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FOR PUBLIC INSPECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition Pursuant to Rule 64.1002(d) for	)	IB Docket No. 12-____
Expedited Issuance of Settlements Stop	)	
Payment Order on the U.S.-Pakistan Route	)	

PETITION OF VONAGE HOLDINGS CORP.

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October 3, 2012

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Executive Summary

Vonage Holdings, Corp. submits this Petition, pursuant to FCC Rule 64.1002(d), urging the Commission to issue an order, on an expedited basis, requiring U.S. carriers to stop settlements payments to certain enumerated Pakistani "long distance international" carriers that have engaged in anti-competitive practices to demand an increase of termination rates on the U.S.-Pakistan route to approximately 400% the previous cost-based levels. The Pakistani carriers (with the consent and support of the Government of Pakistan) have: (i) implemented a new "International Clearing House" exchange for all international incoming calls to Pakistan, creating a new monopoly provider of international termination in Pakistan; and (ii) drastically increased the termination rate payable by international telecommunications carries for terminating calls into Pakistan to more than \$0.088 per minute of use. The actions of the Pakistani carriers constitute a clear violation of the Commission's longstanding prohibition against "whipsawing" and other coercive conduct intended to increase rates, and as such requires immediate Commission intervention.

The actions of the Pakistani carriers have forced Vonage to charge its customers significantly more for calls to Pakistan than it did prior to the implementation of the International Clearing House. This has resulted in harm to U.S. consumers who are forced to pay more to call friends and family in Pakistan.

The Pakistani International Clearing House also violates Pakistan's commitments under the World Trade Organization, and raises numerous other U.S. policy concerns. Vonage and its U.S. customers have already been directly damaged by the actions of the Pakistani carriers and government, and as such, requests that the Commission respond in this case as it has responded to similar situations in the past: by ordering U.S. carriers to suspend settlement payments to the relevant Pakistani carriers until such time as they abrogate the International Clearing House regime and return settlement rates for calls to Pakistan back to their original cost-based levels.

Moreover, as noted in detail below, given that the implementation of ICH Plan is likely to cause significant harm to the public interest and that this harm cannot be addressed through *post facto* remedies, Vonage respectfully requests the International Bureau to impose temporary requirements on U.S. carriers prohibiting all U.S. carriers from paying the Pakistani carriers anything more than the current cost-based termination rate to Pakistan, without prejudice to the FCC's findings on the instant Petition.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Petition Pursuant to Rule 64.1002(d) for Expedited Issuance of Settlements Stop Payment Order on the U.S.-Pakistan Route and for Issuance of Temporary Protective Measures	))))))	IB Docket No. 12-_____

PETITION

I. INTRODUCTION

Vonage Holdings Corp. ("Vonage") hereby submits this Petition pursuant to Federal Communications Commission ("FCC" or "Commission") Rule 64.1002(d), 47 C.F.R. § 64.1002(d), urging the Commission to issue an order, on an expedited basis, requiring U.S. carriers to stop settlements payments to certain enumerated Pakistani "long distance international" carriers ("LDI Carriers") that have engaged in anti-competitive practices to demand an increase of termination rates on the U.S.-Pakistan route to approximately 400% the previous cost-based levels.[1] As detailed below, and in the accompanying Affidavit of Edward Mulligan, Vice President Carrier Operations of Vonage, effective October 1, 2012, the LDI Carriers (with the consent and support of the Government of Pakistan) have: (i) implemented a new "International Clearing House" ("ICH") exchange for all international incoming calls to Pakistan, creating a new monopoly provider of international termination in Pakistan; and (ii) drastically increased the termination rate payable by international telecommunications carries for terminating calls into Pakistan to more than $0.088 per minute of use ("MOU") (collectively, the "ICH Plan").

[1] See Attachment A for a list of LDI Carriers that Vonage understands to have colluded to implement the actions claimed herein.

The establishment of the ICH Plan constitutes a clear violation of the Commission's longstanding prohibition against "whipsawing" and other coercive conduct intended to increase rates, and as such requires immediate Commission intervention. The Commission reaffirmed in the *ISP Reform Order* that actions taken to force U.S. carriers to accept higher termination rates "directly harms the public interest by raising rates to U.S. consumers, impeding call completion and reducing call quality."[2] The FCC has repeatedly stated that these types of actions disrupt commercial negotiations and may require Commission action to protect U.S. customers.

Vonage requests that the Commission respond to the actions of the LDI Carriers and the Government of Pakistan in this case as it has responded to similar situations in the past: by ordering U.S. carriers to suspend settlement payments to the relevant Pakistani LDI Carriers until such time as they abrogate the ICH Plan and return settlement rates for calls to Pakistan back to their original cost-based levels.

Moreover, as noted in detail below, given that the implementation of ICH Plan is likely to cause significant harm to the public interest and that this harm cannot be addressed through *post facto* remedies, Vonage respectfully requests the International Bureau to impose temporary requirements on U.S. carriers prohibiting all U.S. carriers from paying the LDI Carriers anything more than the current cost-based termination rate to Pakistan, without prejudice to the FCC's findings on the instant Petition.[3]

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2 *International Settlements Policy Reform,* First Report and Order, 19 FCC Rcd. 5709, ¶45 (2004) ("*ISP Reform Order*").

3 *See* 47 C.F.R. 64.1002(d).

II. THE LDI CARRIERS HAVE ENGAGED IN ANTI-COMPETITIVE COLLUSION AIMED AT SIGNIFICANTLY RAISING TERMINATION RATES THAT HARM U.S. CONSUMERS

A. The ICH Plan

To date, Vonage has been unable to obtain a copy of (i) the agreement entered into by the LDI Carriers to institute the ICH Plan (the "ICH Agreement"); or (ii) any resolution by the Pakistan Telecommunications Authority ("PTA") or the Ministry of Information Technology of Pakistan ("MOIT") authorizing the adoption of the ICH Plan.

However, in 2011, the LDI Carriers submitted to the Competition Commission of Pakistan ("CCP") an application seeking an exemption for the ICH Agreement under the Pakistani Competition Act, 2010. The application was later withdrawn by the LDI Carriers in February 2012. The CCP's February 8, 2012 order disposing of the application[4] outlined a number of facets of the ICH Plan.

As summarized by the CCP, the ICH Agreement: (i) assigns the rights of thirteen LDI Carriers to terminate incoming international traffic, to Pakistan Telecommunication Company Limited ("PTCL"), the incumbent telecommunications service provider in Pakistan; (ii) each LDI Carrier is to suspend and keep suspended all interconnection capacities in relation to Pakistan incoming traffic; (iii) PTCL is to act as the sole LDI operator with the right to exclusively terminate all incoming traffic to Pakistan; (iv) PTCL is to sell its call terminating services to foreign carriers at the "Approved Settlement Rates" of the PTA; and (v) each LDI Carrier will get a pre-determined fixed quota from PTCL to terminate calls on its network, and

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4 *See International Clearing House Agreement Among LDI Operators*, Order, File No. 2(291)/AGR/EXMP REG/CCP/11 (Feb. 8, 2012) ("*CCP February Order*"). The CCP February Order is attached hereto as Attachment B. Vonage also provides as Attachment C, a number of press reports concerning the ICH Plan, including copies of notices to the Karachi Stock Exchange filed by certain LDI Carriers and explaining the ICH Plan.

receive a fixed share of revenues generated from all incoming international traffic.[5] The ICH Agreement in essence: (A) gives PTCL a monopoly to receive all incoming international traffic to Pakistan; (B) establishes a single rate for incoming international traffic; and (C) artificially divides the market share of incoming international traffic among the 14 LDI carriers.

At the time, the arguments presented by the LDI Carriers in support of the ICH Agreement included: (i) stabilization of the Pakistan international incoming traffic rate as per the PTA's directive; (ii) the curbing of "grey traffic;"[6] (iii) the creation of a vital impact on the national economy in terms of huge influx of foreign exchange in the country; and (iv) the collection of additional revenues for the Government of Pakistan.[7] The LDI Carriers further claimed that the ICH would not result in price fixing, but instead would implement the "PTA's Approved Settlement Rates."[8]

B. The CCP Has Found the ICH Plan Illegal Under Pakistani Law

According to the CCP, on August 13, 2012, the MOIT issued a directive calling for the establishment of the ICH Plan.[9] As noted above, the MOIT directive is not publicly available.

On August 28, 2012, the CCP sent a Policy Note to the PTA and the MOIT warning that the ICH Plan was illegal under Pakistan's Competition Act, and calling for the MOIT to retract

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5 *Id.* (quoting the ICH Agreement)

6 Grey traffic is the use of illegal gateway exchanges to bypass legal gateways and terminate/originate international traffic.

7 *See* Press Release, *CCP, CCP Allows LDI Operators to Withdraw Application for Exemption of ICH Agreement*, CCP (Feb. 13, 2012), available at: http://www.cc.gov.pk/index.php?option=com_content&view=article&id=230&Itemid=86.

8 *See id.*

9 *See* Press Release, *CCP Issues Policy Note to MOIT, PTA*, CCP (Aug. 28, 2012), available at: http://www.cc.gov.pk/index.php?option=com_content&view=article&id=251&Itemid=86.

its directive.[10] The CCP Policy Note states that following the withdrawal of the LDI Carriers' application in February 2012, the CCP was not consulted about the ICH Plan's permissibility under Pakistan's Competition Act.[11] The CCP Policy Note further provides that "[w]hile it may be within the domain of [the] MOIT to issue policy directives in relation to the subject industry, it needs to be appreciated that any such policy decision/directive/circulars are in fact subject to the substantive provisions of the statute in force."[12] It further notes:

> Presently it is possible to call overseas high volume destinations in US/Canada/UK/Australia for Rs 2 + tax or around 2 cents so termination cost to foreign operator has to be less than that. Similarly termination costs for Pakistan are presently under 8.8 cents. With the ICH agreement the termination rates for Pakistan will be raised by consortium to approved PTA levels which will likely result in foreign operators to increase outgoing termination rates. This potential increase to around 8.8 cents will affect consumers in Pakistan who are likely to pay more for making international calls in future under ICH arrangement and it can also fore close the option for the remaining LDI operators to negotiate.[13]

The CCP concludes that under the MOIT's directive and the ICH Plan, "price fixation and sharing of market (quota allocation) are promoted. Such practices i.e. price fixation and quota allocation are considered *per se* illegal being the most pernicious anticompetitive conducts."[14]

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10 *See generally In the Matter of Directive for Establishment of International Clearing House Exchange for International Incoming Calls for Long Distance International, Fixed-Line Local Loop, Wireless Local Loop and Mobile Operators*, Policy Note, CCP (rel. Aug. 28, 2012) ("CCP Policy Note"). The Policy Note is attached hereto at Attachment D.

11 *See* CCP Policy Note, at 1.

12 *Id.* at 2.

13 *Id.* at 4.

14 *Id.* at 8. *See also Assertion that ICH to help boost foreign exchange earnings by $800 million is contentious: CCP Chairperson*, Business Recorder (Sept. 7, 2012), available at: http://www.brecorder.com/company-news/235/1234681/ (providing an interview with CCP Chairperson Rahat Kaunain concerning the implementation of the ICH).

The LDI Carriers, the PTA and the MOIT have nonetheless moved forward with the ICH Plan, and have implemented the aforementioned rate increase to more than $0.088 per MOU as of October 1, 2012.

