



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

Re:
TeleCard Limited

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 Notices: 14th November, 2008
Date of Hearing: 3rd 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:

“Less reporting of international telephony minutes by using various techniques contrary to rules and regulations and the terms and conditions of the license”

Decision of the Authority:

By this order of ours, we, the Pakistan Telecommunication Authority (the “Authority”) intend to dispose of the show cause notices dated 14th November, 2008 (the “notice”) issued to M/s TeleCard Limited (the “licensee”), engaged in the business of providing telecommunication services (Local Loop-(WLL) & Long Distance and International-(LDI) in Pakistan pursuant to the non-exclusive licenses No.LL-23-2004 dated 4th August, 2004 for the all fourteen Licensed Regions (the “WLL license”) and No. LDI-07(06)-2004 dated 27th July, 2004 (the “LDI license”) issued by the Authority.

2. Reason to issue show cause notice:

2.1. The circumstances in which the aforesaid notice was issued to the licensee are stated below in brief:

(a). **Legal provisions:**

(i). As a licensee of the Authority, M/s TeleCard Limited is required to comply with the provisions of the prevailing regulatory laws comprising of the Pakistan

Telecommunication (Re-organization) Act, 1996 (the “Act”), Access Promotion Rules, 2004 (the “AP Rules”), the regulations framed by the Authority under the Act including Access Promotion Regulation, 2005 (the “AP Regulations”), the Number Allocation and Administration, Regulations, 2005 (the “Numbering Regulations”) and conditions of its licenses.

(ii). As per section 23 of the Act, where a licensee contravenes any provision of the Act or the rules made thereunder or any term or condition of the license, the Authority may by a written notice require the licensee to show cause within thirty days as to why an enforcement order of levying a fine upto three hundred and fifty million rupees, or suspension or termination of the License or imposition of additional license conditions may not be issued against it.

(iii). As per section 5(2) (1) read with section 5(2) (q) of the Act, the Authority has the power to “*collect information with respect to telecommunications within and outside Pakistan*” and to “*regulate the allocation of revenues from international telephony service, other than revenues from leased circuits, between interconnecting licensees that handle international telephony service and between any such licensee*”.

(iv). As per sub-rule 1 (a) of rule 12 of the AP Rules, LDI licensee shall report to the Authority on monthly basis “*The total number of minutes of Incoming International Telephony Service that is carried by that LDI Licenses and delivered to the telecommunication system of each LL Licensee and Mobile Licensee by country of origin*”.

(v). As per sub-rule 4(a) of rule 12 of the AP Rules, “*The Authority may, by notice to a licensee, require it to, provide such additional information as the Authority may request in respect of international telephony service or its agreements or arrangements with Corresponding Operators*”.

(vi). As per sub-rule 1 of rule 13 of AP Rules, “*A licensee shall not translate, alter or delete the telephone number or other identification associated with the calling party or the identification of the country of origin of the call*”

(vii). As per sub-rule (2) of rule 13 of AP Rules and condition 6.12.3 of the license, *A licensee shall not translate, alter or delete the signaling or other data associated with an International telephony Service call to disguise the identification of the Corresponding Operator of the calling party or the identification of the country of origin of the call*”

(viii). As per sub-regulation 1 of regulation 11 of the AP Regulations, “*the LDI, LL and Mobile Licenses shall submit the report/information to the Authority in accordance with rule 12 of Access Promotion Rules*”.

(ix). As per sub-regulation 2 of regulation 11 of the AP Regulations, “*The information referred to in sub-regulation (1) shall be submitted by the LDI and LL./Mobile Licensee, as the case may be, within thirty days of close of the month to which such information/report relates*”.

(x). Vide clause 6.4.1 read with clause 6.3.1 of the WLL & LDI license the licensee is required to furnish and provide such information as the Authority may request regarding the licensee's network plan, network and terminal standards, links utilized, financial information, costs and accounts or any such other information as the Authority may from time to time require in connection with its responsibilities.

(xi). Vide sub-rule 4(a) of rule 12 of the AP Rules, the Authority directed the licensee to provide the Call Detail Records (CDRs) to the PTA's Vigilance Cell on monthly basis pertaining to international incoming traffic.

(xii). Vide clauses 1.1.1 and 13.2 of the WLL licenses the licensee is authorized to provide Licensed Services in the Licensed Region described in Appendix-1 of the licenses and Licensed Services means all Mandatory Services and other Telecommunication Services not prohibited under the license.

(xiii). Vide clause 1.1.3(a) and (b) of the WLL licenses, the licensee is not authorized to provide Telecommunication Services outside the Licensed Region and to interconnect its Telecommunication System with the Telecommunication System of a service providers that provides Telecommunication Services outside Pakistan and under clause 1.1.3 (g) of the WLL licenses the licensee is not authorized to establish, maintain or operate a Telecommunication System to provide Telecommunication Service that is not authorized in the license.

(xiv). The licensee has been assigned numbering block and short codes pursuant to condition 2.1 of the WLL license, regulations 3(1) and 16 of the Numbering Regulations to be used for its Licensed Services within the Licensed Regions and shall be used in the specific purpose and manner as approved by the Authority pursuant to regulation 14(1)(b) of the Numbering Regulations. The licensee is further obliged vide clause 1.1.5 (e) of the license to follow numbering plan for Basic Public Telephone Access Services adopted by the Authority.

(b). **Nature of contravention:**

The licensee failed to provide summary of international incoming traffic details from October, 2007 to September, 2008 till 21st October, 2008 contrary to section 5(2) (l) of the Act, sub-rule 1(a) and 4(a) of rule 12 of AP Rules and sub-regulation (1) and (2) of regulation 11 of AP Regulations, despite repeated reminders/requests from the Authority, hence, made unable to the Authority to perform its functions and to enforce the provisions of the AP Rules, AP Regulations and terms and conditions of the license as prescribed.

However, pursuant to the repeated reminders of the Authority it finally submitted the requisite reports on 21st October, 2008, when the reports of two months only i.e., July-August, 2008 were reconciled/scrutinized/analysed and compared with reports of its interconnect partners and CDRs of the licensee and with Internet Protocol Detail Record collected from the International Traffic Monitoring System installed by the Authority, which revealed:

(i). That a total of 15,265,595 minutes terminated on fixed and Mobile Network were not reported.

