



PAKISTAN TELECOMMUNICATION AUTHORITY
HEADQUARTERS, F-5/1 ISLAMABAD
<http://www.pta.gov.pk>

Re:
CM Pak Limited (Zong)

Enforcement Order under Section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 read with sub-rule (4) of Rule 9 of the Telecom Rules, 2000

Date of Issuance of Show-cause Notice: 25th November, 2008
Date of Hearing: 25th June, 2009
Venue of Hearing: PTA HQs, Islamabad

The Authority Present:

Dr. Mohammed Yaseen:	Chairman
S. Nasrul Karim A. Ghaznavi:	Member (Finance)
Dr. Khawar Siddique Khokhar:	Member (Technical)

The Issue:

“The Licensee’s Obligations Regarding Mobile Subscribers’ Documentation and Antecedents Verification”

Decision of the Authority

1. Brief Facts:

- 1.1. M/s CM Pak Limited (Zong) (the “licensee”) which is maintaining telecommunication systems and providing telecommunication services in the country under licence No.CMT-03/LL&M/2004 dated 23rd October, 2004 (the “licence”) issued to it by Pakistan Telecommunication Authority (the “Authority”) was, on 25th November, 2008 issued a show cause notice (the “notice”) under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 (the “Act”) for contravening the terms and conditions of the licence.
- 1.2. Powers of the Authority to issue Show Cause Notice: Under section 23 of the Act, whenever provisions of the Act, the rules framed thereunder or the terms and conditions of licence are contravened by a licensee, the Authority may proceed against it with the issuance of a show cause notice. For ready reference, the said section is reproduce as under;

Section 23 of the Act:

1) *Where a licensee contravenes any provision of this Act or the rules made thereunder or any term or condition of the licence, the Authority or any of its officers not below the rank of director] may by a written notice require the licensee to show cause within thirty days as to why an enforcement order may not be issued.*

(2) *The notice referred to in sub-section (1) shall specify the nature of the contravention and the steps to be taken by the licensee to remedy the contravention.*

(3) *Where a licensee fails to—*

(a) *respond to the notice referred to in sub-section (1); or*

(b) *satisfy the Authority about the alleged contravention; or*

(a) *remedy the contravention within the time allowed by the Authority, [or any of its officers not below the rank of director], the Authority[or any of its officers not below the rank of director], may, by an order in writing and giving reasons—*

(i) *levy fine which may extend to three hundred and fifty million rupees; or*

(ii) *suspend or terminate the licence, impose additional conditions or appoint an Administrator to manage the affairs of the licensee, but only if the contravention is grave or persistent.*

(4) *Without prejudice to the provisions of sub-section (1) and sub-section (3), the Authority or any of its officers not below the rank of director may, by an order in writing, suspend or terminate a licence or appoint an Administrator, if the licensee—*

(a) *becomes insolvent or a receiver is appointed in respect of a substantial part of the assets;*

(b) *being an individual, become insane or dies.*

Explanation—For the purpose of this section, the Administrator shall be appointed from amongst the persons having professional knowledge and experience of telecommunication.

- 1.3. Clauses of the licence contravened: As is clear from the above, contravention of the provisions of the Act, the rules or the terms and conditions of the licence may lead to issuance of a show cause notice by the Authority. In the instant case, it was contravention of clause 3.1.2 and 3.1.3 of the licence by the licensee which constrained the Authority to invoke the provisions of section 23 of the Act. The said two clauses of the terms and conditions of the licence are reproduced below;

Clause 3.1.2

The Licensee shall establish, maintain and operate its Licensed System, and shall provide the Licensed Services, in compliance with the laws of Pakistan.

Clause 3.1.3

The Licensee shall at all times co-operate with the Authority and its authorized representatives in the exercise of the function assigned to the Authority under the Act. The Licensee shall comply with all orders, determinations, directives and decisions of the Authority.