III. THE ICH PLAN SIGNIFICANTLY HARMS VONAGE'S U.S. CUSTOMERS

Vonage (NYSE: VG) is a leading provider of low-cost communications services connecting individuals through broadband devices worldwide. Vonage is headquartered in Holmdel, New Jersey and currently serves approximately 2.3 million subscribers. As a U.S.-based communications provider, Vonage provides feature-rich, affordable communication solutions that offer flexibility, portability and ease-of-use. The Vonage World Plan offers unlimited domestic and international calling to more than 60 countries with popular features like call waiting, call forwarding and voicemail - for $25.99 per month.

Until October 1, 2012, the settlement rate to Pakistan had been cost-based and more or less in line with international termination rates to other countries with liberalized telecommunications sectors.[15] In order to terminate traffic originated by U.S. Vonage customers, to the public switched telephone network in Pakistan, Vonage contracts with U.S. telecommunications carriers to deliver traffic to Pakistani telecommunications carriers. Vonage delivers traffic to these carriers at its network facilities in the U.S. Vonage has approximately ten telecommunications carriers that it uses to deliver traffic to Pakistan.

Prior to October 1, 2012, Vonage was paying between **[BEGIN CONFIDENTIAL TREATMENT]** **[END CONFIDENTIAL TREATMENT]** per minute of traffic placed to Pakistan (in line with the estimate provided by the CCP in the CCP Policy Note, discussed

15 *See* Affidavit of Edward Mulligan, at ¶ 6.

above).[16] In reliance on those cost-based termination rates, in or around May 3, 2012 Vonage added Pakistan to its unlimited international calling plans.[17] Under those plans, customers may call Pakistan and a number of other countries for a flat $25.99 per month, plus applicable taxes and fees. Since the inclusion of Pakistan in its "all you can call" plan, the company has substantially grown its base of customers and minutes of traffic to Pakistan. Vonage estimates that approximately **[BEGIN CONFIDENTIAL TREATMENT] [END CONFIDENTIAL TREATMENT]** of its customers (**[BEGIN CONFIDENTIAL TREATMENT] [END CONFIDENTIAL TREATMENT]** of which are located in the U.S.) have placed calls to Pakistan in the past six months,[18] which represents a sizable proportion of the total number of Pakistani households in the United States (about 106,000 households according to the last census).[19]

During the last week of September, Vonage was notified by its terminating partners to Pakistan that the rate for call termination to Pakistan would be increasing to between **[BEGIN CONFIDENTIAL TREATMENT] [END CONFIDENTIAL TREATMENT]** per MOU effective October 1, 2012.[20] Based on the average monthly minutes of calls to Pakistan by Vonage customers, the increase of the Pakistani international termination rate to the levels proposed by the terminating carriers will require Vonage to charge its customers an additional $80 per month (*i.e.*, $105.99) just to cover the increased cost.[21] Since October 1, 2012, Vonage World Plan customers have been charged an additional per minute fee of $0.08 per minute for

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16 *Id.*

17 *See* Affidavit of Edward Mulligan, at ¶ 4.

18 *Id.*, at ¶ 7.

19 2010, U.S. Census.

20 *See* Affidavit of Edward Mulligan, at ¶ 8.

21 *Id.*, at ¶ 9.

calls to Pakistan, directly impacting U.S. consumers by significantly increasing the average household's cost to call Pakistan.[22]

IV. THE ICH PLAN CONTRAVENES LONG ESTABLISHED COMMISSION POLICIES AND RAISES MANY OTHER POLICY CONCERNS

A. The FCC Has a Long-Standing Policy of Preventing Whipsawing by Foreign Carriers

The Commission has long prohibited foreign carriers from abusing their control of bottleneck facilities at the foreign end of U.S. international routes to "whipsaw" U.S. carriers or otherwise coerce agreements to increase settlement rates. For example, when Telintar of Argentina blocked AT&T's circuits in 1996, the International Bureau found that the FCC "will not allow foreign monopolists to undermine U.S. law, injure U.S. carriers or disadvantage U.S. consumers."[23] Pursuant to the Commission's International Settlements Policy ("ISP"), the International Bureau ordered U.S. carriers to suspend settlement payments to Telintar until all of AT&T's international circuits were fully restored.[24] In upholding the International Bureau's order, the Commission emphasized that "retaliatory actions in response to AT&T's efforts to negotiate a more cost-based settlement rate constitute classic whipsawing, which the Bureau is fully authorized to remedy under the ISP."[25]

Likewise, in 2003 the Commission forbade U.S. carriers from making international settlement payments to six carriers in the Philippines that had blocked the circuits of AT&T and WorldCom, Inc. "for the purpose of forcing AT&T and WorldCom to agree to higher

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22 *Id.*

23 *AT&T Corp. Proposed Extension of Accounting Rate Agreement for Switched Voice Service with Argentina,* ISP-96-W-062, Order, 11 FCC Rcd 18014, ¶ 1 (IB 1996).

24 *Id.*

25 *AT&T Corp. Proposed Extension of Accounting Rate Agreement for Switched Voice Service with Argentina,* 14 FCC Rcd. 8306, ¶ 13 (1996).

termination rates."[26] The International Bureau found that these foreign carrier actions constituted anticompetitive "whipsawing" and a violation of the Commission's ISP.[27]

B. The *ISP Reform Order* Directs the Commission to Respond to Anticompetitive, Unilateral Rate Increases by Foreign Carriers

Following its actions to protect U.S. consumers over the U.S.-Philippines route, in the 2004 *ISP Reform Order,* the Commission highlighted its continuing concern with foreign carrier anticompetitive conduct by establishing "standards and procedures that will support the ability of parties to initiate complaints of anticompetitive harms as they arise."[28] The Commission also pledged to "respond to petitions from non-carriers that believe that anticompetitive conduct may be taking place that harm U.S. customers, and [to] act on [its] own motion if [it] find[s] evidence of market failure."[29]

In the *ISP Reform Order*, the Commission established several actions as *indicia* of potential anticompetitive conduct by foreign carriers, including, but not limited to: (1) increasing settlement rates above benchmarks; (2) establishing rate floors, even if below benchmarks, that are above previously negotiated rates; or (3) threatening or carrying out circuit disruptions in order to achieve rate increases or changes to the terms and conditions of termination agreements.[30]

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[26] *AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief,* 18 FCC Rcd. 3519, ¶ 1 (IB 2003), *aff'd,* 19 FCC Rcd. 993 (2004), *aff'd,* 20 FCC. Rcd. 14106 (2005) (the "*Philippines Stop Payment Order*").

[27] *Id.* In affirming the International Bureau's order, the Commission noted that circuits were fully restored by the Philippines carriers following the issuance of that order and the Bureau accordingly lifted the suspension of payments. *See* 19 FCC Rcd. 993, ¶ 22 (2004).

[28] *ISP Reform Order,* ¶ 40.

[29] *Id.*, ¶ 44.

[30] *See id.*, ¶ 44.

Specifically addressing situations where foreign carriers demand rate increases over previously commercially negotiated levels, the Commission found that "because competitive market forces should result in rates that are increasingly cost-based, upward movement in rates that are not cost-based is not consistent with the development of competition in the U.S.-international market. Indeed, because there is no reason to believe that the underlying incremental costs are rising, increases in rates likely indicate either the absence or thwarting of effective market forces, or abuse of market power."[31]

Moreover, both the Commission and the Executive Branch have noted efforts by foreign governments to increase competitively-negotiated rates may require Commission action pursuant to the procedures established by the *ISP Reform Order*. For example, in the *ISP Reform Order* proceeding, the National Telecommunications and Information Administration ("NTIA") requested "the automatic examination of a route when a foreign government mandates a price floor that increases rates above competitively negotiated levels, regardless of whether the increase is below current benchmarks."[32] The Commission noted that "[c]onsistent with NTIA's concerns," U.S. carrier complaints would "address anticompetitive harm against U.S. competition and U.S. customers, and the rebuttable presumption of harm in the event of retaliation against U.S. carriers will expedite such findings."[33]

Following the *ISP Reform Order*, in 2009 the International Bureau issued an order requiring all U.S. carriers to suspend immediately all U.S. carrier payments for termination

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31 *Id.*, ¶ 48.

32 Letter from Nancy J. Victory, Assistant Secretary for Communications and Information, U.S. Department of Commerce to Michael K. Powell, Chairman, FCC, IB Docket No. 02-234, at 2 (Aug. 5, 2003).

33 *ISP Reform Order*, n.115.

services to Tonga Communications Corporation ("TCC").[34] The *Tonga Stop Payment Order* was issued pursuant to a petition filed by AT&T, and supported by Verizon, seeking protection from and remedies to the disruption of circuits on the U.S.-Tonga route. The FCC's order resulted from TCC's demand to AT&T and Verizon that termination rates for U.S.-Tonga traffic would be raised to $0.30 per MOU from the previous rates of $0.09 (AT&T) and $0.19 (Verizon) per MOU.[35] TCC cited a ruling from the Tongan Department of Communication establishing the minimum rate for traffic inbound to Tonga from the United States, with no cost justification for the demanded rate increases.[36] After failing to agree to the rate increase, TCC began disrupting AT&T and Verizon circuits to Tonga.[37] Finding that all three *indicia* of anticompetitive conduct listed in the *ISP Reform Order* were present in TCC's actions, the Bureau ordered all U.S. carriers to suspend payments to TCC.[38]

C. The ICH Plan Violates Pakistan's International Free Trade Commitments

The increased competition that has developed over the past 15 years on virtually all international routes has been accompanied by lower termination rates, resulting in lower call prices for U.S. consumers. Specifically, international termination agreements with carriers in Pakistan are now exempt from the FCC's ISP. As such, U.S. carriers are free to negotiate (i) with as many Pakistani carriers as they want, and (ii) set the termination rate on the U.S.-Pakistan route based on supply and demand. This has resulted on a cost-based settlement rate of

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34 *Petition of AT&T for Settlements Stop Payment Order on the U.S.-Tonga Route*, Order and Request for Further Comment, IB Docket No. 09-10 (rel. June 15, 2009) (the "*Tonga Stop Payment Order*").

35 *Id.*, ¶ 5. In contrast to the 400% rate increase faced by Vonage with respect to the Pakistani LDI Carriers in this case, the rate increase for traffic to Tonga in 2009 represented only a 233% increase for AT&T and a 58% increase for Verizon.

36 *See id.*

37 *See id.*, ¶¶ 6-7.

38 *See id.*, ¶ 45.

less than 2 cents per MOU,[39] which has substantially reduced the cost for U.S. customers to make calls to Pakistan.

As the Commission is aware, international settlement rates are the most important component of the marginal cost of international telephone service. The rate increase under the ICH Plan is clearly well above cost and the establishment of PTCL as a clearinghouse for all international calls to Pakistan constitutes the creation of a monopoly provider of international termination in Pakistan. As such, the ICH Plan violates several of Pakistan's commitments under the World Trade Organization ("WTO") Agreements.[40]

Vonage notes that all of Pakistan's reservations with respect to basic telecommunications services in the WTO Agreements have expired effective January 1, 2004. Since then, PTCL has not held a monopoly position over any telecommunications services, until the ICH Plan was implemented on October 1, 2012.

D. The ICH Plan Raises Numerous Other U.S. Policy Concerns

The ICH Plan raises numerous other issues of concern for U.S. consumers, and national policy. First, the importance of affordable calling "back home" for expatriated Pakistanis cannot be overstated. These phone calls enable families to stay together, help preserve important cultural traditions, and foster the sharing of important news and global developments that might not be readily available in some corners of Pakistan. The ICH Plan will have the effect of

39 *See* Affidavit of Edward Mulligan, at ¶ 6.