(ii). That comparison the licensee's CDR for the months of July and August, 2009 with its interconnect partners revealed that it reported 3,804,927 minutes less.

(iii). That comparison of IPDR with CDRs of the licensee revealed that 1,218,439 minutes were less reported.

(iv). That the licensee was involved in altering its international telephony calls as national and also used its geographic numbers to mask the international A-Party number contrary to sub-rule (1) and (2) of rule 13 of AP Rules and condition 6.12.3 of the license, hence, detected 6,780,789 minutes from its CDRs.

2.2. It was found that the licensee had shown over fifteen million (i.e., 15,265,595) incoming international telephony minutes less than that of the actual minutes by using various techniques including masking of its geographic numbers. This fact was corroborated by the analysis carried out by matching with the licensee's CDR and CDRs of other interconnect partners (access providers) and IPDR collected from ITMS. The licensee was, thus, found in misreporting of incoming international telephony minutes, hence, concealed the real/actual facts/data from the Authority and avoided the legitimate payment of APC for USF, which constitutes violation of the terms and conditions of the license, the AP Rules and the AP Regulations, as referred to in Para 2.1(a), above, in addition also found involved in origination and termination of international telephony calls through its local loop geographic numbers contrary to license terms and conditions and Numbering Regulations, for which reasons the notice was issued to the licensee.

3. Reply to 1st notice by the licensee:

3.1. The licensee replied the show cause notice vide its letter No.TeleCard/AK/SK/436 dated 15th December, 2008 in the following terms:

Re: Show Cause Notice under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996

We act for Telecard Limited ("Telecard") in the matter of the Show Cause Notice bearing ref: No:2-10/08(AP/CP) PTA dated 14th November, 2008 ("Notice") issued under section 23 of the Pakistan Telecommunication (Re-Organization) Act, 1996 ("the Act") whereby violations and contravention have been alleged against Telecard pertaining to the Access Promotion Rules, 2004 ("AP Rules") and Access Promotion Regulations, 2005 ("AP Regulations").

We have been instructed by Telecard to submit the following response to the Notice on its behalf:

Preliminary points

1. The Notice invokes various provisions of the AP Rules and AP Regulations whose vires have been challenged by Telecard in toto through its Writ Petition No.763 of 2008 currently pending adjudication in the honourable Islamabad High Court and is close to being disposed off with merely the Respondents' arguments left to be addressed before the honourable High Court. Needless to mention that PTA is one-of the Respondents in the said Writ Petition and the next date for its arguments is 16.12.2008. Propriety

demands that since the matter of vires of AP Rules and AP Regulations is sub judice, any penal or adverse action based thereon against a licensee should not have been initiated in the first place. Nonetheless, having issued the Notice, the proceedings thereunder should be kept in abeyance till a definitive judgment has been handed by the judicature in the matter since the Notice is entirely rooted in the provisions of the challenged AP Rules and AP Regulations.

2. *In case the AP Rules and AP Regulations are declared ultra vires as prayed for in the abovementioned Writ Petition and PTA passes any adverse order based on the said rules/regulations, Telecard - a licensee of PTA - would be unnecessarily put to hassle and burdened with costs, which is otherwise absolutely avoidable. PTA's hasty issuance of the Notice, thus, infringes the letter and spirit of both section 6(b) of the Pakistan Telecommunication (Re-organization) Act, 1996 ("Act") and section 24A of the General Clauses Act, 1897, which require PTA to act in a just, fair, reasonable, equitable, non-discriminatory, consistent and transparent manner.*

3. *PTA's unwarranted haste in issuing the Notice is further exhibited by the very nature of allegations made against Telecard in the Notice could be resolved by a reconciliation of data which could very well be undertaken without invoking the provision of section 23 of the Act and without putting either of the sides to the undue hassle of show cause proceedings. The Notice itself cites section 5(2) (b) of the Act. However, Telecard is at a loss to understand why the same provision of law was ignored and a hasty resort was made to section 23 of the Act.*

4. *It is also pertinent to mention that the publicity given to the issuance of the Notice to Telecard in the media has caused loss to Telecard's reputation, which was otherwise absolutely avoidable and Telecard is gravely aggrieved thereby.*

5. *Section 23(2) of the Act requires PTA to specify the nature of the contravention and the steps to be taken by the licensee to remedy the contravention. Although certain contraventions and/or violations on part of Telecard have been alleged in the Notice, no remedial steps have been specified by PTA with reference to each alleged contravention or at ail. PTA has simply required Telecard to respond to the Notice within the stipulated time period. Therefore, the Notice served to Telecard is deficient and defective being contrary to section 23(2) of the Act. Seen in the context of the allegations arising from an alleged non-reconciliation of data that could be otherwise settled, invocation of section 23 of the Act comes as a surprise to Telecard and shows a pattern of conduct that is least in keeping with the letter and spirit of section 6(b) of the Act and section 24A of the General Clauses Act, 1897.*

6. *More regrettably, PTA has also refused to provide necessary data (IPDRs) to Telecard despite repeated written requests, in the absence whereof Telecard is handicapped in exercising its legal right of defence in a meaningful and informed manner. While Telecard reserves its right and remedies in this regard (including the right to receive the necessary data for its defence and to submit further response/defence to the Notice), it is stated that Telecard feels deeply aggrieved by the constant prejudiced conduct exhibited against it in the issuance of the Notice and the subsequent proceedings, which are clearly violative of the principles of natural justice and also the express mandate of section 6(b) of the Act and section 24A of the General Clauses Act, 1897.*

Response to the notice.