- 1.4. The Contravention in brief: As given above, the licensee is obliged to abide by each and every decision/order/determination/directive of the Authority under clause 3.1.3 of the licence. However, the licensee was found to have persistently ignored the Authority's instructions/orders/directives issued to it on the subject of cleaning old data and issuance of new connections (SIMs). The facts which constituted the contravention on the part of the licensee were communicated to the licensee in the notice in the following sequence;
- i. Vide determination No.DG(LE)/9(2-24)/Coord/PTA/02V-III dated September 17, 2004 "Verification Procedure for Mobile Subscribers' Antecedents" the licensee was directed and required to issue new connections on the strength of CNICs only and to ensure that the SIM gets activated only after proper verification of the requisite documents and form B alongwith CNIC of one of the parents was made mandatory for issuing connection/SIM to children under 18 years of age;
 - ii. On the reservations shown by the licensee and all other mobile operators, the aforementioned determination was withdrawn vide determination No.DG (LE)/9(2-24)/Coord/PTA/02 Vol-III dated September 29, 2004 and with the consent of all the mobile operators/licensees including licensee the responsibility of authenticity/verification of mobile subscribers' antecedents was placed on the licensee in the case of the licensee's subscribers and on all other operators regarding their subscribers;
 - iii. Vide letter No.9(2-24)/Coord/PTA/02 Vol.III dated 28th June, 2005 an SOP on verification of Mobile/WLL/Fixed line subscribers' antecedents was issued for strict and immediate compliance w.e.f. 1st March, 2005 requiring the licensee to issue new connections/SIMs on the strength of CNICs, NICs, Form-B in case of the applicant below the age of 18 years alongwith CNIC/NIC of one of the parents and in case of foreigners, on the copy of the passport;
 - iv. Vide the aforementioned SOP it was further laid down to verify subscribers data through NADRA within ten days of the sale/issuance of the new number to the subscriber and in case of erroneous data entry, to approach the customer for provision of correct data within 15 days and to verify it from NADRA and on non-compliance by the customer, to bar the outgoing facility in the first instance and after expiry of 30 days to close the connection permanently;

- v. No action was taken by the licensee on the aforementioned SOP, constraining the Authority to communicate its concern through the letter of its Chairman No.9(2-24)/2007/Enf/PTA dated 26th March, 2007. Vide the said letter the licensee was informed that the licensee's continuous violations of the SOP/directives has given enough reasons to believe that the Authority/PTA has been taken for granted and the licensee was required to submit a detailed report alongwith the strategy evolved to address the issue of verification procedure by 15th April, 2007;
- vi. Since there was no compliance of the Authority's directives on the issue, vide letter No.9(2-24)/2007/Enf/PTA dated 1st June, 2007 Chairman of the Authority again communicated to the licensee the Authority's concern over the issue of verification of antecedents of mobile subscribers and in view of the importance of the matter, the Chairman vide the said letter, sought personal indulgence of the licensee's CEO, in the matter and the CEO was requested to ensure implementation of the decision taken in the meeting of 25th May, 2007;
- vii. The licensee was directed in various meetings and through letters/directives (e.g. May 31, 2007, July 10, 2007, August 24, 2007, August 30, 2007, September 14, 2007, October 3, 2007 and October 9, 2007) to streamline the procedure for sale of new connections down to franchisees and outlets/retailers and clean the old data by end of July, 2007, prior to surprise visits/inspections by PTA;
- viii. The deadline given by the Authority for carrying out surprise checks/inspections was also relaxed on the licensee's request from 1st July and 1st August, 2007 to 1st September, 2007;
- ix. Looking at the continuous default in implementation of the Authority's directions regarding verification of the subscribers' antecedents by the licensee, the Authority had to warn and informed the licensee's franchisees on 24th June, 2007 through advertisements/notices appeared in the national press to stop issuing cellular connection on fake identity but all in vain;
- x. Looking into the gravity of the issue of the subscribers' either no or fake data with the licensee and the law and order situation it has resulted into and the threat it has posed to the nation at large, the august Supreme Court of Pakistan in HRC No.2843/2007 took *suo moto* notice;
- xi. The sub-committee of the Senate Standing Committee on Interior also took serious notice of the non-availability of mobile users' antecedents with the relevant operators and the procedure of issuing SIMs without verification;
- xii. Proceeding further in the matter, the august Supreme Court of Pakistan vide its order dated 9 August, 2007 also directed the cellular mobile companies including you to cooperate with PTA and adhere to the instructions it has issued in this regard in letter and spirit;
- xiii. Orders/directions/instructions of the Supreme Court of Pakistan are followed/obeyed/implemented as laws of the land;

- xiv. Even orders of the Supreme Court of Pakistan could not make the licensee to obey and follow the Authority's directions on the subject and thus contravened clause 3.1.2 of the license;
- xv. Policy Directive was issued by MoIT & Telecom regarding "Mobile Subscribers' Documentation and Antecedents Verification" vide letter No. 4-I/2005-M (T) dated January 24, 2008. Accordingly, PTA issued Standing Operating Procedure on the same vide letter number 9(2-24)/2008/Enf/PTA dated February 22, 2008 whereby the licensee was directed to clean the old data and issue new connections after due verification through NADRA database.