40 For example, the ICH Plan violates: (i) the General Agreement of Trade in Services ("GATS") Article VIII (regarding the institution of monopolies and exclusive service suppliers); (ii) the GATS Telecommunications Annex, Section 5 (concerning network access by blocking U.S. providers from public communications transport services on reasonable and non-discriminatory terms and conditions); (iii) the GATS Article III and Telecommunications Annex, Section 4 (concerning transparency, for failing to publish the ICH Plan and the PTA and the MOIT activities and proceedings leading to the adoption of the ICH Plan); and (iv) the GATS Article VI (concerning domestic regulation, by failing to ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner).

dramatically stifling these important communications. Further, American citizens who call Pakistan help share news and balanced information about world events and American public policy. Any policy that stifles those conversations and effectively shuts down lines of communication deserves serious review.

Moreover, the ICH Plan has the effect of re-introducing a monopolist in the termination of calls to Pakistan, a dramatic step backwards in the liberalization of international telecommunications markets. In so doing, the ICH Plan directly inhibits one-on-one relationships between U.S. and Pakistani carriers. By eliminating one-on-one relations between carriers, the ICH ensures that Vonage will not be able to enter into innovative arrangements with Pakistani carriers like it has done in the Philippines with Globe Philippines ("Globe").[41] Under this arrangement, Vonage has a special rate plan that allows unlimited calls to Globe landline and mobile telephone numbers in the Philippines. Globe also offers a special rate plan that allows unlimited calls to Vonage telephone numbers. The ICH Plan constitutes is a reversion back to a uniform accounting rate and discourages direct interconnection between U.S. and Pakistani fixed and mobile carriers, to the detriment of competition.

The ICH Plan also imposes inequitable and anticompetitive global treatment of U.S. employers and communications providers. Specifically, the ICH Plan unfairly disadvantages Vonage's thoughtful business plans (and undermines investment) for market growth in the years ahead.

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41 *See* **http://ph.vonage.com/?refer_id=INWEBGN120711003W1&CMP=v_com_INTCallingPlanPage_GlobeBanner.**

V. THE COMMISSION SHOULD TAKE PROMPT ACTION AND REQUIRE ALL U.S. CARRIERS TO STOP SETTLEMENTS PAYMENTS UNTIL THE ICH PLAN IS REMOVED

Vonage respectfully requests that the Commission take the following actions in order to prevent harm to U.S. consumers from the LDI Carriers' anticompetitive actions: a) require U.S. carriers to stop settlement payments made directly to the LDI Carriers; and b) impose such measures immediately during the pendency of this Petition, without prejudice to the Commission's findings.

A. The Commission Has Authority To Issue An Order Directing U.S. Carriers to Stop Direct Payments to the LDI Carriers

In the Tonga *Stop Payment Order*, the Commission clarified that a such orders are appropriate because they require U.S. carriers to take a unified bargaining position, preventing each carrier from acting in its own self-interest, which removes the opportunity for the foreign carrier to establish direct operating arrangements with other U.S. carriers in order to play one off against the other in an effort to get the demanded higher rate.[42]

The actions of the LDI Carriers (with the clear consent of the Government of Pakistan) require the same Commission intervention to protect U.S. consumers in accordance with the long-established precedents and principles described above. Just as with TCC in 2009, the Philippines carriers in 2003, and Telintar of Argentina in 1996, the LDI Carriers, through an artificial bottleneck established by PTCL, are a abusing their control of the foreign end of a U.S. international route to extract unreasonably high, anti-competitive, settlement rates. The size of the rate increase in Pakistan is many times greater than the demanded increase that led to the circuit disruption in Tonga (about 230%), and dwarfs the 2003 rate increase in the Philippines

42 *See Tonga Stop Payment Order*, ¶ 30.

where foreign carriers sought to raise rates approximately 50 percent.[43] To Vonage's understanding, the more than 400% rate increase demanded by the LDI Carriers is unprecedented on any international route.

Further, the information available about the ICH Plan appears to show that the rate increase is directly attributable to the actions of the PTA in the establishment of a rate floor. While the PTA ostensibly is concerned with stamping out "grey traffic," such an increase is clearly not based on cost, has not been demonstrated to have any link whatsoever to so-called grey traffic, and is clearly intended solely as a measure to extract revenue from U.S. carriers, to the significant detriment of U.S. consumers. While the rate increase may be dictated by the Pakistani government, as demonstrated in the 2009 Tonga case, carriers cannot shield anticompetitive practices behind the veil of a governmental obligation.

The rate increase, therefore, clearly meets the FCC's *indicia* of anticompetitive conduct as it establishes a rate floor above previously negotiated rates. Even though Pakistan is on the Commission's routes exempt from the ISP, such a move to re-establish PTCL as a monopoly provider of international termination services and the accompanying rate increase, dictates that the Commission re-examine its prior determination with respect to Pakistan's exclusion from the ISP,[44] and the establishment of a stop payment order to safeguard U.S. consumers. The LDI Carriers' actions have created "a rebuttable presumption of harm to the public interest," and the Commission should therefore respond as it has in prior instances of anticompetitive conduct, by requiring U.S. carriers to stop settlement payments to the LDI Carriers until the ICH Plan is abrogated and international termination rates are re-established at cost-based levels.

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43 *See Philippines Stop Payment Order*, ¶ 113 (concerning a rate increase from 8 to 12 cents per MOU).

44 *See ISP Reform Order*, n.115.

B. The Commission Should Issue Temporary Measures to Address the ICH Plan Pending Final Resolution of This Petition

Finally, as demonstrated above, the implementation of ICH Plan is likely to cause significant harm to thousands of U.S. consumers and is contrary to the public interest, convenience and necessity. Given that this harm cannot be addressed through *post facto* remedies, pursuant to 47 C.F.R. § 64.1002(d), Vonage respectfully requests that during the pendency of this Petition, the International Bureau imposes temporary requirements on U.S. carriers prohibiting all U.S. carriers from paying the LDI Carriers anything more than the current termination rate to Pakistan, without prejudice to the Commission's findings on the instant Petition.

VI. CONCLUSION

This Rule 64.1002(d) Petition and the accompanying Affidavit demonstrate that the LDI Carriers are engaging in anticompetitive behavior on the U.S.-Pakistan route harming U.S. consumers. Vonage urges the Commission to expeditiously intervene on this route to require all U.S. carriers to stop settlements payments to the LDI Carriers until the ICH Plan is abrogated and international termination rates are re-established in Pakistan at cost-based levels. In addition, given the immediate and significant harm to the public interest, Vonage respectfully requests the issuance of temporary measures prohibiting all U.S. carriers from paying the LDI Carriers anything more than the current termination rate to Pakistan, without prejudice to the Commission's findings on the instant Petition.

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October 3, 2012

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Certificate of Service

I, Jeffrey R. Strenkowski, certify that copies of the foregoing Petition were delivered via e-mail on this day, October 3, 2012, to the following:

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Jeffrey R. Strenkowski

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Attachment A

List of LDI Carriers

Based on the CCP Policy Note, the Pakistani LDI Carriers engaged in the ICH Plan are:

(i) PTCL;

(ii) Multinet Pakistan (Private) Limited;

(iii) 4B General International (Private) Limited;

(iv) Wi-tribe Pakistan Limited;

(v) Dancom Pakistan (Private) Limited;

(vi) Wise Communication System (Private) Limited;

(vii) Worldcall Telecom Limited,

(viii) ADG (Private) Limited;

(ix) Link Direct International (Private) Limited;

(x) Telecard Limited;

(xi) Circle Net Communications Pakistan (Private) Limited;

(xii) Wateen Telecom Limited;

(xiii) Redtone Telecommunications Pakistan (Private) Limited; and

(xiv) Telenor LDI Communications (Private) Limited

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Attachment B

Competition Commission of Pakistan Order
Disposing of ICH Agreement Waiver Application (Feb. 8, 2012)

BEFORE THE
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF

INTERNATIONAL CLEARING HOUSE AGREEMENT AMONG LDI OPERATORS

(File No. 2(291)/AGR/EXMP REG/CCP/11)

Dates of hearings:	December 13, 2011 January 31, 2012
Present:	Ms. Rahat Kaunain Hassan **Chairperson**
	Mr. Abdul Ghaffar **Member**
	Dr. Joseph Wilson **Member**
	Ms. Vadiyya S. Khalil **Member**
	Mr. Shahzad Ansar **Member**
	Mr. Mueen Batlay **Member**

On behalf of:

M/s. Transworld International	Mr. Zulfiqar Qazilbash, VP Communications Mr. Naveed Malik, VP Finance
M/s. Telenor LDI Communications	Mr. Haider Latif, Manager (Legal Affairs) Mr. Affan Hassan Khan Lodhi Mr. Abdul Mobeen
M/s. Wise Communications Systems (Pvt) Limited	Lt (Col.) Shafiq Ahmad Abbasi, Vice Chairman Advocate Asia Batool, Director Law & Regulatory Affairs
M/s. Multinet Pakistan	Malik Arif Munir, Head of Corporate Voice. Mr. Fahad, Regional Manager
M/s. Circlenet Communications (Pvt) Limited	Mr. Muhammad Wajahat Zeeshan Khan, Consultant
M/s. Witribe Pakistan Limited	Mr. Imran Qureshi, Director Carrier & Govt Relations, Mr. Jawad Latif, Consultant Regulatory Affairs
M/s. Pakistan Telecommunication Company Limited (PTCL)	Mr. Sikandar Naqi, SEVP Mr. M. Amer Shafique, GM (Reg Affairs) Mr. Aziz ur Rehman, SM (CP&S)
M/s. 4B Gentle International (Pvt.) Limited	Mr. Abdul Waheed
M/s. Dancom Pakistan (Pvt.) Limited	Mr. Aurangzeb
M/s. Worldcall Telecom Limited	Mr. Gul Ahmed, Senior Advisor Regulatory Affairs
M/s. ADG LDI (Pvt.) Limited	Mr. Abdul Sattar, FCA
M/s. Telecard Limited	Brig (Rtd) Shahid Naeem Butt Mr. Rizwan Muzaffar Cheema
M/s. Wateen Telecom Limited	Mr. Junaid Sheikh
M/s. Redtone Communications Pakistan (Pvt.) Limited	Mr. Iftikhar Butt
M/s. Link Direct International Limited	Mr. Tariq Sultan, Head GR Sahibzada Uzair Hashim

ORDER

1. This order disposes of the Exemption Application jointly filed by Long Distance and International licensees namely; (i) Pakistan Telecommunication Company Limited (PTCL); (ii) Multinet Pakistan (Private) Limited; (iii) 4B General International (Private) Limited; (iv) Wi-tribe Pakistan Limited; (v) Dancom Pakistan (Private) Limited; (vi) Wise Communication System (Private) Limited; (vii) Worldcall Telecom Limited, (viii) ADG (Private) Limited; (ix) Link Direct International (Private) Limited; (x) Telecard Limited; (xi) Circle Net Communications Pakistan (Private) Limited; (xii) Wateen Telecom Limited; (xiii) Redtone Telecommunications Pakistan (Private) Limited; and (xiv) Telenor LDI Communications (Private) Limited (hereinafter collectively referred to as "LDI Operators", and the PTCL and LDI Operators collectively referred to as the "Applicants"), under Section 5 of the Competition Act, 2010 (hereinafter referred to as the "Act") to seek exemption for their proposed International Clearing House Agreement (hereinafter referred to as the "ICH Agreement") entered between PTCL and the LDI Operators.

2. The issue presented before the Commission was whether the proposed ICH Agreement would escape the *per se* condemnation of Section 4 of the Act, and meet the criteria laid down in section 9 of the Act for exemption from the application of section 4.

