date. The representatives of the licensee relied upon the Honorable Lahore High Court order dated 20<sup>th</sup> May, 2011 in Civil Suit No.123 of 2011 wherein implementation of APC regime is challenged and contended that the honorable court has granted interim relief to the effect that status quo be observed by the Authority and requested to withdraw the notices and abstain from carrying out further proceeding in the matter.

1.5 Matter heard and record perused. During scrutiny of record it has been revealed that the licensee has not challenged any SCN mentioned above, hence there is no restraining order in field against the SCN therefore, the Authority can proceed accordingly. It is also highlighted that the Authority has notified ASR, APC (APCL and APC for USF) in accordance with the provision of AP Rules / Regulation issued from time to time. Being aggrieved of notification dated March 31, 2008 Wi-tribe filed FAO 113/2008 which was disposed of by the Islamabad High Court in favor of the Authority. Another notification dated June 19, 2009 was challenged by PTCL in FAO 12/2009, which was also disposed of in favor of the PTA. The third notification dated February 23, 2011 was also challenged by Starlite in FAO 19/2011 which was also disposed of in PTA's favor. In addition, all the writ petitions and appeals filed against the implementation of APC regime have been decided in favor of PTA, hence, it can safely be concluded that all Acts of PTA, are within the four corner of law hence, the implementation of notifications issued under AP Rules/Regulations, can lawfully be enforced under the applicable laws. The status quo order is limited to the extent of prayers of the licensee in the said civil suit court: "*Subject to notice in the meanwhile status quo shall be maintained till the next date of hearing*" the scope of which cannot be enlarged or extended on the outstanding payments which are outside the domain of the said case. In such circumstances, the Authority has powers to enforce the provisions of the Act, the rules/regulations and license conditions, the operation of which cannot be stopped to safeguard the interest of national exchequer.

1.6 The licensee in accordance with cause 8.1 of the Appendix B of the Rules and condition 3.1 of the license is obliged to observe the provisions of the Act, the Rules and Regulations. Sub-rule 2 of rule 5 of AP Rules, sub-regulations (3) and (4) of regulation 6, and sub-regulation (2) of regulation 10 of the AP Regulations make it obligatory on the licensee to deposit APC for USF contribution within ninety (90) days after the end of calendar month for which the payment obligation arises.

1.7. The licensee by virtue of license condition, Rules, Regulations is under an obligation to make the payment on account of APC for USF contribution but it has failed to make the payment within the due time as given in the AP Rules and AP Regulations, hence, charge of contravention of the provision of the license, AP Rules, and AP Regulations have been established and licensee is required to make the payments on account of APC for USF.

## **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.997,549,241/- on account of APC for USF for the months of August 2010, September 2010, October 2010, November, as well

as for the period pertaining to January 2010 to December 2010, (additional amount on account of APC for USF contribution), January 2011 and February 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 03 pages.