1.5. Result of the Surveys: Two nationwide surveys were conducted by the Authority in September and November 2008. It revealed during the said surveys that the licensee's new connections/SIMs are still available in the market for sale without filling Customer Agreement Form (CSAF) from the customer, without CNICs or on any CNIC copy without "verification of subscribers' antecedents" in sheer disregard to the Authority's directives.

The following results of some of the surveys conducted showing the licensee's violation of the Authority's directives were communicated to the licensee in the notice under:

First Joint Survey 8 – 21 September, 2008

Zone	Outlets Checked		With Verification		Without Verification	
	F	R	F	R	F	R
Karachi	1	22	1	5	-	17
Lahore	-	30	-	1	-	29
Peshawar	2	45	2	13	-	32
Quetta	3	25	3	2	-	23
Rwp/Ibd	-	45	-	22	-	23
Muzaffarabad	3	30	3	18	-	12

Franchisees= 0 %, Retailers 136/197 = 69.03 %

Second Joint Survey 10-16 November, 2008

Zone	Outlets Checked		With Verification		Without Verification	
	F	R	F	R	F	R
Karachi	3	15	3	7	-	8
Lahore	4	15	2	2	2	13
Peshawar	4	16	4	3	-	13
Quetta	3	19	3	-	-	19
Rwp/Ibd	3	15	2	7	1	8
Muzaffarabad	1	5	-	-	1	5

Franchisees 4/18 = 22.22%, Retailers 66/85 = 77.64%

- 1.6. Conveying of the Authority's concern: A numbers of meetings were held with the licensee wherein the licensee were conveyed the concerns of the Authority on non compliance of SOP. Chairman PTA called a meeting of the CEOs on October 7, 2008 and of regulatory heads of the companies on October 20, 2008 where results of first joint survey conducted in September 2008 were communicated with the directions to streamline the procedures. The mobile operators including the licensee were told that next joint survey would be conducted shortly and necessary legal action would be initiated if any mobile licensee is found in violation of the directions in this regard.
- 1.7. The licensee was required to explain its position: While acting under the delegated powers of the Authority, DG(L&R), PTA, vide the notice required the licensee to remedy the aforementioned contravention by immediately complying with the Authority's SOP/directives/instructions mentioned above and submit compliance report within ten days of the issuance of the notice and to show cause in writing within thirty (30) days of the issuance of the notice and explain as to why an enforcement order under sub-section (3) of section 23 of the Act may not be issued against it for disregarding and not complying with the Authority's aforementioned directives/instructions/orders and the persistence it has shown so far in gravely contravening the terms and condition of the licence.
- 1.8. Licensee's response to the notice: The licensee's response to the notice vide letter dated 19th December, 2008 is reproduced in *verbatim* as under:
- "1. CMPak has always been complying with its licence conditions, laws, regulations as well as the instructions and directions issued by the honourable Authority in their letter and spirit;*
- 2. We are fully aware of our responsibility towards national security and have been putting in our best efforts to ensure that our services are not misused in any criminal or unpatriotic manner. Furthermore, we have always extended our complete support upon receiving instruction issued by the Authority order from any court of law to pursue investigation in such matters;*
- 3. Our commitment to curb the menace of issuance of connection against unverified antecedents could be well gauged by the various measures taken by us to ensure compliance to the honourable Authority's various instructions and directives, including:*
- i. termination of all franchisees and appointment of new franchisees after due diligence;*
- ii. verification of the existing subscribers' antecedents and disconnection of all the connection issued against unverified antecedents. CMPak has already de-activated well over 0.506 million connections and all new subscribers' antecedents are being verified with NADRA;*
- iii. deactivation of the extra connections of the subscribers holding more than ten (10) connections against a single CNIC. It is pertinent to note that CMPak has de-activated the extra connections and is ensureing strict compliance to PTA's instruction in this regard;*