3. Through the ICH Agreement, the LDIs intended to assign their rights, granted to them by the PTA under the LDI license, to terminate incoming international traffic to PTCL. During the period the ICH Agreement were to be in effect, each LDI were to "suspend and keep suspended all interconnection capacities in relation to Pakistan Incoming Traffic at its end."[1] PTCL were to act as the sole LDI operator with the right to exclusively terminate all incoming traffic to Pakistan.[2] PTCL were to sell its call terminating services to foreign carriers at the Approved Settlement Rates of the PTA, and each LDI would get a pre-

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[1] Article 2.1, International Clearing House Agreement.

[2] Article 2.2, Id.

determined fixed quota from PTCL to terminate calls at its network, and receive a fixed share of revenues generated from all incoming international traffic.

4. The ICH Agreement, in essence, (i) was giving PTCL the monopoly to receive all incoming international traffic; (ii) having a single rate for incoming international traffic; and (iii) dividing the market share of incoming international traffic.

5. The Applicants gave the following arguments to support the ICH Agreement. ICH would:

   a. Stabilize the Pakistan international incoming traffic rate as per PTA directive/determination;
   b. Curb the grey traffic, which is badly effecting the rate stabilization and harming the country as well as the whole LDI industry, as all the traffic will land into Pakistan trough a single channel;
   c. Create a vital impact on the national economy in terms of huge influx of foreign exchange in the country, increased taxes for the Government of Pakistan due to increase in revenue, and revenue for the telecom industry for increasing the tele-density in the country;[3]
   d. ICH would not fix price, but only PTA's Approved Settlement Rates would be implemented;
   e. ICH would have no control on the production of voice minutes towards Pakistan;
   f. ICH would have no adverse impact either on local phone subscribers or overseas callers calling to Pakistan;
   g. ICH would divert balance of foreign exchange payments on account of telecom in Pakistan's favour; and
   h. ICH would have great impact on Pakistan's economy and foreign exchange earnings and will aggregate to USD 37.5 million per month.[4]

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[3] Points a to c are from: Cover letter, exemption application, dated 6 September, 2011.

[4] Points d to h are from the presentation made before the Commission on 13 December 2011.

6. Transworld Associates Private Limited (hereinafter "TWA") operates and owns its own undersea fiber optic cable system. TWA has a submarine cable system that connects Pakistan to two major communication hubs in the Middle East and onwards and provides internet and international communication connectivity to Pakistan's internet Service Providers, and telecommunication service providers. TWA being a competitor of PTCL strongly objected to the formation of ICH and became a necessary party to the proceedings and gave a detailed presentation in this regard.

7. TWA gave the following arguments against the formation of ICH. ICH arrangement may not be in the long term interests of the industry and country as:

   a. It will not curb grey traffic since there are other technology options for those who wish to engage in illegal activities. In fact higher APC will encourage more grey traffic;

   b. More Grey traffic will result in reduced inflow of foreign exchange and undeclared revenue will result in loss to exchequer;

   c. The LDI's reliance on PTCL for its voice business will allow PTCL to influence his decision on which carrier to use for his data business also;

   d. LDIs will become dependent on PTCL who will have unfair advantage in developing new international business and routes in future;

   e. A strategic asset of the country, TWA will be forced to relinquish its commanding market share in this market segment without adequate justification or compensation;

   f. PTCL will share revenue in the near term in order to "buy off" and incentivize the LDIs to reduce investments on developing their infrastructure and rely on PTCL network;

   g. There is no existing legal curb on PTCL to use its dominant position to manipulate the market in its favor – its has successfully fought off PTA attempt to set limits by declaring it a "significant market power;"

   h. It will significantly weaken the ability of the alternate international carrier (TWA) to compete with PTCL for LDI business, the most lucrative part of the telecom sector;

   i. Increasing incoming termination rates will provoke foreign operators to increase outgoing termination rates vice versa, affecting local consumer who in-turn will have to pay more;

j. Reliance on single operator will result in local consumer impacted by higher prices and declining quality;

k. Reliance on single operator will result in overall weakening of Pakistan's international communications infrastructure and also impact the domestic telecom sector due to brain drain and job losses;

l. It will hurt and possibly shut down significant number of the foreign and local technology product and service companies that service this sector as PTCL will become the only "real" international network operator;

m. Rollback to a monopolistic infrastructure will result in loss of foreign investor confidence since it directly goes against written and implied guarantees given by GOP; and

n. It is effectively rolling back the clock on 10 years of deregulation and re-establishing PTCL's infrastructure monopoly.[5]

8. PTCL on behalf of LDI industry of Pakistan, vide its letter dated 7th February 2012, through General Manager, Regulatory Affairs, first submitted its response to concerns raised by TWA during the hearing held on 31st January, 2012, wherein point-wise rebuttal to TWA objections have been given. Subsequently, however, PTCL through an even dated letter signed by Mr. Sikandar Naqi, SEVP (Corporate Development) requested the Commission to allow PTCL to withdraw their application for exemption as *"the industry has not reached consensus on the modalities of ICH operations."*[6] ADG (Pvt) Ltd. and Link-Direct in their letters of the same date have requested withdrawal of the subject exemption application stating that they *"have decided to shelf [the ICH Agreement] for the time being.*[7] *Since, the idea will not be implemented, therefore, we do not consider this as a live case".*

9. The Commission has been engaged in this matter since October 2011, *inter alia* filing of the application, examining written submissions, conducting hearings

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[5] Presentation made by TWA at a hearing held on 31 January 2012. Copy of presentation is part of the Commission's record.

[6] PTCL letter dated 7 February 2012, bearing reference No. RA/C&PS/ICH/2012; ADG (Pvt) Ltd. letter dated 7 February 2012; Link-Direct Letter dated 8 February 2012, bearing reference No. LDI/CCP/ICH/Notice/271

[7] Id, ADG letter; Link-Direct Letter.

and taking presentations from the parties; all now, forming part of the record. These proceedings, however, have now become moot with the request of the Applicants to withdraw their application.

10. In view of the foregoing, while the withdrawal of the exemption application is being allowed it may be noted that if in future the Applicants enter into such agreement/arrangement, notwithstanding, any authorization obtained from any other authority such agreement/arrangement prior to its execution would require clearance from the Commission, as, prima facie, it has serious competition concerns and would attract the provisions of the Competition Act, 2010.

11. Accordingly, the Applicants are hereby allowed to withdraw their application.

(Rahat Kaunain Hassan) **Chairperson**	(Abdul Ghaffar) **Member**	(Dr. Joseph Wilson) **Member**
(Vadiyya S. Khalil) **Member**	(Mueen Batlay) **Member**	(-Shahzad Ansar) **Member**

ISLAMABAD, THE 8TH OF FEBRUARY, 2012.

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Attachment C

Press Reports Concerning ICH Plan

Call Rates to Pakistan Increase by 300-800% With ICH in Place from Today

By Aamir Attaa · Monday, Oct 1, 2012 45 Comments

In middle of severe opposition from Competition Commission of Pakistan, Pakistan Telecommunication Authority and Ministry of Information Technology today lead the LDI operators to implement International Clearing House (ICH) from today.

It maybe recalled that ICH will streamline all incoming international traffic through a centralized gateway (operated and maintained by PTCL) through which all LDI operators will share the revenues for international incoming traffic based on their current market share with fixed termination charges.

Competition Commission has expressed its concerns relating to implementation of ICH and has said that commission could litigate the matter if ICH is implemented.

However, PTA – backed by Ministry of IT – went ahead with the plan and ICH is principally considered operational starting today.

All public listed companies have notified their shareholders (and stock exchanges) of their participation in ICH regime.

Call Rates to Pakistan Increase

Move, which is said to eliminate gray or illegal traffic coming to Pakistan, has increased call pricing for those calling to Pakistan from abroad. Calls from USA to Pakistan are likely to be charged at as high as 16 $cents per minute, up from 4-6 $cents per minute charged before ICH implementation.

We are receiving reports from all over the world indicating that rates for calls to Pakistan increased by 300 to 800 percent, depending on respective state and network.

Skype has also increased per minute charges for calls to Pakistan, which is now charging 14.5 $cents per minute as standard tariff. Skype has also taken back special calling plans (bundles) that it used to offer for Pakistani calls.

According to industry experts, monthly incoming international traffic to Pakistan is around 1.5 billion minutes per month, which will translate into US 120-150 million dollars of increased burden on Pakistani expats for making calls to Pakistan.

CCP has said that it is receiving complaints from overseas Pakistanis over the issue of ICH and increased call charges for making calls to Pakistan.

Economic impacts are yet to be fully calculated with the implementation of ICH.

Can CCP Block ICH?

Technically speaking Competition Commission of Pakistan can't bar PTA from implementing ICH.

CCP as a anti-competition body can't restrict the government from implementing any policy, such as ICH in this case. This doesn't come under CCP's mandate to issue show-cause notice or to penalize a government body, such as Ministry of Information Technology.

Legal experts tell ProPakistani that CCP's laws have been violated through a MoIT policy directive (upon which ICH is being implemented). Breach of CCP's laws can't be justified with an MoIT policy directive only, instead a legal framework or legislation is required to compensate CCP's legal obligation.

However, at the same time, CCP is not entitled to issue show-cause notice to a government body to cap it from issuing a policy directive. Hence there's no way it can restrict private companies from implementing ICH, which is covered by a policy directive.

The only way left behind to challenge ICH is by filing a lawsuit against the implementation in the courts, which can be done by any individual or a company. But we will have to see if that happens. Reportedly, no individual or company is yet ready to go legal against the implementation of ICH.

Karachi Stock Exchange notices for Implementation of ICH:

13. SEP. 2012 14:53 KSE T&M AFFAIRS DEPTT. 2437560 NO. 742 13 01:06PM
ROM : COMPANY_SECY_PTCL 051 2600111 2600111

ptcl hello to the future

Asset/Misc/KSE/2012

Mr. M Ghufran
Deputy General Manager- Companies Affairs
Karachi Stock Exchange,
Stock Exchange Building, Stock Exchange Road,
Karachi.

Subject: **Material Information**

Dear Mr. Ghufran,

Please refer to your letter No. KSE/C-540-6633 of September 11, 2012 on the captioned subject.

Please note that in pursuance of the Government of Pakistan (GoP) Policy Directive, Pakistan Telecommunication Authority (PTA) mandated all LDI Operators to establish International Clearing House Exchange (ICH) for handling of international incoming traffic. This is expected to result in stabilization of Settlement Rates and to possibly curb the menace of grey traffic.

According to this arrangement, PTCL has been designated as ICH Operator and will bring all international incoming traffic into country and distribute it using its own infrastructure/network. PTCL will also receive charges from foreign carriers and distribute as per agreed arrangement amongst LDI Operators. Further, there will be an ICH Board comprising of one member from each LDI and one representative each from Ministry of IT and PTA, as observers.

The ICH is expected to become operational / effective from October 01, 2012. It is hoped that with the successful implementation and functioning, this initiative will bring benefit for all stakeholders including the Government of Pakistan.

However, kindly note that this initiative of the GoP and the PTA is still in the formative phase. Therefore, at this stage it is difficult and premature to estimate the increase in revenue as it may also have unforeseeable implications for grey traffic in the country.