7. *Before submitting an issue-wise response, it is submitted that having challenged the very vires of AP Rules and AP Regulations in to, the submissions made on behalf of Telecard in this entire response to the Notice (including Preliminary Points) may kindly be read alongwith Telecard's contentions raised in its aforementioned Writ Petition. Moreover, all contents of this response (including Preliminary Points) are without prejudice to Telecard's contentions and prayer made in the said Writ Petition.*

Issue: Delay in Provision of Incoming Traffic Details Summary

8. *The delay in provision of incoming traffic details to PT A is admitted for which Telecard wishes to apologies. The delay occurred due to administrative issues resulting from an ongoing restructuring exercise at Telecard whereby a significant number of staff members had been reduced.*

9. *Telecard believes that the issue of delay, though mentioned in the Notice, is not cited as one of the alleged contraventions on which the Notice has been issued since the same was cured and accepted by PTA. In this regard, the Notice itself admits receipt of international traffic details from Telecard subsequently.*

Issue: Traffic Details for the Months of July and August, 2008 Reported Less

10. *PTA has alleged that a total of 15,265,595 international incoming minutes for the months of July and August 2008 have been reported less by Telecard to the Commercial Affairs Division, PTA. Although the Notice refers to comparison with the Vigilance Directorate, this alleged discrepancy is apparently substantiated from Annexure-A enclosed with the Notice wherein Call Detail Records ("CDRs") of Telecard have been compared with the Telecard Summaries provided.*

11. *It is submitted that Telecard has provided complete CDRs of international inbound traffic to PTA which disclose the total number of minutes of incoming international telephony. CDRs clearly relate to the records generated by the Telecard switch.*

12. *For all concerned, CDRs constitute a credible basis for judging the required information in this regard and PTA also relies on the same for its purposes. This is also confirmed by the minutes of the meeting held at PTA Headquarters on 30th October, 2008, wherein it was decided that operators shall provide monthly CDRs for reconciliation and monitoring purposes.*

13. *Having duly provided the CDRs, Telecard has as such not withheld any information or data from PTA and cannot be termed to be in violation of any reporting requirements.*

14. *The sheer fact that the data in CDRs does not match with the Summaries provided loses relevance when CDRs are duly provided as aforesaid.*

15. *As such, PTA's assertion that Telecard reported fewer minutes in order to hide international minutes for so-called "ulterior motive" is bizarre and vehemently denied and contested. PTA has presented no evidence of any such ulterior motive and the fact of ulterior intent cannot simply be implied from, without conceding, reporting of less minutes in the Summaries.*

16. *The Summaries are taken from the operators' invoices and Telecard's reporting of both CDRs and information from operators' invoices in the shape of Summaries only reflects good faith on part of Telecard. The same should not be misconstrued as something driven by any ulterior motive. On the contrary, Telecard's forthrightness exhibits and enhances its commitment to be always transparent.*

17. *It is reiterated that since Telecard has been undergoing an extensive restructuring process affecting its internal administrative processes, certain errors may have been committed given the intricate nature of the restructuring, which are regretted. However, it is important to note that the Summaries are contextual and are based on different interpretations and, therefore, do not necessarily have to correspond with actual reading from the CDRs, PTA has complete discretion to discard any summaries provided by Telecard and generate its own summaries if so desired.*

18. *It is also worth mentioning that Telecard uses the same CDRs as the basis for determining its liability owed to PTA in its books of account. Being a public listed company, Telecard's transactions are thoroughly audited and published. Therefore, it is not probable that incorrect information could be processed for considerable time as this would eventually be highlighted in its audit reports and corrected.*

Issues: Comparison of Telecard CDRs with Access Provider CDRs

19. *PTA has alleged that, after comparison with the information provided by Telecard's partners (access providers), it transpired that a total of 3,804,927 international incoming traffic minutes for the months of July and August, 2008 have been reported less by Telecard to PTA.*

20. *Having examined Annexure-B of the Notice, it is submitted that the access providers have reported higher figures to PTA and have sent invoices for lesser amounts to Telecard. The said invoices can be produced if so desired by PTA and have been duly settled in terms of payment to partner operators who have not raised any objection thus far.*

21. *Telecard is not in a position to comment on the fact that partner operators have provided a different figure to PTA and raised invoices in dissimilar figures to Telecard.*

22. *Telecard further reserves the right to offer additional response/defence upon examining the access providers' CDRs provided to PTA forming basis of its comparison.*

Issue: Altering International Incoming Traffic as Domestic Traffic

23. *PTA has alleged that by virtue of comparison of the Internet Protocol Detail Record ("IPDR") collected from the International Traffic Monitoring System*

("ITMS") with the CDRs provided by Telecard, a total of 1,218,439 minutes have been reported less by Telecard.

24. In order to reconcile these figures, Telecard requested PTA vide its letter dated 22nd November, 2008 to provide it with the IPDR for the relevant months i.e. July and August 2008. This legitimate request by Telecard was turned down by PTA vide its letter No.2-10/08(AP/CA) PTA dated 27th November 2008, without assigning any reason. It is against the principles of natural justice and all norms of fairness to make an assertion without giving full opportunity to the accused to ascertain the exact nature of the allegation and refuting the same.

25. As stated earlier in the Preliminary Points, Telecard reserves all rights and remedies in this regard including the right to access the said data and to offer further response/data after examining the same. Telecard's response to this issue is, thus, not offered and is being reserved till the requisite data is made available.

Issue: Masking International Traffic as Domestic Traffic

26. PTA has alleged that Telecard has masked a total of 6,780,789 minutes using its geographical numbering.

27. In this regard, it is highlighted that the calls mentioned in Annexure-E of the Notice are all international calls. The GO (WLL) numbers indicated by PTA as evidence are Telecard's PRI numbers. If it were the desire of Telecard to mask its international traffic as domestic 'traffic the same would not have appeared as international numbers. Instead, the same would have been forwarded to the operators via Telecard's domestic trunk groups.

28. In the case of international calls, CDR transmission process, as defined by PTA, requires 1930 code to be forwarded as a CLI to other operators in case a valid international A-party number is not found or possible. This is evident from the CDRs of partner operators such as Mobilink, Telenor and Ufone. Additionally, these calls have been transmitted to the operators on international trunks thereby eliminating any chances of masking.

29. As per PTA's own admission, these calls are present in the CDRs provided by Telecard to PTA for international incoming traffic. It does not stand to reason why Telecard would mask calls that are appearing as international traffic in its own CDRs and, thus, it is incomprehensible as to why PTA would make such a serious allegation.