- iv. *increase in the frequency of raids on franchisees and retailer to ensure compliance to the honourable Authority's determinations/SOP;*
- 4. *Upon receiving the Show Cause Notice we have suspended all the franchisees mentioned in the Show Cause Notice and have barred all our franchisees from doing business with such retailers who have been found guilty of issuing new connection without proper verification of subscribers' data as identified by the honorable Authority in the Show Cause Notice;*
- 5. *It is evident from the survey results that despite our best efforts and strict measures taken against our franchisees and the retailer, a few of them still violate the honorable Authority's instructions/SOP for issuance of SIMs by exploiting the inherent loopholes in the existing system. CMPak appreciates the acknowledgement of these loopholes in the existing system by the honorable Authority and fully supports the honorable Authority's initiative of replacing the existing system with the new system whereby deactivated SIMs shall be sold which shall be activated only upon verification of subscribers' antecedents.*

However, we request the honorable Authority to keep in view, while finalizing the modalities of the proposed system, the concerns and suggestions of all the stakeholders, and implement the proposed system only once the said concerns have been adequately addressed.

In the end, we wish to assure the honorable Authority of our firm commitment to implement all the determinations, instruction and directives issued by the Authority especially with regard to issuance of connections/SIMs after proper verification of the subscribers' antecedents, and hope that the honorable Authority shall appreciate the concrete measures taken by CMPak in this regard.

PRAYER

In the above circumstances, we hereby respectfully pray to the honorable Authority to withdraw the Show Cause Notice, and in case the Show Cause Notice is not withdrawn, to kindly grant CMPak with an opportunity of personal hearing."

- 1.9. 2nd Notice re continued contravention: the aforesaid reply was not found satisfactory, however, in the light of licensee's assurances regarding streamlining its system/procedures, again joint surveys were conducted in March, 2009, therefore, in continuation of the notice, on 13th May, 2009 another notice No.14-552(L&A)/PTA/09/719 (the "2nd notice") was issued to the licensee. Besides requiring the licensee to appear before the Authority for personal hearing on the issue on 19th June, 09, the 2nd notice was meant to communicate to the licensee that its violations of the Authority's instructions/orders/SOPs on the subject is still continued even after issuance of the notice and implementation of the new system. This reminder was given for two reasons, *firstly*, to inform the licensee that despite its assurance in the reply to the notice that there will be no violation after implementation of the new regime, the violation is continued and, *secondly*, to let the licensee come prepare on its fresh violations as well.

- 1.10. The Hearing: On the licensee's request, the hearing scheduled for 19th June, 2009 was later on adjourned to 25th June, 2009. On the said date the licensee appeared before the Authority through Mr. Zafar Usmani, COO Zong, Mr. Ejaz Khan, legal counsel, Mohammed Ahmed Shaikh, legal counsel, Sajid Mahmood, Javed Ghafoor, Director, Aslam Minhas, Company Secretary and Mr. Faheem Mumtaz, Sr. Manager Business.
- 1.11. Mr. Zafar Usmani, opened the hearing with the statement that national security is our collective responsibility and nobody will be allowed to use our services against it. He committed that the licensee will stand shoulder to shoulder with PTA in matters relating to the country's security. Mr Usmani further submitted that he will not argue the points as to whether the SOP is implementable or not but will only emphasize that the licensee has done whatever was humanly possible.
- 1.12. On 789 Mr. Usmani stated that though there are flaws in it but still it is the best solution to minimize the risk. He informed that a million US\$ is invested to track the retailers' selling and maintained that the licensee is the only mobile operator who can tell that such and such SIM is sold to such and such person by such and such franchisee at such and a such time and that 50 million rupees a month a being incurred on the above system only to secure Pakistan. He reiterated that 9-10% requests are rejected daily for not answering the secret questions correctly.
- 1.13. Mr. Usmani claimed that no pre-activated SIM can be found after 1st February, 09 and if any such SIM is found that must be activated before 1st February. Mr. Usmani added that the licensee understands the Authority's frustration and has the same frustration on the issue.
- 1.14. The learned counsel representing the licensee submitted that the violation, if any, is not intentional. On the violation by the franchisees, he submitted that unless there is sharing of the criminal intention by the licensee with its franchisees, no action can be taken against the licensee for the wrong done by the franchisee. He further submitted that it is incumbent upon the prosecuting agency to show *mens rea* on the part of the licensee. He argued that the licensee could be penalized only if there is evidence on record showing that the licensee has contributed or encouraged the franchisees in the violation.
- 1.15. Written arguments submitted by the licensee: The licensee, on the day of hearing, submitted the following arguments which are reproduced in verbatim;

"The Authority, vide its determination No. DG (LE)/9(2-24)/Coord/PTA/02 V-III dated 17 September 2004, issued a 'Verification Procedure for Mobile Subscribers' Antecedents'. The said determination was subsequently withdrawn by the Authority on demonstration by the Cellular Mobile Telecom Operators (CMTOs) of shortcomings in the laid down procedure.