Regards,

(Farah Qamar)
Company Secretary
Contact: 051- 2263732 & 34

13. SEP. 2012 13:14 KSE TAM AFFAIRS DEPTT. 2437568 NO. 739

WORLD CALL

WorldCall

WorldCall Telecom Limited

Mr Muhammad Ghufran
Deputy General Manager – Companies Affair
The Karachi Stock Exchange Limited
Stock Exchange Road
Karachi – 74000
Fax – 021 32410825

Dear Sir

Subject : Material Information

Refer to your letter Ref No. KSE / C – 1097-6634 on the captioned subject, we hereby submit our response herein below.

2. A directive dated 13-08-2012 issued by the Ministry of Information Technology (MOIT) for establishment of International Clearing House (ICH) exchange for international incoming calls for long distance international (LDI), fixed-line local loops, wireless local loops and mobile operators.

3. A number of LDI operators had been working on the idea of ICH since long and they had approached Pakistan Telecommunications Authority (PTA) and MOIT many times on the subject but the same could not materialize.

4. ICH agreement was finally signed by all LDI operators in Pakistan on August 30, 2012 which will come into effect on October 1, 2012. As per the agreement all incoming traffic will be terminated on the network of Pakistan Telecommunication Company Limited (PTCL) and it will then distribute the share of contribution margin to all other LDI operators.

5. Worldcall Telecom Limited (WTL) will get a small share of around 3.5% from the ICH revenues received by PTCL. The impact on the total profitability of the Company will not be material.

6. The whole ICH arrangement is designed in a way that Government of Pakistan should start getting its due revenue from the income generated by LDI operators and the LDI

Page 1 of 2

KARACHI STOCK EXCHANGE LIMITED RECEIVED 13 SEP 2012 4064 KARACHI

Head Office:
57 A, C-III, Gulberg-III, Lahore.
Tel: (92 42) 5872636-8
Fax: (92 42) 5755231

WORLD CALL

An Omantel Company

WorldCall

WorldCall Telecom Limited

business becomes viable for the companies. This also aims to eliminate any illegal call traffic terminating in Pakistan.

7. Management of the Company believes that ICH will surely ensure a guaranteed receipt against the LDI business and a proper tax payment on the same but will not bring any material shift in the total profitability of the Company.

8. Company stands committed to informing members of the Company if the ICH revenues become material for the Company after its inception on October 1, 2012. Please also note that receipts against the revenues will start to flow into WTL from PTCL somewhere in December 2012.

9. Competition Commission of Pakistan (CCP) has also raised its concerns over the ICH agreement which may become a hurdle in the materialization of any receipts under the ICH.

10. Unless the actual receipts start to flow into WTL as per the agreement, any announcement to the members of the Company about future revenue would only enhance speculative share trading.

In the light of the above, we feel that at present, there is no material information which had to be disseminated to the members of the company.

We also welcome your advice on the same for further consideration.

Yours truly

Babar Ali Syed

Babar Ali Syed
Chief Executive Officer

Head Office:
A, C-III, Gulberg-III, Lahore.
: (92 42) 5872636-8
: (92 42) 5755231

THE EXPRESS TRIBUNE
WITH THE International Herald Tribune

State-corporate nexus: The unholy alliance in the telecom sector

Establishment of clearing house will reduce competition significantly.

By Ali Salman

Published: September 17, 2012

LAHORE: Recent developments in the telecom sector indicate that the federal government is undoing its own acts by inviting, coercing and facilitating private sector players to form a cartel, thus not only ruining the gains made from competition, but also potentially robbing off consumers.

The Ministry of Information Technology has issued a policy directive for the establishment of International Clearing House (ICH) for incoming international calls for long distance international, fixed-line local loop, wireless local loop and mobile operators.

The ICH and the policy directive will not only reduce competition significantly, but are also in direct violation of the ministry's own deregulation policy of 2003, which says "Increase service choice for customers of telecommunication services at competitive and affordable rates and liberalise the telecommunication sector by encouraging fair competition amongst service providers."

This directive disregards the proceedings held earlier by the Competition Commission of Pakistan (CCP), which were initiated on the request of long distance international (LDI) operators themselves. As per the policy note of CCP, available on its website, the LDI operators, who had earlier requested CCP for its approval, were warned against creation of ICH.

At present, there are 13 LDI operators in addition to PTCL who are licensed to originate and terminate voice traffic in Pakistan. The sector dynamics are such that incoming international voice traffic dominates the outgoing international voice traffic despite the fact that international dialing is now easily available on pre-paid SIMs and on PSTN lines.

Under ICH arrangement, all incoming traffic in future will terminate on PTCL infrastructure, which will lead to less incentive to use international bandwidth from PTCL's competitors. This will not only eliminate competition, but also further strengthen PTCL's dominant position.

Presently, it is possible to call overseas high-volume destinations in US, Canada, UK and Australia for Rs2 plus tax or around 2 cents, so termination cost to foreign operator has to be less than that. Similarly, termination costs for Pakistan are presently under 8.8 cents. With the ICH agreement, the termination rates for Pakistan will be increased by the consortium to approved PTA levels, which will likely result in foreign operators increasing outgoing termination rates.

This potential increase to around 8.8 cents will affect consumers in Pakistan, who are likely to pay more for making international calls in future under ICH arrangement and it can also foreclose the option for the remaining LDI operators to negotiate.

Through ICH, it appears that competition among LDI operators is prevented as each operator will have a guaranteed quota of incoming international traffic as per their existing market share. This is a typical example of cartelisation. In this environment, there is no incentive for an LDI operator to improve sales or enhance quality of service or for that matter to invest in network.

In the instant matter, a substantial advantage will be available to existing LDI operators. They will be in a position to exploit the arrangement through cost advantage over potential new entrants. They may use this advantage to cut prices if and when new players enter the market.

The policy directive of the ministry mentions the appointment of an independent undertaking to monitor the said arrangement and submit MIS reports on a daily basis to PTA or the IT ministry to prevent "collusive behaviour and to ensure transparency". This is ridiculous, impractical and in fact counter-productive.

In fact, such monitoring tools are typically used by cartels to monitor the observance of the common policy and not otherwise. Monitoring essentially is a regulatory role entrusted to the sector regulator and should be discharged accordingly.

The ICH will reduce choices for the consumers, enhance entry barriers, increase dominance of PTCL and facilitate cartelisation in the telecom sector.

It is apparent that the federal government, instead of protecting interests of public at large, which are guaranteed through competition in a free market economy, has itself colluded with the corporate sector. It has not happened for the first time and examples of a similar state-corporate nexus abound, for instance in fertiliser, sugar, cement, banking, etc. This nexus not only brings bad name to market economy, it also denies fruits of economic development to the public.

The Competition Act 2010 was a step in the right direction. It is time that its scope should be widened to include the policy directives and frameworks issued by the government with a punitive clause. The CCP should be authorised to refer to any such policy directives to parliament, which is the mother of all institutions, for corrective action.

The writer is a managing partner of economic research organisation Development Pool, and a founding member of the Economic Freedom Network Pakistan

Published in The Express Tribune, September 17th, 2012.

More in Business

Malaysia, Pakistan discuss ways to enhance trade

X

INTERNATIONAL
THE NEWS

Group Chairman: Mir Javed Rahman

Founded by: Mir Khalil-ur-Rahman

Editor-in-Chief: Mir Shakil-ur-Rahman

LDIs directed to operate through ICH from Oct 1

Salman Siddiqui
Friday, September 14, 2012
From Print Edition

KARACHI: The Ministry of Information Technology has issued policy directives to long distance international (LDI) operators on Thursday to establish the controversial International Clearing House (ICH) mechanism for handling all incoming foreign calls at one central point, said an official notice.

The mechanism would come into place in one go with effect from October 1, said the notice, adding that there will be an ICH Board comprising one member from each LDO and one representative each from the Ministry of Information Technology and Pakistan Telecommunication Authority, as observers.

To date, international calls are being received through different 14 houses in the country.

The Competition Commission of Pakistan (CCP) has yet not given its go ahead signal for the development and implementation of ICH but notices to the Karachi Stock Exchange that the ministry concerned would try to address the CCP concerns very soon.

The CCP was of the view that the system would end competition in the telecom sector.

The ICH agreement was finally signed by all LDI operators in Pakistan on August 30. Pakistan Telecommunication Company Limited (PTCL), with the market share of 50 percent, has been designated as ICH operator and will bring all international incoming traffic into the country and distribute it using its own infrastructure / network.

PTCL will also receive charges from foreign carriers and distribute as per the agreed arrangement among the LDI operators, it said.

"The whole ICH arrangement is designed in a way that the government of Pakistan should start getting its due revenue from the income generated by the LDI operators and the LDI," said in a notice.

Zeeshan Afzal, an analyst at Topline Securities, said that fine-tuning of the operational modalities would take two-three months and all LDI operators will keep channeling incoming international traffic through the current setup during this period.

He said that the steep increase in termination rates was likely to provide incentive for grey traffickers leading to drop in total industry minutes. "Industry sources reveal that average 1-1.2 billion minutes are terminated in Pakistan every month, while we expect the industry volumes to drop by 30 percent after the establishment of ICH."

Moreover, cartelisation, quota allocation and distorting free competition are untenable under the Competition Act 2010. In this regard, the CCP barred LDIs on February 8 to enter into such an agreement without seeking exemption from the CCP, he said.

However, this time LDIs are just complying with the federal government order to establish ICH as directive has been issued by the IT minister.

"As per our discussion with the experts, the CCP cannot issue orders to government, while it can even provide exemption, if sought."

He believed that the commission had done its part by issuing advisory note to the ministry and any direct action against LDIs was less probable as the ICH was under the umbrella of government.

"However, judicial activism may prove to be legal hindrance."

Business

International Clearing House controversy heats up

Hina Mahgul Rind
Sunday, September 09, 2012
From Print Edition

KARACHI: The controversy over the Pakistan Telecommunications Authority-mandated establishment of the International Clearing House is gaining steam. The Competition Commission of Pakistan (CCP) recently shot down the move as anti-competitive and the lobby in favour of the ICH is up in arms over what they're calling a misinformed opposition.

In August this year, the PTA finally managed to convince the 14 Long Distance and International (LDI) operators to agree to the setting up of the ICH, a project that has been in the pipeline since 2008.

The establishment of the ICH envisions all incoming international calls landing at a single technical exchange/ gateway instead of landing with the 14 LDIs currently holding the field.

Justifying the setting up of the ICH, PTA spokesperson Malahat Rab said that operators in a few countries have agreed to set up the ICH model on their own while in others, it is obligated by the regulators. "Some countries like Bangladesh have even gone beyond the ICH arrangement and launched third party exchanges" she said in a statement provided to The News.

According to sector analysts, if this project materialises, the government will earn between $750 million to $800 million in revenues from the telecom sector. Further, the government also stands to secure a contribution of $232 million from the telecoms for the Universal Service Fund (USF), which is maintained by the government for the development of IT and telecom sector in underdeveloped areas.

The ICH is also expected to restore the profitability of LDI operators since it will fix the rates for all incoming calls at 8.4 cents a minute, up from the existing Approved Settlement Rate (ASR) of two cents per minute.

According to industry observers, the biggest beneficiary of the move is expected to be PTCL, which is the largest LDI operator with 50 percent of the existing market. PTCL stock, say market players, is already on the up. "The ICH will be a game changer for the listed telecom sector, particularly for PTCL, as the company will have a 50 percent share in revenues from ICH," says Ayub Ansari, telecom analyst at AKD Securities. "Furthermore, unlike other LDI operators; PTCL will actually receive Access Promotion Charges and will not have to pay 15 percent of its LDI margins towards the settlement of USF dues."

The other LDI operators are to be allocated a proportion of total revenues based on their respective market shares and, according to some accounts, their performance over the last five years.