30. PTA has provided Telecard 1930 code. This code is to replace any invalid number as A-party number and identify the call as international call for terminating network.

31. The allegation with respect to masking of international incoming calls as domestic by Telecard is, thus, strongly repelled.

Conclusion

In view of the foregoing, it is requested that the Notice may kindly be withdrawn and/or no action adverse to Telecard or its interest be taken while disposing off the same.

(b). Pursuant to the licensee's request dated 5th December, 2008 a meeting was convened on 24th December, 2008 for which following minutes were issued vide letter dated 30th December, 2008:

3. *The licensee informed that it has been reporting data of only successful calls to PTA and not the failed calls and that for reconciliation purpose it needs the soft data of IPDRs. Director (Vigilance) PTA provided sample IPDRs in hard form to the licensee with the commitment that the soft format of the sample will also be provided to the licensee by 26th December, 2008 and the licensee shall then submit its written report/reply to PTA within seven (7) days, i.e. on or before 1st January, 2009.*

4. *The licensee showed its satisfaction on the sample/material provided to it for preparation of its stance against the subject show cause notice.*

(c). the licensee replied vide its letter dated 30th December, 2008 and 6th January, 2009 in the following terms:

Subject: Show Cause Notice under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996

Dear Sir,

This is with reference to our meeting with you and your team of 24 December 2008 at PTA Headquarters in relation to the captioned subject matter.

2. *We thank PTA for affording us an opportunity to put forth our concerns and clarifications along with reasons for requesting the Internet Protocol Detail Record ("IPDR") collected from the International Traffic Monitoring System.*

3. *During the meeting, we had reaffirmed the necessity of a more exhaustive version of the extracts/samples from the IPDRs which were provided to us. Nevertheless, we have analyzed the sample and it shows that IPDRs correlate with our facts and CDRs fully.*

4. *It may be appreciated that we had given full CDRs for the period under review and at the same time our demand of IPDRs is critical to judiciously arrive at the correctness of information which we have posted to PTA. The sample provided to us cannot give definitive and conclusive picture with regards to alleged discrepancy. In order for us to be able to reconcile the entire alleged discrepancy of 1,218,439 minutes, it would be fair and transparent that 100% IPDRs are compared with 100% CDRs provided by us.*

5. *We remain committed to transparent and correct business practices and always remain open to any possibility of an unintentional mistake, yet we believe that desired purpose of an exercise will be impossible until the whole data can be scrutinized and evaluated in its entirety, more so because our CDRs are with you already and you seem to have identified a definite number of questionable calls / minutes and our response can therefore only be relevant if we know exactly where you are deducing your position from.*

6. *The requested information can easily be provided by PTA via email or a compact disc and will afford us with a full opportunity to assess the requested data and adequately respond/defend our case at any meaningful and formal hearing.*

7. *Our reservations with regard to access and examining the relevant record as stated in our reply dated 15th December, 2008 to the Show Cause Notice are reiterated herein by reference.*

Subject: Preliminary analysis of the sample IPDRs

Dear Sir,

This has reference to the meeting held at PTA's Headquarters on 24 December 2008 and our subsequent correspondence dated 30 December 2008 and 1 January 2009 on the subject matter.

2. *This is to inform you that Telecard (TCL) has in the meanwhile undertaken an analysis, and would like to put forth the preliminary results of the said analysis, carried out on the sample IPDRs provided by PTA through its (PTA's) email dated 24 December 2008. Please note that the TCL analysis is based on the comparison of IPDRs with its own CDRs as well as Access Providers' CDRs.*

3. *In the sample of 1,000 (One Thousand) calls provided by PTA, 583 (five hundred and eighty three) pertained to Mobilink while 149 (one hundred and forty nine) calls were terminated on Telenor's network. The remaining calls were terminated on other cellular operators' network, for which the requested CDRs are still awaited from partner operators. The results from the available CDRs are as follows:*

a. Mobilink

Eighty four percent (84%) of the calls were unsuccessful, with zero duration in our logs.

These calls were not present in Mobilink CDRs as well.

IPDRs are showing meaningful durations for these calls, which we believe is an error in the IPDR recording mechanism. The system does not detect that a call has failed and continue to add to the total duration.

The remaining sixteen percent (16%) consisted of calls where during the VOIP translation, the second leg of the call was not recorded, or a complete eradication of CDRs was witnessed.

b. Telenor

percent (90%) of the calls were unsuccessful, which were not reflected in Telenor's CDRs as well.

The remaining ten percent (10%) were calls where, during the VOIP translation, the second leg of the call was not recorded or a complete eradication of CDR was witnessed.

4. *To put it in the correct perspective, the sample provided by PTA to TCL represents only 0.01% of the total population of 10 million calls and over 75 million minutes terminated during the months of July and August 2008.*

5. *The CDRs received from partner operators for the months in question are enclosed for ease of reference and review.*

6. *Please note that this communication is strictly without prejudice to TCL's right to receive the information requested through TCL's reply to the show cause notice dated 15 December 2008, and subsequent correspondence dated 30 December 2008 and 1 January 2009.*

4. Evaluation of the replies to the notice:

4.1. A careful evaluation of the replies could not satisfy us, hence, the licensee was required to appear before us to extend it the opportunity of personal hearing.

5. Hearing by the Authority:

5.1. The matter was fixed for hearing on 3rd June, 2009. The licensee attended the hearing through its representatives namely Mr. Shahid Naeem Butt (Director Regulatory Affairs), Syed Muhammad Asim (Deputy CTO) and Mr. Afnan karim Kundi, Advocate.

5.2. At the very outset of the hearing the licensee alleged that the validity of AP Rules and AP Regulations, violation of which is the basis of the instant show cause notice, are *sub-judice* before Supreme Court of Pakistan. Though the Islamabad High Court vide its judgment dated 21st January, 2009 held the AP Rules as *intra vires*, however, the same has been challenged before Supreme Court of Pakistan and the Hon'ble Supreme Court has asked the Federal Government/PTA to submit notification of USF issued under section 33-A of the Pakistan Telecommunication (Re-organization) (Amendment) Act, 2006. As the matter is sub-judice before Supreme Court of Pakistan, hence, in the fitness of things and interest of justice, the hearing in the instant case may be pended till the time the Supreme Court of Pakistan decided the matter once for all. The Authority, however, on satisfaction of the fact that no any restraining order is in field, did not accede to the request of pending the matter till the decision of Supreme Court on the ground that the Authority could not be stopped from performing its duties or implementation of rules and regulations on the mere ground of pendency of the matter in the court of law, hence, decided to proceed in the matter and asked the licensee to proceed with the arguments in response to show cause notice on the issue.