On 28 June 2005, the Authority issued a new Standard Operating Procedure (SoP) on verification of Mobile/WLL/Fixed line subscribers' antecedents, which took effect from 1 March 2005. The said SoP was superseded by yet another SoP on 22 February 2008 ("Old SoP").

The Respondent implemented the above SoPs to the best of its ability. However, despite the best efforts of the cellular operators and strict measures taken against

their franchisees and the retailers, instances of violations of the SoPs by the retailers and franchisees kept occurring, primarily due to the inherent loopholes in the SoPs. Compliance culture at the level of retailers is low - a fact recognized by the Authority itself in its laid down SoP - requiring much time, effort and investment on the part of the CMTOs to bring about this cultural change.

In acknowledgement of the earlier SoPs containing inherent loopholes, the Authority issued a new SoP on 30 January 2009 ("New SoP"), whereby only deactivated SIMs were to be sold and such SIMs could be activated only upon verification of subscribers' antecedents.

IMPLEMENTATION OF THE NEW SoP

The Respondent has taken all measures within its power and control to implement the New SoP with effect from 1 February 2009, despite substantial adverse impact on its sales. It may be borne in view that the time between the implementation date of the New SoP and the surveys the subject of this hearing was very short given the mammoth task set for introducing and implementation a new '789' regime altogether – this is still work-in-progress.

The following measures were taken by the Respondent in this regard:

- i. Establishment of a new call center with a capacity of 200 seats and hiring of 600 plus agents to cater for the work load. This increased the company's capital and operating expense drastically for implementation of verification process of subscribers' antecedents, as per the SoP;*
- ii. Development of the Module in Billing System to register the retailers and track their inventory to make sure we have enough audit-trail to support PTA objectives.*
- iii. This resulted in an investment of about **160M Rupees CAPEX and 50M Rupees a month** as OPEX.*
- iv. The Respondent has proven to be one of the best in successfully implementing the SoP, and PTA Chairman including his technical team were pleased to see the results and also appreciated this fact at the time of survey to ZONG 789 Call Centre.*
- v. Allocation of '789' short code to the above call centers;*
- vi. Training of '789' call center personnel to carry out the verification process strictly in accordance with the SoP;*
- vii. Registration of retailers for the purpose of selling SIMs;*
- viii. Issuance of strict instructions to its franchisees and their registered retailers to follow the SoP and issue SIMs only after proper documentation;*
- ix. Appointment of Business Development Officers, who are instructed to conduct raids on franchisees and retailers to ensure that the SoP is being adhered to in its letter and spirit;*
- x. Penalising franchisees and registered retailers for violating the SoP;*
- xi. All SIMs in the market were deactivated as per PTA instructions by 1st February 2009;*
- xii. **No SIM got activated after 01st Feb without 789/NADRA verification;** and*

xiii. On an average approximately 9~10% activation requests are being rejected at 789 Call Centre daily due to non-verification from NADRA. This can be verified through data that can be provided to the Authority on request.

ALLEGED VIOLATIONS OF THE SoP

As regards the alleged violations of the SoP by the Respondent, its franchisees and retailers, the Respondent submits that the Authority has, vide the Show Cause Notice dated 25 November 2008 (SCN), alleged violations which include violations both of the old as well as the New SoP. It is submitted that the alleged violations and the Respondent's replies to each should be segregated and kept separate according to the Old SoP and the New SoP respectively. Further, any surveys conducted under the old regime created by the Old SoPs cannot be used to make the Respondent liable for alleged violations of the New SoP, and vice versa.

PRE-ACTIVATED SIMs – TERMINOLOGICAL DIFFERENTIATION

Firstly, it is pertinent to draw a distinction between 'pre-activated SIMs' and 'active SIMs'. Under the old regime, all SIMs available in the market were 'pre-activated SIMs' and a 'pre-activated SIM' was considered as an 'active SIM' once a call was made from or received on such SIM.

Secondly, the Respondent submits that on 1st February 2009, all the pre-activated SIMs of the Respondent were deactivated and no pre-activated SIM of the Respondent is available in the market from the said date.

However, the Respondent categorically denies any possibility of 'pre-activated SIM' being available in the market after 1st February 2009.