But the most significant consequence of the ICH is that it is expected to ramp up PTCL's bargaining power vis-à-vis foreign operators. "The setting up of the ICH will improve PTCL's ability to negotiate higher ASR rates from foreign operators," says Ansari.

However, the CCP's policy note addressed to the Ministry of Information and Technology has thrown a spanner into these works.

The increase in rates, argues the CCP, will hurt consumers while the revenue guarantees would reduce the LDI operators' incentive to improve performance. Since the CCP's reservations have been widely publicised and circulated, the ministry is expected to address these before proceeding with the plan to set up the ICH.

However, the telecom sector is insisting that the CCP doesn't know what it's talking about. "The CCP's fear that consumer tariffs will rise is completely baseless," says one industry insider. "We're not advocating a rise in rates for Pakistani consumers calling abroad; all we want is a greater share of the revenues generated on calls originating from abroad."

According to him, telecom companies in UK, North America and Canada charge their subscribers an average rate of 38 cents per minute while those in Saudi Arabia and the GCC countries charge an average of 54 cents. "The telcos abroad keep a major portion of these rates – 38 cents and 54 cents – for themselves and the operators in Pakistan who route these calls to their destination are given only a fraction of these rates, usually 1.25 cents per minute," he explains.

"Obviously, the revenues generated by LDI operators in Pakistan are thus very small, usually enough to just cover their USF contributions. And so you'll see many of these LDI operators dealing in grey traffic to recover their investment."

However, others who keep an eye on the telecom sector are not too persuaded by this logic because termination charges in even the UK, US and Canada are just one cent per minute; the revenue earner is always the country where the call is originating. (The exceptions to this rule are the GCC countries, which demand 80 percent to 90 percent of total revenue even when the call originates from elsewhere.)

In such a scenario, say telecom analysts, Pakistan's quest to ramp up its share of termination charges may push other countries to do the same. And this, say sector analysts, will see consumers in Pakistan paying higher call charges – the fear expressed by the CCP.

The other fear is that in the face of Pakistan's demand for a greater chunk of revenues from incoming calls, telecos abroad may pass on the increased charges to their subscribers. "The increase in calling rates will push consumers to shift to voice over internet protocol (VoIP) platforms such as Skype and decrease outgoing traffic," says Ansari. "The other risk is that a possible huge jump in grey traffic could force the PTA to reduce the ASR in order for the sector to remain competitive," argues Ansari.

However, the PTA has its own take on the issue. "Different countries have adopted or specified different international termination rates, keeping in view their requirements," said Rab.

According to the PTA spokesperson, European countries generally have lower international termination for fixed lines but exceptionally high ones for mobiles while international termination rates for Middle Eastern countries are generally high. As such, the PTA argues, Pakistan's internal policies have no bearing on rates elsewhere. "When the PTA lowered settlement rates for Pakistan, international carriers still charged higher retail tariffs from their customers and didn't pass on the benefit of reduction," she said.

The controversies regarding rates aside, ICH proponents are adamant that the gateway will curb grey traffic by routing it through registered LDI operators. There are plans for the ICH to hire an independent private body to monitor traffic and identify the grey route operators.

However, analysts are not too persuaded by the viability of this plan. Earlier too, they argue, the PTA failed to curb grey traffic worth an estimated $400 million a year. "The decline in grey traffic and the increase in number of minutes consumed from 12 billion a year to 24 billion is a consequence of lower call charges, not their routing through unregistered LDI operators," says BMA Capital's telecom sector analyst Zoya Zaidi. "Obviously, if rates increase, so will grey traffic," she contends.

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Assertion that ICH to help boost foreign exchange earnings by $800 million is contentious: CCP Chairperson

September 07, 2012 RECORDER REPORT 0 Comments

Following are edited excerpts of a conversation with Rahat Kaunain, Chairperson Competition Commission of Pakistan.

BR Research: The Competition Commission of Pakistan (CCP) has expressed serious reservations regarding the planned establishment of an International Clearing House to channelise incoming international phone calls. Please elaborate on the nature of these concerns.

Rahat Kaunain: The telecommunications sector approached the CCP back in September 2011, requesting an exemption from Competition laws for the establishment of the International Clearing House (ICH).

It is very important to remember that it was the LDI operators who approached CCP voluntarily. This shows that they too had recognised that there are restrictive practices in this proposal that could hinder fair competition.

They approached the Commission requesting exemption under Section 4 of the Competition Act, 2010. This section basically bars any anti-competitive agreements such as quota fixing or price fixing; unless an exemption on grounds of promoting technical or economic progress while allowing consumers' fair share of resulting benefits is granted by CCP.

The request received was deliberated over by the full Commission. Transworld International as the only competitor to Pakistan Telecommunications Company Limited in the relevant segment and having 10 LDI operators as its customers strongly opposed the formation of ICH.

During the course of the hearings, the Commission repeatedly asked the petitioners to cite any example of a similar arrangement in the rest of the world. With respect to Commission's concern that ICH would effectively cartelise the market for incoming international calls by instituting a fixed quotas and also the price; no satisfactory explanation was offered. The response centred on raising more revenues for the government through curtailment of grey traffic. This argument was not even well substantiated.

However, the subject application was withdrawn citing that, "the industry has not reached consensus on the modalities of ICH operation. They have decided to shelve the ICH agreement for the time being. Since the idea will not be implemented, therefore they did not consider it a live case".

Nonetheless, the Commission while allowing the withdrawal of the application made it abundantly clear in its order issued in February 2012 that if in future applicants enter into any such arrangement in future; owing to serious competition concerns, it would require prior clearance of the Commission notwithstanding any authorisation obtained from any other authority. The Commission could not have put it in simpler and more easily understandable terms.

NY Closing	World Indices	The Rupee
Euro		1.2932
Sterling		1.6223
Swiss Franc		0.9357
Yen		77.8600
Gold		1767.600
Cotton		72.500
Oil		92.040

The Commission cannot issue orders pre-emptively, unless a proceeding is pending, however it is empowered to seek clarification and/or call for information, as was sought from PTA through its special order after CCP learnt that the ICH plan had in fact not been shelved.

It needs to be appreciated that policy directives must be in line with the laws of the land. Any policy directive cannot overrule and run contrary to the express provisions of law.

BRR: The ultimate aim of the various regulators and other authorities including the CCP is to improve the economic conditions in Pakistan. The ICH is billed to combat grey trafficking in the telecom sector, which is costing the government millions of dollars in foregone foreign exchange. What sort of a settlement can be achieved that will allow the country to crack down against this menace?

RK: Let us first ascertain what comprises national interest. In my opinion, it includes a free economy, growth, investment and enforcement of law; and in the current scenario such measures must enhance economic efficiency.

Secondly, let us dissect the assertion that the ICH will help combat grey trafficking among the LDIs. The Pakistan Telecommunications Authority (PTA) accedes that right now it is only able to monitor 30 percent of all incoming international traffic.

These assertions are based on the current market volumes, which are subject to the prevailing rates for incoming international calls. If the ICH were to push up these rates from the current level the volume of international incoming traffic is likely to go down and the dynamics would also change.

So the assertion that the ICH will help boost foreign exchange earnings by $800 million is contentious. In fact, by raising rates along the legal channel, grey traffic is likely to increase.

Thirdly, international calling is a two-way traffic. It would be naive to assume that we can raise rates for incoming traffic, but outgoing rates charged to customers will remain unaffected. It may not happen overnight, but other countries may respond in time with higher charges on long distance calls from Pakistan to these destinations.

In other words, while there may be some short term gains in terms of foreign exchange earnings, in the long term, we will jeopardise a vibrant market in this country and would be going backwards to the times prior to deregulation. Furthermore, defined quotas would not only deter innovation and competition amongst the LDIs but would also impact on the quality of the service offered to consumers.

Under the ICH model, the LDIs in the garb of monitoring grey traffic would actually be ensuring that their quotas are maintained. In fact, monitoring and regulation is the job of the regulator and not the regulatee. As for engaging an Int'l agency for monitoring after competitive bidding and subsequently installing requisite equipment, it will take a minimum of six-12 months, during which time the grey traffic will not only continue but those using illegal means may find creative solutions for countering such monitoring.

BRR: What are the potential drawbacks that may be borne if the ICH is set up?

RK: We are not in a position to pass judgement on the intentions of the PTA, Ministry of Information Technology (MoIT) or the stakeholders in this sector. However, what we can point out is that there can be some possible detrimental effects to this sector and the industry in general by the establishment of ICH and this certainly is not in-sync with international practices.

The advances that this industry has witnessed as a result of deregulation of the sector, growth in volumes, low rates to consumer, may be negated and PTCL will once again emerge as a monopoly over the incoming volume, giving it considerable dominance even in negotiating outgoing rates. The allocation of quotas will further provide comfort zone to LDI operators who will be left with no incentive to compete even for improving quality of service. Hence competition and the drive towards innovation will be hampered.

Also revenues are not and cannot be the only focus of the regulator or the government, rather focus should be on generating more and more economic activity keeping in view the long term benefits to the economy. We must have progressive policies to ensure that we remain globally competitive.

Economic Indicators   Market at Close

Annual	**2011/12**
Foreign Debt	$65.602bn
Per Cap Income	$1,372
GDP Growth	3.7%
Average CPI	10.04%
Monthly	**August**
Trade Balance	$-1.774 bln
Exports	$1.911 bln
Imports	$3.685 bln
Weekly	**September 24, 2012**
Reserves	$14.863 bln

Top Traded   Advancers   Decliners

Symbol	Price	Change	Volume
PTC	19.36	0.42	11,376,000
PTC	19.36	0.42	11,376,000
MLCF	8.78	0.60	7,247,000
MLCF	8.78	0.60	7,247,000
PAEL	8.11	0.10	7,137,000

Currency Converter

Amount:

From:
Canadian Dollar (CAD)

To:
U.S. Dollar (USD)

Convert

Promoting free and fair competition necessitates that the sector should be open to future entrants as well. The current market players that claim to be running losses cannot be supported to persist as hegemony, to dominate the market regardless of their level of efficiency. Closing the market to new entrants will not improve competition in the market and it will definitely not benefit customers in terms of increase in costs.

As mentioned earlier we cannot assume that PTCL will dominate the market for incoming traffic but the market for outgoing traffic will remain unaffected. In the real world, things are a lot more inter connected than that. CCP is not concerned with bailing out competitors but it is very much mandated with ensuring that fair competition is not impeded in any market.

REDACTED
FOR PUBLIC INSPECTION

Attachment D

Competition Commission of Pakistan Policy Note (Aug. 28, 2012)

Media Center › Press Releases

:: 28 August 2012

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CCP ISSUES POLICY NOTE TO MOIT, PTA

ISLAMABAD, 28 AUGUST 2012: The Competition Commission of Pakistan (CCP) has issued a Policy Note to the Ministry of Information Technology (MOIT) and Pakistan Telecommunication Authority (PTA) recommending the withdrawal of the Directive dated 13 August 2012 issued by the MOIT proposing establishment of international clearing house exchange for international incoming calls for long distance international, fixed-line local loops, wireless local loops and mobile operators (Proposed ICH Arrangement).

In its Policy Note, CCP has also advised MOIT & PTA that any such proposed arrangement/agreement if entered into, is not tenable in terms of Section 4 of the Competition Act, 2010.

The Proposed ICH Arrangement has been supported by MOIT through its directive for amicable settlement of the pending cases relating to Access Promotion Charges (APC) and to curtail and eliminate the grey traffic, in line with the existing Deregulation Policy 2003, and the existing regulatory regime.