5.3. The licensee in response reiterated the same facts as stated in its reply dated 15th December, 2009 and denied the allegation of hiding the international traffic by opting various techniques including masking of its local loop numbers, etc. He further took the stance that it has not concealed the minutes rather it has provided its CDRs on the demand of the Authority, hence, when CDRs have been provided by it, which contain all required information in raw form, the sheer fact that data in CDRs does not match with the summaries provided earlier loses its

relevance when CDRs are duly provided. It further stated that it is a matter of reconciliation and not of violation. It pointed out that the provisions contained in rule 12 of AP Rules relates to reporting requirement and sub-rule (4) of rule 12 provided that *“the Authority may, by notice to a licensee, require it,-(a) provide such additional information as the Authority may request in respect of international telephony service or its agreement or arrangements with corresponding Operator, therefore, the Authority should prior issuing show cause notice in the matter should ask the licensee through notice to provide additional information, if it found was not provided earlier, if this course would have been applied the show cause notice under section 23 of the Act would not have been issued. It also attracted the attention of the Authority to sub-rule (4) of rule 13 of AP Rules “A licensee shall, at the request of the Authority, meet with representatives of the Authority for the purpose of developing and implementing methods and techniques that encourage increased compliance with these rules.” with submission that the Authority was given the mandate to meet with the representatives of the licensee to develop methods and techniques for the purposes of compliance of these rules rather issuing show cause notice in the matter. Lastly it pointed out that even in the notice we have not been informed the steps to be taken to remedy the contravention. Keeping in view the foregoing, it requested for withdrawal of show cause notice and for sharing of IPDRs. The Authority further allowed sample of 10,000 IPDRs for verification and matching it with its CDRs, which were provided to the licensee accordingly.*

5.3. The licensee analyzed the aforesaid sample IPDRs and provided its response vide letter dated 16th June, 2009 in the following terms:

Re: Show Cause Notice under Section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996

Please refer to the hearing held on 3rd June, 2009 in respect of Show Cause Notice ref: No:2-10/08(AP/CP) PTA dated 14th November, 2008 (“Notice”), wherein our Mr. Afnan Karim Kundi, Advocate Supreme Court, represented Telecard Limited (“Telecard”).

We also refer to the follow-up meeting on 5th June, 2009 of Telecard’s personnel with Mr. Taimur Arshad of PTA’s Vigilance Cell pursuant to the Authority’s directions to the Vigilance Cell to provide a set of 10,000 CDRs from the set of CDRs received from Mobilink in order for Telecard to audit them at its end and to come back with its analysis/critique.

To start with, we wish to emphasize that it has been a consistent stance of Telecard that the Notice and related proceedings could have easily been avoided if a meaningful exercise of reconciliation of CDRs had taken place earlier between technical personnel of PTA and Telecard and necessary opportunity to Telecard had been afforded to explain its position. In fact, the very nature of technical issues involved required detailed thrashing out which was neither convenient nor possible to be achieved during the hearing of the Notice at the level of the Authority. We would, therefore, urge the Authority at the outset that realizing the nature of technical issues requiring detailed examination and thrashing out, the Notice may be withdrawn and any such proceeding in the nature of the Notice, if necessary (which we trust would not be required at all), may only be initiated after a detailed and meaningful exercise of reconciliation and mutual understanding has been completed between the concerned technical teams/personnel of PTA and Telecard. The very fact that PTA shared the 10,000 CDRs with us and expects us to respond alongwith our analysis amply demonstrates the need for reconciliation and

a thorough examination/investigation before resort is made, if at all necessary, to proceedings of enforcement orders under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996.

Nonetheless, without prejudice to the foregoing and subject to a right of hearing, Telecard has, in the lines below, attempted at explaining its position on some of the issues and aspects of PTA's technical critique/analysis of Telecard CDRs that was not earlier shared with Telecard:

1. It was alleged during the hearing that in order to evade payment of APC in certain cases, Telecard intentionally replaced the A-party (coming from the international side) with a number(s) from the geographic number plan issued by PTA to Telecard for its WLL operations. Moreover, while performing the A-party number replacement, Telecard allegedly routed such calls to Access Network Providers (e.g., Mobilink) via the Domestic or National Trunk Groups instead of the International Trunk Groups of the Interconnects that exist between them.

2. Telecard very strongly objected to the aforesaid allegation and totally denied any such malpractice. In support of its stance, Telecard explained to the Authority that there is a common misunderstanding of the concepts and processes/procedures of A-number replacement, CLI Presentation, Stamping of CDR for all such calls, etc. In this regard, the following is brought on record for a just disposal of the Notice:

a. The Authority/PTA had itself mandated the LDI operator(s) that in case the received A-party number is missing/incomplete/fictitious, the LDI Operator(s) are bound to replace it with a 4-digit Carrier Pre-Select Code (CPC).

b. In case of Telecard, the CPC allocated by PTA is "1930".

c. The same code "1930" should also be used for CLI-Presentation to the final Called-Party i.e. the end-user or the subscriber of an Access Provider in Pakistan. It is categorically stated that while performing the CLI-presentation (i.e., 1930), Telecard, in full compliance with the concerned PTA directives, filed the above traffic on the International Trunk Group(s) of the Access Providers.

d. There is three-legged CDR making process for those International Incoming Calls that arrive on a particular portion of Telecard's VoIP network.

e. The first leg of international incoming call lands on the VOIP hardware. A portion of Telecard VoIP network architecture comprises of VoIP 'boxes' from a vendor of global repute e.g., Cisco. The IPDRs for calls are also recorded on the 'box'.