ALLEGATIONS OF VIOLATIONS OF OLD SoP

The alleged violations of the Old SoP during the Joint Surveys conducted from 8th to 21st September 2008 and from 10th to 16th November 2008, as identified by PTA in the report provided to the Respondent, predominantly consist of minor violations of the following nature:

- *CSAF not filed*
- *NIC not seen, and*
- *copy of CNIC not obtained*

The Respondent submits in response that:

- *A comprehensive exercise was initiated to verify/re-verify the customer data and all those customers whose credential were not available or not verified by NADRA were blocked and the Authority was notified accordingly.*

- *The Respondent has also established internal process to audit the implementation of SoP time to time at random samples, and the Respondent has been suspending such franchisees and retailers failing to ensure compliance.*

- *The franchisees and retailers, identified in the abovementioned survey reports, have acted dishonestly, fraudulently, and in breach of their contracts.*

- *Since violations of SoP entail penal liability, doctrine of 'mens rea' (intent to commit violation) is applicable.*

- *It is mandatory on the prosecuting authority to demonstrate 'mens rea' on the part of the Respondent. Penal liability cannot be fastened in the absence of such demonstration of mens rea.*

• *Mere existence of violations on the part of the franchisees and registered retailers cannot lead to a conclusion of mens rea on the part of the Respondent.*

• *No evidence in the SCN of mens rea on the part of CMPak has been provided by the Authority.*

• *CM Pak has issued numerous instructions to franchisees and registered retailers and has suspended and cancelled their registration for violations; requisite evidence of such cancellations can be provided to the Authority on request.*

• *Provisions of SoP making a CMTO liable for violations of its franchisees and retailers are illegal and ineffective, unless mens rea can be established on the part of CMTO to commit such violations.*

ALLEGATIONS OF VIOLATIONS UNDER THE NEW SOP

The alleged violations of the New SoP, as identified by PTA in the reports of the Joint Surveys conducted from 9th to 13th March 2009 and from 22nd to 27th March 2009, consist of the following:

i. *Activation of SIMs without NADRA verification / Pre-activated SIMs*

These allegations are factually incorrect as all the SIMs mentioned in this regard have been activated by the Respondent upon proper verification.

1. *0312-7235024 – verified by Place of Birth. It cannot be a pre-activated SIM as it is not technically possible for a pre-activated connection to access 789.*

2. *0313-5930195 – verified by Place of Birth*

3. *The above number was repeated mistakenly by the Authority.*

4. *0314-5022769 – verified by Place of Birth*

5. *0314-5040535 – verified by Place of Birth*

*The relevant Call Centre recordings are enclosed as **Appendix I**.*

ii. *CSAF not filed, original CNIC not seen, copy of CNIC not obtained, 3rd persons NIC used*

Although, it is alleged that certain franchisees and registered retailers of the Respondent were guilty of violating the new SoP by:

- *not filing the CSAF properly; or*

- *not seeing the original CNIC at the time of sale of SIMs; or*

- *not obtaining a copy of the CNIC; or*

- *issuing SIM on a third person's CNIC;*

the Respondent respectfully submits that in all the above cases, no violation of the NADRA verification process was committed and all the numbers identified by the Authority in the survey reports were activated after due verification and confirming that the ID particulars of the calling customer was genuine.

DOCTRINE OF 'MISCHIEF'; NO-PREJUDICE'

The Respondent submits that such alleged violations at the time of sale of the SIMs did not have any adverse effect on the intent and purpose of the SoP: that the number is in use of the person in whose name it is registered. All the said SIMs were activated by the Respondent only upon proper verification.

*It is submitted with respect that the requirement for obtaining copies of CNIC and their attestation is futile and unnecessary given the requirement for verification with NADRA. This issue was even highlighted by the industry in its letter dated 20th January 2009 to the Authority; however the comments of the industry were ignored by the Authority. These comments are reiterated here and have been made an integral part of this reply. A copy of the said industry letter is enclosed as **Appendix 2**.*

As no prejudice resulted from the alleged violations of the franchisee or the registered retailers, the doctrine of 'no-prejudice' is pressed into service.