CCP has observed in its Policy Note that while it may be within the domain of MOIT to issue policy directives in relation to the subject industry, it needs to be appreciated that any such policy decision/directive/circulars are in fact subject to the substantive provisions of the statute in force. Regarding the amicable settlement aspect, it has been noted that the pre-ICH outstanding liabilities on account of regulatory and GoP dues will continue to be individual responsibility of each LDI operator i.e. 'to be discharged as final settlement through legal process'. Therefore, CCP has observed that it is thus not clear how the matter stands resolved when the settlement is subject to judicial review i.e. 'final settlement through legal process' which in any event, the parties are bound to honor.

With respect to the curtailment and elimination the grey traffic, CCP has observed that under the Proposed ICH Arrangement the termination rate for Pakistan is expected to go up to 8.8 cents from currently lower rates. This may provide further incentive for Grey market players to increase their traffic. Also, in future if an arbitrage opportunity exists the players operating in the Grey traffic will likely exploit that, thus ICH move is unlikely to curb the Grey traffic and may kindle its further growth.

As far as the De-regulation Policy, 2003 is concerned, it has been observed by the Commission that the said policy apart from other objectives provides for increase service choice for customers of telecommunication services at competitive and affordable rates, liberalize the telecommunication sector by encouraging fair competition amongst service providers and maintain an effective and well defined regulatory regime that is consistent with the international best practices. However, through the Proposed ICH Arrangement it appears that the competition among the LDI Operators is restricted/prevented/diminished as each operator will have a guaranteed quota of incoming international traffic as per their existing market share.

As for the aspect regarding regulatory regime for the telecom operators, CCP in its Policy Note has observed that all relevant laws and applicable rules and regulations which inter alia includes the Competition Act must be taken into account. The CCP reiterates that it had already passed an order dated 8 February, 2012 in which the CCP made it abundantly clear that the subject matter has serious competition concerns.

The CCP further notes that the Proposed ICH Arrangement directly violates Section 4 of the Act, and particularly, clause (a) & (b) of subsection 2 of Section 4 which prohibits price fixing and division of market via quotas. , Under the Proposed ICH Arrangement the consortium will designate PTCL to undertake negotiations on termination rates with foreign operators, and LDI operators also signing up to a percentage quota, will be guaranteed from the revenue PTCL collects from the incoming international terminations. Thus the consortium as such will fix price for termination rates and also via percentage quota allocated, share in the proceeds from the terminations from foreign operators, a clear violation of the Act. It has also been observed that in this environment there is no incentive for a LDI Operators to improve sales, or enhance quality of service (QoS) or for that matter to invest in Network. With fixed quotas there will also be less incentive for LDI's to bring in additional voice traffic from overseas operators as any upside will be shared as per quota.

It has also been observed by CCP that in terms of Para 3(d) of the Directive, the representatives of PTA and MOIT on Board as observers of Proposed ICH Arrangement, in itself curtails the free market commercial decision making of the LDI Operators and perhaps undermines the regulatory powers of PTA.

The CCP also noted in its Policy Note that a substantial advantage will be available to the existing LDI operators due to the Proposed ICH Arrangement. The incumbent LDI operators will be in a position to exploit the said arrangement through a cost advantage over potential new entrants. They may use this advantage to cut prices if and when new players enter the market. Although they will be moving away from short run profit maximization objectives, they will however inflict losses on new undertakings and thus protect their own market position in the long run unless the new entrant also agree to such an arrangement. Once a potential entrant is successfully barred from a market, existing players are free to revert to their prior anticompetitive conduct. This will eventually have a negative impact on the end consumer, who must now face higher prices (due to monopolistic or oligopolistic pricing structures and inefficient and obsolete technology), lower quality products (the effect of less research and development) and ultimately fewer alternatives. It has also been observed that although it has been stated in the Para 3(b) of the Directive that the appointment of an independent undertaking to monitor the said arrangement and submit MIS reports on a daily basis to PTA or MOIT to prevent "collusive behaviour" and to ensure transparency; however, under the given arrangement it seems more likely that such arrangement results in monitoring the consortium members to prevent any deviation from allocated quotas, which in itself is anti-competitive under the Proposed ICH Arrangement.

CCP in its Policy Note concludes that Under the Directive and Proposed ICH Arrangement price fixation and sharing of market (quota allocation) are promoted. Such practices i.e. price fixation and quota allocation are considered per se illegal being the most pernicious anticompetitive conducts. Competition regime is all about applying competition policy & principles of law to make undertakings compete vigorously with each other. This fair business rivalry ensured through the competition rules brings efficiency, increased productivity, creates a wider choice for consumers and helps reduce prices and improve quality. It also plays important role in weeding out inefficient undertakings and relocation of output from less productive to more productive undertakings. It needs to be recognized that the larger benefit of competition is to promote and enhance economic efficiency.

POLICY NOTE

IN THE MATTER OF DIRECTIVE FOR ESTABLISHMENT OF INTERNATIONAL CLEARING HOUSE EXCHANGE FOR INTERNATIONAL INCOMING CALLS FOR LONG DISTANCE INTERNATIONAL, FIXED-LINE LOCAL LOOP, WIRELESS LOCAL LOOP AND MOBILE OPERATORS

1. A directive dated 13-08-2012 issued by the Ministry of Information Technology (hereinafter referred to as the '**MOIT**') for establishment of international clearing house exchange for international incoming calls for long distance international, fixed-line local loops, wireless local loops and mobile operators (hereinafter referred to as the '**Directive**') has come to the notice of the Competition Commission of Pakistan (the '**Commission**').

2. By way of background it is pertinent to highlight that LDI Operators earlier vide application dated 09-09-2011, (i) PTCL; (ii) Multinet Pakistan (Private) Limited; (iii) 4B General International (Private) Limited; (iv) Wi-tribe Pakistan Limited; (v) Dancom Pakistan (Private) Limited; (vi) Wise Communication System (Private) Limited; (vii) Worldcall Telecom Limited, (viii) ADG (Private) Limited; (ix) Link Direct International (Private) Limited; (x) Telecard Limited; (xi) Circle Net Communications Pakistan (Private) Limited; (xii) Wateen Telecom Limited; (xiii) Redtone Telecommunications Pakistan (Private) Limited; and (xiv) Telenor LDI Communications (Private) Limited (hereinafter collectively referred to as '**LDI Operators**'), sought exemption under Section 5 of the Competition Act, 2010 (hereinafter referred to as the '**Act**') for their proposed International Clearing House Agreement (hereinafter referred to as the '**ICH Agreement**') entered between PTCL and the LDI Operators.

3. It is hoped that the LDI operators duly apprised MOIT prior to passing of the Directive regarding Commission's stance on the subject issue. However, the Commission was not informed or consulted regarding any such deliberations. The

Commission has already passed an order dated 8 February, 2012. It was involved in this matter from October 2011 to February 2012 and the subject application was withdrawn on the ground that the industry did not reach consensus on the modalities of ICH operators and that the applicant did not consider it *'a live case'*. The Commission made it abundantly clear that the subject matter has serious competition concerns. It was observed that if in future the applicants enter into any such agreement/arrangement, notwithstanding any authorization obtained from any other authority, such agreement/arrangement would require clearance from the Commission before giving effect to such agreement.

4. There are presently 13 LDI operators in addition to PTCL who are licensed to originate and terminate voice traffic in Pakistan. The sector has evolved with the growth of Cellular telephony services and Teledensity has increased up to 72% from a large pre-paid card based business to inexpensive nationwide and international calls from Cellular and Local Loop operator connections. The sector dynamics are such that incoming international voice traffic dominates the outgoing international voice traffic despite the ease of availability for International dialing now available on pre-paid SIM's and on PSTN lines. There is vertical integration for Operators who own their own LDI's or have arrangement through partnerships as voice traffic originates and terminates at the Cellular subscribers (120M) and PSTN subscribers (3.1 M) and WLL subscribers (3.1 M). PTCL was the sole monopoly at time of deregulation and still is the dominant player in international incoming voice traffic with around 50% market share and their once high margin business has suffered most with the strong price competition.

5. While it may be within the domain of MOIT to issue policy directives in relation to the subject industry, it needs to be appreciated that any such policy decision/directive/circulars are in fact subject to the substantive provisions of the statute in force.

6. MOIT through the Directive has expressed its support for the establishment of International Clearing House Exchange arrangement (hereinafter referred to as the '**Proposed ICH Arrangement**') of LDI Operators primarily on the following basis:

(i). PTA's request for amicable resolution of the matter pertaining to Access Promotion Charges (the 'APC') contribution to be made by the LDI Operators to the Universal Services Fund (the 'USF') under the Access Promotion Contribution Rules, 2004 & Access Promotion Regulations 2005;

(ii). to curtail and eliminate the grey traffic;

(iii). the existing Deregulation Policy 2003; and

(iv). the existing regulatory regime.

7. With respect to the above aspects, the Commission wishes to point out the following:

(i). As per the Directive, number of cases are pending wherein LDI operators have challenged APC for USF contribution before the courts and huge amount in this regard is payable to PTA. However, in Para 3 (e) of the Directive it is stated that the pre-ICH outstanding liabilities on account of regulatory and GoP dues will continue to be individual responsibility of each LDI operator i.e. '*to be discharged as final settlement through legal process*'. Further it is stated that to show the commitment to return the outstanding dues against concerned LDIs, an Escrow account is to be opened with PTA and *the ICH operator shall deposit 15% of respective LDI operators' revenues obtained through this new arrangement* so that the same can be used to pay the dues in case the decision of the court is against LDI operators. It is thus not clear how the matter stands resolved when the settlement is subject to judicial review i.e. '*final settlement through legal process*' which in any event, the parties are bound to honor.

(ii). Under post Proposed ICH Arrangement, all incoming traffic in future will terminate on PTCL infrastructure. The inbound traffic is significantly more than outgoing traffic, so will lead to less incentive to use international bandwidth from a PTCL's competitor(s) and the Proposed ICH Arrangement would not only eliminate competition but also further strengthens PTCL's dominant position. Prior to deregulation in this sector bandwidth rates were very high and with competition have come down to competitive levels, both for Voice and Data, which can run the risk of going up once again.

(iii). Presently it is possible to call overseas high volume destinations in US/Canada/UK/Australia for Rs 2 + tax or around 2 cents so termination cost to foreign operator has to be less than that. Similarly termination costs for Pakistan are presently under 8.8 cents. With the ICH agreement the termination rates for Pakistan will be raised by consortium to approved PTA levels which will likely result in foreign operators to increase outgoing termination rates. This potential increase to around 8.8 cents will affect consumers in Pakistan who are likely to pay more for making international calls in future under ICH arrangement and it can also fore close the option for the remaining LDI operators to negotiate. It may be relevant to add that the Deregulation Policy 2003 provides that as the markets for particular services become effectively competitive, PTA shall reduce the regulatory burden on PTCL in respect of such services, while maintaining appropriate anti-competitive safeguard.

(iv). With respect to the second aspect the Proposed ICH Arrangement is supposed to restrict Grey traffic by converging all incoming traffic at PTCL gateway and by putting in better monitoring facility. However under the ICH agreement the termination rate for Pakistan is expected to go up to 8.8 cents from currently lower rates. This may provide further incentive for Grey market players to increase their traffic. Also, in future if an arbitrage opportunity exists the players operating in the Grey traffic will likely exploit that, thus ICH move is unlikely to curb the Grey traffic and may kindle its further growth.