f. Telecard has always formally reported the Network Architecture, hardware make/model/version, etc to PTA from time to time in response to

periodic requirements of PTA's Enforcement Division. The Authority may desire to obtain those diagrams and details from the Enforcement Division.

g. The second leg of such calls is made between Telecard VoIP Network and NGN/TDM Network, which is also procured from a vendor of international repute i.e. Alcatel-Lucent.

h. The physical interface between the two networks i.e. VOIP and Alcatel is ISDN-PRI based.

i. The PRIs are "User-PRI" by type and, hence, have to have a unique number or ID assigned. Telecard is using a small sub-set of the geographical number range issued by PTA for allocating the ID or telephone number for these PRIs.

j. While the NGN Network performs the A-party conversion to 1930 for presenting it to the Access Provider (PTCL, Mobilink, etc), it stamps the PRI-Number in the CDRs for the second leg.

k. When PTA's various divisions noticed these PRI numbers in the CDRs, being unaware of the whole technical process at the Network end of Telecard (as explained above), they got alarmed and assumed as if Telecard was masking the original A-party number. However, had PTA or its personnel asked for a technical explanation/clarification from Telecard at that moment, the need for issuance of the Notice would not have arisen.

l. Coming back to the three-legged CDR formation, the third and final leg of the CDRs is formed when the Alcatel Switch places the call on the International Trunk Group with the Access-Providers within Pakistan for final delivery to the intended end-user.

3. During the hearing as well as now, Telecard urges the Authority that in order to verify Telecard's claim/stance, all CDRs from by any/all Access Provider(s) which are already in the archives of PTA should be examined/re-examined by the Authority and compare them with the CDRs of Telecard to verify Telecard's above explanation. Telecard is confident that at the end of the above audit/re-verification process, it would lead to a full satisfaction of PTA and the Notice would be withdrawn. In case PTA still has any reservations, the results of its audit/verification may also kindly be shared with Telecard together with an opportunity to critique them and a hearing, if necessary.

4. Besides the foregoing, the Authority had directed its Vigilance Cell to provide a set of only 10,000 CDRs from the entire set of millions of CDRs from Mobilink's Network in order for Telecard to audit them at its end and to come back with its analysis. A meeting was called by PTA at its Director Vigilance's office on 5th June, 2009 wherein Telecard was handed over the aforesaid set of 10,000 CDRs from Mobilink's Network pertaining to international incoming calls they had received from Telecard.

5. *Having carried out a detailed analysis of the 10,000 CDRs provided by PTA's Vigilance Cell, the following is brought to the Authority's kind notice:*

a. *The set of the CDRs provided by PTA pertained to July 2008.*

b. *A total of 9975 CDRs i.e. 99.75% have been identified from the 10,000 calls.*

c. *The call attributes (Calling Time, B-Party, Date, Time, Call-Durations, etc) have been verified to match one hundred percent (100%) in these cases.*

d. *The Trunk Group selected by Telecard on the Mobilink Interconnect was "International Trunk Group".*

e. *The A-Party was also replaced by Telecard with "1930" for CLI-presentation and Mobilink's CDR showed A-Party as "001930" in their CDRs sample.*

f. *Telecard's LDI network stamped either "1930" or a PRI-number, as appropriate, in the CDRs as per the three-legged process of CDR formation explained in the preceding paragraphs.*

g. *The question as to why these calls were claimed by Mobilink to have arrived on their Domestic Trunks of the Interconnect is very much questionable and we request the Authority to raise it strictly with Mobilink because proper assignment of Trunk Group is an operator's prerogative.*

h. *Telecard's role is confined to its network only and, hence, it cannot be held responsible for any mistakes/errors committed by the Receiver Operator(s) which in this case is Mobilink. Only Mobilink could be held accountable.*

i. *In case Mobilink's stance were to contradict Telecard's, it is formally requested hereby on behalf of Telecard to hold another hearing wherein Mobilink may be invited so that it could be confronted with Telecard's stance and evidence in Telecard's presence to meet the ends of justice. In fact, a hearing is due in any case to further thrash out all technical issues involved comprehensively wherein presence of Receiver Operators' presence may also procured to confront any contradictory/conflicting data or stance provided by them and Telecard. We may mention that this has not been done till date despite our earlier requests to this effect. Needless to reiterate that this is besides Telecard's consistent stance that such an exercise is least desirable to be undertaken in a Show Cause proceeding under **section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 ("the Act")** at the level of the Authority.*

j. Coming back to the very small number of the un-compared 25 CDRs constituting a sheer 0.25% of the 10,000 calls sample, kindly note that these were very much present and reported by Telecard to PTA at the time of monthly CDR provisioning. The presence of these 25 CDRs in the 10,000 calls sample from Mobilink itself proves this fact.

k. However, Telecard could not extract them now which could be due to any mis-aligned attribute in the samples received from Mobilink via PTA. We hope PTA would appreciate that this in any case portion comprises a negligible number and can be legitimately ignored from an analytical standpoint.

l. Telecard has placed the comparison of these calls in an easy-to-understand format by placing the 9,975 out of 10,000 CDRs from both Mobilink and Telecard side by side in the enclosed excel sheet.

In view of the foregoing, it would be appreciated that the sheer nature and the huge scope of technicalities involved in the matter do not merit disposal by means of a Show Cause Notice under **section 23 of the Act** but through a detailed and thorough reconciliation exercise undertaken under other enabling provisions of the Act and the rules and regulations made thereunder. Reliance is particularly placed in this regard on the provisions of **rule 13(4) read with rule 12(4)(a) of the Access Promotion Rules, 2004**. We may mention that as requested earlier Telecard is yet to be provided the complete IPDRs without which it is handicapped in defending itself and which can only be done, if at all necessary, through a proper detailed reconciliation and investigation exercise between the technical personnel of PTA and Telecard. This is but one such instance demonstrating the need for such an exercise.