- ALLEGED VIOLATIONS REGARDING CORPORATE CUSTOMERS

*The Authority has alleged violations with regard to certain corporate customers of the Respondent. It is submitted that all the alleged violations relate to the corporate connections issued before the issuance of the New SoP. Therefore, the New SoP is not applicable on such corporate connections and the Old SoP did not require any such address verification. Moreover, the Respondent has verified the data provided to the Authority in this regard and submits that the said alleged violations are factually incorrect. The Respondent's specific response to each alleged violation is provided in **Appendix 3**.*

The above alleged violations relate to the following:

a) CUSTOMER DENYING ANY CORPORATE CONNECTION

As regards the specific customers who have denied having any corporate connection, identified in the joint survey reports, the Respondent submits that such customers are in fact individual customers and have been inadvertently included in the list of corporate customers. It is due to the fact that the Respondent previously did not segment its customers and no separate lists were available for individual and corporate customers. However, the segmentation of customer is currently under process and shall be completed shortly.

b) ADDRESS NOT TRACEABLE

It is submitted that:

- Address verification was not required under the Old SoP;*
- CMTOs cannot control the change of address by corporate customers;*
- Most companies have different 'registered office' and 'business office' addresses;*

Under the new SoP, responsibility lies squarely with corporate customers failing to provide the SoP data within seven (7) days (Para 15 of New SoP).

It is to be noted that the Respondent has already entered into an arrangement with a third party for the purpose of verifying addresses of all its corporate customers. All the new corporate are being issued only upon address verification. The Respondent is also in the process of verifying addresses of old corporate customers.

COMPLIANCE OF THE SCN BY THE RESPONDENT

Upon receiving reports of the joint surveys conducted on 8th to 21st September 2008 and from 10th to 16th November 2008, the Respondent has suspended all the franchisees mentioned in the SCN for ten (10) days and has issued warnings to the

said franchisees to strictly follow SoP. As regards violation of the SoP by the Respondent's registered retailers, the Respondent has instructed its relevant franchisees to suspend their business with the retailers found guilty of selling SIMs without proper documentation/verification, as identified in the SCN, for ten (10) days. Furthermore, they have been instructed to ensure that all the requirements of SoP and other directives of PTA are complied with while selling SIMs and otherwise.

PRAYER

In the above circumstances, we hereby respectfully pray to the honorable Authority to withdraw the Show Cause Notice."

2. Findings of the Authority

- 2.1 The learned counsel's argument that the licensee is not responsible for the wrong done by its franchisees unless the bad intention is shared by both is, respectfully, not agreed. The Authority has no relationship whatsoever with the franchisees. For the Authority it is only the licensee which is responsible for compliance of its instructions/SOPs. The learned counsel has failed to assist the Authority on the point that if the licensee is not responsible for the illegal sales by its franchisees, against whom the action could be taken and, more importantly, how can the Authority proceed against the franchisees and under which law?
- 2.2 Whether *mens rea* on the part of the licensee or not, whether sold by the franchisees or directly by the licensee itself, the fact is that the pre-activated SIMs of the licensee were found available for sale in the open market. It is also found that the licensee's SIMs were sold without proper and required verification. For the above reasons, it is the licensee who is responsible for the sale of its SIMs and no other third party.
- 2.3 Though in reply to the notice, the licensee has narrated few events showing the actions taken by it for implementation of the SOP and the Authority's instructions on the subject, however, the licensee has failed to give a satisfactory response on the specific violations communicated to it through the results of both the surveys, as reproduced above. The enforcement division has produced sufficient record and ample evidence to establish that the licensee has violated the Authority's directions/instructions contained in the SOP.
- 2.4 Violation of the SOP, having being established, means that the licensee has shown disregard to the Authority's orders/instructions on the subject and has thus contravened clause 3.1.3 of the licence. This being the case, the notice is rightly issued and there is no reason for withdrawing it as requested in reply to the notice.

3. Order of the Authority:

- 3.1 Under sub-rule 4 of rule 9 of the Telecom Rules, 2000, the licensee is directed to remedy the contravention within twenty five days of the issuance of this "Enforcement Order" and submit complete compliance report of the SOP in vogue and the new regime which shall be verified by the Authority by conducting a joint survey;
- 3.2 In case of the licensee's failure to comply with para 3.1, above, "Final Enforcement Order" under sub-rule 5 of Rule 9 of the Telecom Rules, 2000 shall be issued against the licensee.

(Sayed Nasrul Karim A. Ghaznavi)
Member (Finance)

(Dr. Khawar Siddique Khokhar)
Member (Technical)

(Dr. Mohammad Yaseen)
Chairman

Signed on this 6th day of July, 2009