(v). Reverting now to the third aspect, the existing policy which we understand is reference to De-regulation Policy issued on 13 July, 2003 (hereinafter the '**Deregulation Policy**') and must be taken holistically. From competition view point the Deregulation Policy emphasizes *inter-alia*

(a). Increase service choice for customers of telecommunication services at competitive and affordable rates and

...

...

(f). Liberalize the telecommunication sector by encouraging fair competition amongst service providers.

(g). Maintain an effective and well defined regulatory regime that is consistent with the international best practices

However, through the Proposed ICH Arrangement it appears that the competition among the LDI Operators is restricted/prevented/diminished as each operator will have a guaranteed quota of incoming international traffic as per their existing market share. In this regard it is pertinent to highlight that the LDI Operators are under a mandatory obligation to stay within the Proposed ICH Arrangement for a period so determined by the Government of Pakistan but such obligation is without prejudice to the rights of LDI Operators under their LDI Licenses (which inherently envisages that they can originate and terminate calls at their infrastructure). Apart from this contradiction, the role of the LDI Operators seemingly would be that of bystander as most of the decision making would depend or be passed on to PTCL.

(vi). As for the aspect regarding regulatory regime for the telecom operators all relevant laws and applicable rules and regulations which *inter alia* includes the Competition Act must be taken into account. As mentioned in Para (2) above the Commission has already passed an order dated 8 February, 2012 in which the Commission made it abundantly clear that the subject matter has serious competition concerns.

(vii). The Proposed ICH Arrangement directly violates Section 4 of the Act, and particularly, clause (a) & (b) of subsection 2 of Section 4 which prohibits price fixing and division of market via quotas. Under the Proposed ICH Arrangement the consortium will designate PTCL to undertake negotiations on termination rates with foreign operators, and LDI operators also signing up to a percentage quota, will be guaranteed from the revenue PTCL collects from the incoming international terminations. Thus the consortium as such will fix price for termination rates and also via percentage quota allocated, share in the proceeds from the terminations from foreign operators, a clear violation of the Act. This is a typical example of cartelization. In this environment there is no incentive for a LDI Operators to improve sales, or enhance quality of service (QoS) or for that matter to invest in Network. While LDI operators retain the right to originate international voice traffic to foreign operators the inability to control inbound termination price and volumes effectively leads to a weaker bargaining position, when negotiating with foreign operators. With fixed quotas there will also be less incentive for LDI's to bring in additional voice traffic from overseas operators as any upside will be shared as per quota. The forming of ICH consortium is a cartel which will restrict competition and has to be discouraged.

(viii). Furthermore, in terms of Para 3(d) of the Directive, the representatives of PTA and MOIT on Board as observers of Proposed ICH Arrangement, in itself curtails the free market commercial decision making of the LDI Operators and perhaps undermines the regulatory powers of PTA.

(ix). We note that in economics and especially in the theory of competition, barriers to entry are obstacles in the path of an undertaking which wants to enter a given market. It is any factor that makes it difficult for a new undertaking to enter a market. The term refers to hindrances that an undertaking may face while trying to enter into a profession or trade. In the instant matter, a substantial advantage will be available to the existing LDI operators due to the Proposed ICH Arrangement. The incumbent LDI operators will be in a position to exploit the said arrangement through a cost advantage over potential new entrants. They may use this advantage to cut prices if and when new players enter the market. Although they will be moving away from short run profit maximization objectives, they will however inflict losses on new undertakings and thus protect their own market position in the long run unless the new entrant also agree to such an arrangement. Once a potential entrant is successfully barred from a market, existing players are free to revert to their prior anticompetitive conduct. This will eventually have a negative impact on the end consumer, who must now face higher prices (due to monopolistic or oligopolistic pricing structures and inefficient and obsolete technology), lower quality products (the effect of less research and development) and ultimately fewer alternatives.

8. Although it has been stated in the Para 3(bi) of the Directive that the appointment of an independent undertaking to monitor the said arrangement and submit MIS reports on a daily basis to PTA or MOIT to prevent "collusive behaviour and to ensure transparency; however, under the given arrangement it seems more likely that such arrangement results in monitoring the consortium members to prevent any deviation from allocated quotas, which in itself is anti-competitive under the Proposed ICH Arrangement. In fact such monitoring tools are typically used by cartels to monitor the observance of the common policy and not otherwise. Monitoring essentially is a regulatory role entrusted to the sector regulator and should be discharged accordingly.

9. **Conclusion**: Under the provisions of the Act, the Commission is mandated *inter alia* to provide for free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anti-competitive behavior. Under the Directive and Proposed ICH Arrangement price fixation and sharing of market (quota allocation) are promoted. Such practices i.e. price fixation and quota allocation are considered *per se* illegal being the most pernicious anticompetitive conducts.

Competition regime is all about applying competition policy & principles of law to make undertakings compete vigorously with each other. This fair business rivalry ensured through the competition rules brings efficiency, increased productivity, creates a wider choice for consumers and helps reduce prices and improve quality. It also plays important role in weeding out inefficient undertakings and relocation of output from less productive to more productive undertakings. It needs to be recognized that the larger benefit of competition is to promote and enhance economic efficiency.

In view of the above highlighted competition concerns and the statutory responsibility of the Commission under the Act to prevent or eliminate anti-competitive behavior and in pursuance to Section 29 of the Act, we recommend withdrawal of the Directive.

Please be advised that any such proposed arrangement/agreement if entered into in terms of Section 4 of the Act is not tenable under law.

*****

Islamabad, the 28th of August, 2012

REDACTED
FOR PUBLIC INSPECTION

Affidavit of Edward Mulligan

REDACTED
FOR PUBLIC INSPECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Petition Pursuant to Rule 64.1002(d) for Expedited Issuance of Settlements Stop Payment Order on the U.S.-Pakistan Route	)))))	IB Docket No. 12-_____

AFFIDAVIT OF EDWARD MULLIGAN

Edward Mulligan, being first duly sworn according to law does hereby state as follows:

1. My name is Edward Mulligan. I am the Vice President Carrier Operations of Vonage Holdings, Corp. ("Vonage"). In that capacity, I oversee all agreements entered into by Vonage concerning call termination and related matters. The purpose of this affidavit is to support certain facts set forth in Vonage's petition pursuant to Rule 64.1002(d) for expedited issuance of settlements stop payment order on the U.S.-Pakistan route and for issuance of temporary protective measures.

2. Vonage is a U.S.-based communications provider. Vonage is headquartered in Holmdel, New Jersey and currently serves approximately 2.3 million subscribers.

3. I have responsibility for overseeing Vonage's efforts to negotiate with third party carriers for the termination of Vonage's traffic, including international traffic. Through its negotiations with third party carriers, Vonage seeks lower, more cost-based termination rates on all international routes, including the U.S.-Pakistan route, in accordance with the FCC's direction to those carriers to "to negotiate with their foreign correspondents accounting rates that are consistent with relevant cost trends." *Regulation of International Accounting Rates*, 6 FCC Rcd. 3552, ¶ 24 (1991).

4. Currently, Vonage offers its U.S.-based customers multiple calling plans that include international calling. Vonage's flagship calling plan is "Vonage World." The Vonage World plan includes unlimited local and long distance home phone service across the U.S., Canada and Puerto Rico, as well as unlimited calling to landlines in more than 60 countries and mobiles in more than 10 countries and territories. Since May 3, 2012, unlimited calls to landline and mobile numbers in Pakistan have been included in the Vonage World plan. Vonage added Pakistan to the Vonage World plan based on the low termination rates Vonage paid for the termination of calls to Pakistan. The Vonage World plan is currently priced at $25.99 per month plus taxes and fees.

5. Vonage has longstanding relationships with a number of third party U.S. and international carriers for the termination of Vonage's traffic into Pakistan. Vonage routes most of its calls to Pakistan through **[BEGIN CONFIDENTIAL TREATMENT]** **[END CONFIDENTIAL TREATMENT]** and other international telecommunications providers, including, **[BEGIN CONFIDENTIAL TREATMENT]** **[END CONFIDENTIAL TREATMENT]** All of the calls to Pakistan placed by Vonage customers, therefore, are handed off from Vonage's network to international carriers, which ultimately send them to Pakistani carriers.

6. Until October 1, 2012, the international termination rate in Pakistan had been cost-based and more or less in line with international termination rates to other countries with liberalized telecommunications sectors. Vonage was paying its carrier partners between **[BEGIN CONFIDENTIAL TREATMENT]** **[END CONFIDENTIAL TREATMENT]** per minute of traffic sent to Pakistan for termination to fixed landline and/or mobile telephone numbers.

7. Since the inclusion of Pakistan in the Vonage World plan, the company has substantially grown its base of customers and minutes of calls to Pakistan. Vonage estimates that approximately **[BEGIN CONFIDENTIAL TREATMENT]** **[END CONFIDENTIAL TREATMENT]** of its customers (**[BEGIN CONFIDENTIAL TREATMENT]** **[END CONFIDENTIAL TREATMENT]** of which are located in the U.S.) have placed calls to Pakistan in the past six months. Vonage estimates that prior to October 1, 2012, each of its customers that called Pakistan averaged **[BEGIN CONFIDENTIAL TREATMENT]** **[END CONFIDENTIAL TREATMENT]** minutes of calls to Pakistan per month. This represents an average of approximately **[BEGIN CONFIDENTIAL TREATMENT]** **[END CONFIDENTIAL TREATMENT]** minutes of U.S.-Pakistan calls per month.

8. On or around September 24, 2012, Vonage was formally notified by its underlying carrier partners that the rate for call termination to Pakistan would be increasing to between **[BEGIN CONFIDENTIAL TREATMENT]** **[END CONFIDENTIAL TREATMENT]** per minute effective October 1, 2012. Vonage's carrier partners have consistently stated that the increased rates were solely caused by a corresponding rate increase to more than $0.088 per minute by PTCL. PTCL would be handling all incoming international traffic to Pakistan effective October 1, 2012 under what is being dubbed as the International Clearing House Plan (the "ICH Plan"). The ICH Plan and the termination rate increase to $0.088/minute in Pakistan are purportedly mandated by the Pakistani telecommunications regulatory authorities.

9. Based on the average monthly minutes of calls to Pakistan by Vonage customers, the increase of the Pakistani international termination rate to between **[BEGIN**

CONFIDENTIAL TREATMENT] **[END CONFIDENTIAL TREATMENT]** per minute, would require Vonage to charge its customers an additional $80 per month (*i.e.*, $105.99) just to cover the increased cost of termination. As a result of this dramatic cost increase, on October 1, 2012, Vonage was forced to remove Pakistan from the countries that Vonage World customers can call for no additional charge under the Vonage World plan. Since October 1, Vonage World plan customers have been charged an additional per minute fee of $0.08 per minute for calls to Pakistan.

10. Vonage does not have a direct traffic termination relationship with any Pakistani carriers that have undertaken the ICH Plan. Vonage terminates its traffic to Pakistan through third party carriers. Nonetheless, the rate increase to $0.088 per minute in Pakistan has a direct and negative impact on Vonage, the costs it pays for termination of calls to Pakistan, and ultimately the Vonage customers placing calls to Pakistan, through higher rates.

The foregoing is true and correct to the best of my knowledge and belief.

Edward Mulligan
Edward Mulligan
Vice President Carrier Operations
Vonage Holdings Corp.

Dated: October 1, 2012

STATE OF NEW JERSEY

COUNTY OF MONMOUTH

Subscribed and sworn to before me this 1st day of October, 2012.

Kathryn Lewandowski
Notary Public 2398594

My Commission expires: ______________________

KATHRYN LEWANDOWSKI
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JULY 26, 2015