Furthermore, since discrepancies between Telecard's CDRs and those reported by Access Providers (like Mobilink) have been alleged in the Notice which invariably give rise to a dispute between Telecard and the Access Providers and since the Authority is already seized of the matter by virtue of these proceedings in the Notice, Telecard hereby invokes the provisions of **sub-regulation (4) of regulation 9 of the Access Promotion Regulations, 2005** seeking settlement the aforesaid discrepancies/disputes. The said sub-regulation is reproduced below in material part for convenience of reference:

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

We are also enclosing herewith invoices received from Mobilink according to which reporting was made to PTA for the months of June and July, 2008. These are relevant to establish that monthly summaries prepared and provided to PTA by Telecard were based on these invoices without any mala fide intent on Telecard's part.

Lastly, we would respectfully request that the Notice being misconceived and premature may kindly be withdrawn and resort, if at all deemed necessary, may be made to the reconciliation process enshrined in the spirit and scheme of the Act and the Access Promotion Rules and Regulations made hereunder.

6. Findings of the Authority:

6.1. The licensee pursuant to rule 12 of the AP Rules, provided monthly report on the total number of minutes of incoming international telephony service that is carried by the licensee and delivered to the system of LL and Mobile operators. Therefore, to examine and verify that the reports of international telephony minutes and its payments have been made as per the AP Rule and AP regulations by the licensee, the Authority by exercising its powers to determine the compliance of AP Rules also called for its CDRs for the month of July, 2008 and August, 2008. CDR data for international traffic terminated by the licensee for the aforesaid months was analyzed at the Vigilance Cell of PTA. During the analysis following activities were performed:

- a. Reconciliation of M/s Telegard international incoming CDRs with the traffic reported by the licensee to PTA Commercial Affairs Division.
- b. Reconciliation of M/s Telegard international incoming CDRs with the CDRs of Telegard terminated traffic obtained from its Interconnect partners Mobilink, Telenor and PTCL
- c. Reconciliation of M/s Telegard international incoming CDRs with the IPDRs of International Traffic Monitoring System (ITMS).
- d. Reconciliation of M/s Telegard Local Loop CDRs with the IPDRs of International Traffic Monitoring System (ITMS).

During the aforesaid analyses following concealments were identified:

- a. A differential of 15,265,595 minutes exists between the Traffic reported by Telegard and the traffic detected from Telegard CDRs.
 - i. 15,094,069 minutes accounting for 98.8% of the total differential are minutes which have been terminated on Mobile Networks
 - ii. 171,526 minutes accounting for 1.12% of the total differential are minutes which have been terminated on Fixed Line Networks
- b. Analysis of Telegard CDRs with Telegard Traffic CDRs produced at its Interconnect Partners evidenced a differential of 3,468,554 minutes in Telegard CDRs. The breakup provided as under:

	July			August		
	Minutes in Access providers CDRs	Minutes in Telegard CDRs	Difference	Minutes in Access providers CDRs	Minutes in Telegard CDRs	Difference

Mobilink	12,509,515	11,059,065	1,450,45 0	13,505,999	11,819,258	1,686,741
Telenor	7,910,615	7,495,105	415,510	6,320,154	6,067,928	252,226
PTCL	9,505,763	9,529,931	-24,168	10,007,973	10,320,178	-312,205
Total	29,925,893	28,084,101	1,841,79 2	29,834,126	28,207,364	1,626,762

c. Analysis of Telecard CDRs with the ITMS IPDRs produced the following results:

I. A differential of 1,218,439 minutes terminated on Mobile Networks as shown below:

Month	TeleCard's traffic detected by ITMS	IPDRs minutes not present in TeleCard's CDR
July	4,720,784	363,146
August	5,526,667	855,293
Total	10,247,451	1,218,439

d. Telecard Local Loop CDRs were also reconciled with the ITMS IPDRs to ascertain if Telecard is using its Local Loop numbers to mask International incoming traffic as local traffic. Sample of the comparison is as under:

	A-party	B-party	Duration	Date/Time
ITMS	96614475425	8672923015772414	35	2008-07-01 12:15:40.000
Telecard LL	218367454	03015772414	25	2008-07-01 12:25:08.000
ITMS	111	8672923205516556	6	2008-07-01 11:07:31.000
Telecard LL	218460958	03205516556	5	2008-07-01 11:19:54.000
ITMS	5723	8672923088720842	5	2008-07-01 12:54:25.000
Telecard LL	218460957	03088720842	2	2008-07-01 13:00:10.000
ITMS	Unknown	8672923335127872	5	2008-08-26 22:51:09.000
Telecard LL	218460925	03335127872	3	2008-08-26 23:04:21.000
ITMS	sorif	8672923338663147	7	2008-08-27 15:17:52.000
Telecard LL	218370326	03338663147	8	2008-08-27 15:31:15.000

The Telecard WLL numbers detected as a result of above reconciliation were analyzed and following results were obtained regarding their activity:

	Calls	Unique Destinations	Minutes

218367454	1,973	1,891	8,768
218460958	1,944	1,875	8,751
218460957	1,934	1,852	8,359
218460925	1,817	1,761	8,408
218370326	2,158	2,100	10,649

Hence, the above is a clear indication that the Operator is resorting to its Local Loop Platform for masking and hence, concealment of international incoming traffic.

6.2. Comparison of Telecard CDRs and its submitted reports for July-August 2008 revealed a differential of 15,265,595 minutes in its submitted reports. In its response to the Show Cause and in the subsequent hearing the licensee claimed that its reports are based on the invoices received from its interconnect partners. However, it was noted by the Authority during the hearing that the volume of misreported traffic is quite significant i.e. around 50% which undermines licensee stance of relying upon its interconnect partners' invoices. Furthermore, misreporting was significantly made for traffic terminated on Mobile Networks. Therefore, the licensee is not justified in misreporting of traffic and is also liable to pay APC for USF against 15,094,069 minutes which were terminated on Mobile Networks out of the above stated minutes.

6.3. Comparison of the licensees CDRs with the CDRs of its interconnect partners produced a differential of 3,804,927 minutes in licensees CDRs. In its response the licensee again resorted to the invoices it has received from its Interconnect partners and also reserved its right to examine its partners CDRs. However, during the hearing the licensee provided no evidence related to CDR comparison. As for the invoices which the licensee received from its partners, it has already been ascertained that these are not accurate for judging the international minutes terminated by the licensee. Therefore, the licensee is liable to pay APC for USF against 3,804,927 minutes.

6.4. Comparison of ITMS IPDRs with the Licensees CDRs produced a differential of 1,218,439 minutes in the licensees CDRs. In its response to the Show Cause the licensee requested for the provision of IPDR records for providing its response. The Licensees request was approved by the Authority and in a follow up meeting held after the Show Cause the licensee was provided a sample of 1000 IPDR calls which were not found in the licensees CDRs. Based on analysis carried on this sample the licensee claimed that these calls are essentially failed calls which have not materialized due to different technical reasons. However, a sub set of around 50 such calls were checked by the Vigilance Cell for authenticity by obtaining data from Access providers. The calls were duly found to be terminated at the relevant access provider end thus contradicting the licensee's claim of these calls as being failed calls. Matching of these calls was shown to the Authority during the hearing as evidence. Thus the licensee is also liable to pay for 1,218,439 minutes not found in its CDRs.

6.5. During the comparison of ITMS IPDRs and the licensees CDRs it was noted that a total of 6,780,789 minutes have been terminated by replacing the calling numbers with the geographical numbers allocated to M/s Telecard Local Loop. During the hearing the Licensee claimed that this has happened due to Technical design of its VoIP/TDM systems as a PRI is required for call leg formation between VoIP and TDM. The licensee has allocated a set of geographical numbers to such PRIs and during the technical process of allocating 1930 to calls having invalid or missing CLI (as per PTA instructions), number allocated to the PRI is assigned

as the calling number for these calls. However, before these calls are terminated on the access provider's end, the technical process ensures replacement of geographical numbers with its CSC code 1930. The licensee is not justified in assigning geographical numbers to the user based PRI as these numbers have been provided to the licensee for usage in Karachi as Go (WLL) numbers. Furthermore, since the PRI is to be only used for calls formation/translation between VoIP and TDM; it should have been assigned any other dummy number rather than a geographical number. More appropriately the licensee should have consulted PTA numbering dept in advance for prior information and resolution of this issue. It should however be noted that these 6,780,789 minutes have no separate financial implication and are included in the 15,265,595 minutes of Telecard misreporting to PTA.

6.6. The licensee failed to comply with the provisions relating to rule 12 of AP Rules by not providing traffic report from October, 2007 to September, 2008 till October, 2008, which is contravention of the rules and regulations. However, in response the licensee sought apology on the ground that reports could not be furnished due to administrative issues, which argument has no force. The licensee has been running its business and bringing millions of international telephony minutes in every month in the country and terminating the same on various networks of LL and Mobile licensees and making the required payments and earning revenues, which were not affected due to administrative issues, but only the mandatory reports of incoming international telephony traffic under the prevailing regulatory regime.

6.7. Rule 12 of the AP Rules provides a comprehensive procedure for reporting of incoming international telephony minutes, which were violated by the licensee either by not providing the same or when provided in October, 2008 the same contained incorrect information regarding the minutes. However, the Authority when by exercising its powers to monitor the compliance of the AP Rules, audited its reports by calling its CDRs and comparing it with its CDRs and CDRs of other operators it revealed the already submitted reports provided incorrect details of the minutes and payments, hence, it established that the licensee has tried to conceal or hide the correct details of incoming international telephony minutes by misreporting it. The licensee has not provided the correct detail rather in audit through technical facilities it revealed that the licensee has concealed the accurate detail of minutes from the Authority.

6.8. As the licensee has contravened the license conditions and the AP Rules and Regulations, hence, show cause notice was rightly issued under section 23 of the Act. However, the licensee has come with argument that it needs reconciliation, which has no force, as it has to prepare accurate reports as per its CDRs by exchanging the same with other operators. The Authority has found difference of minutes in its reports and CDRs as stated in Para 2.1 and 6.1 above, while doing the necessary audit of its information, hence, by noting the violation the Authority issued show cause notice. Therefore, the argument of reconciliation is an after thought step to save itself from the consequences of the proceedings.

6.9. The licensee has not reported earlier any of its dispute with any other operator, hence, the same cannot be entertained at this stage and during the proceedings of the instant show cause notice. However, if the licensee feels that there is its genuine dispute with any other operator regarding the calculation of its incoming international minutes, it may file separate dispute under the AP Regulation which will be adjudicated accordingly.

6.10. The licensee has also taken the stance that all of its incoming international telephony minutes were present in its CDRs, which could not be rightly reported to the Authority on one

reason or the other. The samples provided to the licensee twice as per its demand were cross examined by it and confirmed the matching of the same with its CDRs with negligible difference as per its stance, hence, samples are sufficient to authenticate the violations and in such circumstances even provision or non-provision of whole IPDRs do not change the findings of the Authority.

7. Order of the Authority:

7.1. The foregoing shows that the contents of the show cause notice stand proved since the licensee itself has already admitted the difference of 15,265,595 minutes (15,094,069 on Mobile network plus 171,526 on LL networks) present in its CDRs which were not part of its reporting to PTA. The licensee is thus liable to pay APC for USF and APCL for these minutes as well as the differential of its CDRs with ITMS IPDRs and CDRs of its interconnect partners which account for 1,218,439 minutes and 3,804,927 minutes, respectively, which in total becomes 20,288,961 minutes.

7.2. Under sub-rule 4 of rule 9 of the Telecommunication Rules, 2000, the licensee is directed to:

- (a) remedy the contravention by paying **Rs.56,477,267/-** on account of APC for USF against aforesaid less reported minutes **20,117,435** terminated on Mobile networks and APCL to respective LL operator for less reported minutes **171,526** terminated on LL networks within **thirty (30) days** of the issuance of this “Enforcement Order” and stop masking traffic immediately.
- (b). submit proof of payments mentioned in Para 7.2 (a), above, within the aforesaid period of **thirty (30) days** from the issuance of this “Enforcement Order”.

7.3. In case of the licensee’s failure to comply with Para 7.2, above, “Final Enforcement Order” under sub-rule 5 of Rule 9 of the Telecommunication Rules, 2000 shall be issued against the licensee.

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

(Dr. Khawar Siddique Khokhar)
Member (Technical)

(Dr. Mohammed Yaseen)
Chairman

Signed on 31st August, 2009 and comprises 21 pages.