



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

Re:
Warid Telecom (Private) 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 Notice: 20th November, 2008
Date of Hearing: 18th 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 Warid Telecom (Private) Limited (the “licensee”) which is maintaining telecommunication systems and providing telecommunication services in the country under licence No.MCT-02/RBS/PTA/2004 dated 26th, May, 2004 (the “licence”) issued to it by Pakistan Telecommunication Authority (the “Authority”) was, on 20th 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;

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 of 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 inform 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	3	29	3	5	-	24
Lahore	-	30	-	5	-	25
Peshawar	2	32	2	9	-	23
Quetta	5	18	5	-	-	18
Rwp/Ibd	-	45	-	17	-	28
Muzaffarabad	3	26	2	5	1	21

Franchisees 1/13 = 7.69%, Retailers 139/180 = 77.22%

Last Week of August, First Week of September 2007

Zone	Outlets Checked		With Verification		Without Verification	
	F	R	F	R	F	R
Karachi	3	15	3	7	-	8
Lahore	12	15	6	-	6	15
Peshawar	3	20	3	4	-	16
Quetta	4	15	4	-	-	15
Rwp/Ibd	2	10	1	2	1	8
Muzaffarabad	1	5	-	3	1	2

Franchisees 8/25 = 32%, Retailers 64/80 = 80%
(the % shows the ratio of non-compliance)

- 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 dated 18th December, 2008 is reproduced in *verbatim* as under:

Preliminary objections

- a) *it is stated that there is no violation, intentional/unintentional or direct or indirect, of the Pakistan telecommunication (re-organization) act, 1996 ("1996 telecommunication act") by Warid telecom (pvt) limited ("warid" or the respondent company") and particularly section 23 of the 1996 telecommunication act as alleged in the show cause notice or otherwise at all.*
- b) *Warid always abide by the prevailing and applicable laws of the land, its license as well as any instructions, order, determinations issued by the Pakistan telecommunication authority ("PTA") under 1996 telecommunication act. All instructions /orders issued by the PTA have been complied with in their letter and spirit by the respondent company. Even there in no breach on the part of warid of its license issued by the PTA for providing telecommunication services.*
- c) *The respondent company has established a vast sales network through opening its business centres ("BC s"), owned and operated by herself, in almost every city of Pakistan to provide better and quality services to the mobile subscribers so that their concerns could be resolved at their door steps. Besides business centres, the respondent company in order to expand its sales operations established franchise network under an independent agreement called "Franchise Agreement" and the relation between the franchise and warid is regulated and governed by the terms and conditions of franchise agreement. It is specifically mentioned that as per clause 2.7 of the standard franchisee agreement, warid and franchisee are independent contracting parties. This clause further postulates that the agreement does not create general or special agency, joint venture, partnership, employment relationship. Although warid services are being sold at the franchisee premises. But one entity cannot be held responsible for any act or omission of other independent person. The business centres, which are operated and controlled by the respondent company herself, are adhering to the SOP for issuing SIM connections. Warid is not responsible for any act or omission of the retailers as well. It is further brought to the PTA's knowledge that extensive training is provided to the franchisees regarding understanding and implementation of the SOP in its letter and spirit. If, in the event, franchisees are found in breach of any term of the SOP their commission is withheld by warid as punishment, besides other action/direction suggested by PTA against the franchisee.*

- d) *That in discharge of legal and licensing obligation, the respondent company, from the very inception and till to-date issuing instructions to all franchisees for complying with the SOP and as and when any violation of PTA SOP was reported to the respondent company, immediate action was taken accordingly against the franchisee including the termination of the franchisee agreement and permanent closure of their business. This shows the bonafide and seriousness of the respondent company in complying with the instructions of the PTA. There is nothing on the part of warid which could tantamount to breach of any instruction or order of PTA.*
- e) *That it is mentioned in the show cause notice that PTA randomly conducted surprise visits/survey to franchisee and retailers and found contravention to the SOP for issuance of mobile connections. With due deference, it is mentioned that surprise visits have been conducted in violation of equality and judicial principles. Without prejudice to the stance taken by warid, it is mentioned that the comparative analysis (2007 and 2008) shows that warid is improving in percentage in complying with the SOP.*
- f) *The criteria adopted by PTA for comparative analysis has been drawn/prepared without taking into account the total number of franchisee /retailers in the relevant city. The inappropriate comparative analysis criteria showed the higher percentage.*
- g) *The Pakistan telecommunication authority's every instruction has been followed and implemented in its letter and spirit. As and when any breach by franchisee/retailers was informed to warid by PTA., the same was implemented there and then. The relevant franchisee /retailers business was either suspended or terminated in the light of instruction of PTA. Nothing is on the part of warid which can be termed as breach of any instructions of PTA.*
- h) *It is further submitted that after issuance of the show cause notice, a meeting was held on 26th November 2008 chaired by the chairman PTA and all CMTOs in which it is was decided that CMTOs shall take strict action against the violators, a list of which shall be provided by PTA. In this regard it is stated the respondent company has taken action against the franchisee/retailers are per the list provided by PTA. As it appears and is evident from the minutes of meeting, the issues/subject matter of show cause notice has been resolved by the PTA and now it would be in the interest of justice that proceedings under show cause notice be dropped/withdrawn.*
- i) *Without prejudice to the stance taken by respondent company, it is mentioned that once the NADRA newly introduced verification system is operational, the SOP would practically ineffective and till the time of making the NADRA system operational, a lenient view may be taken and more time be granted to the respondent company.*
- j) *That the respondent company is providing quality services to its customers and meeting all standards relation thereto and keeping in view its standards the concerned bodies awarded to the respondent company the certificate of achievement most acclaimed "Brand of the year award 2008.*

B. Para wise reply on merits

In addition to and subject to the submissions in the earlier paragraph A of his reply, it stated that all the allegations in the show cause notice are denied except to the extent that they re specifically admitted herein below:

1. *the contents of paragraph 1 relate to the award of cellular mobile licence to the respondent company and are admitted.*
2. *the contents of paragraph 2 relate to the obligation of all licensees to comply with applicable laws and regulations and need no reply.*
3. *the contents of paragraph 3 needs no reply as the same relates to licensing obligation of the respondent company.*
4. *the contents of paragraph 4 needs no reply as the same relates to powers of the Pakistan telecommunication authority.*
5. *the content of paragraph 5 needs no rely as the same is matter of record.*
6. *the content of paragraph 6 needs no rely as the same is the matter of record.*
7. *the contents of paragraph 7 needs no reply as the same is the matte of record.*
8. *the contents of paragraph 8 needs no reply as the same is the matter of record.*
9. *the contents of this paragraph 9 are denied. The respondent company always followed the instructions of the PTA as and when issued.*
10. *the contents of this paragraph 10 are denied. Although the same is matter of record but the respondent company always complied with the direction, in its letter & spirit, of the PTA, As already mentioned that the business centres are under the control of respondent company, the SOP has been implemented. Not only this as and when any violation of any franchisee/retailers was reported to the respondent company, immediate action was taken accordingly, it is further mentioned that extensive training is provided to the franchisees regarding understanding and implementation of the SOP in its letter and spirit. If in the event, franchisees are found in breach of any term of the SOP their commission is withheld by warid as punishment, besides other action /direction suggested by PTA against the franchisee.*
11. *the contents of this paragraph 11 needs no reply as the same is matter of record. It is reiterated that the respondent company has streamlined its procedures for issuance of SIMs and is being implemented in its true sense. The SOP issued by the PTA was also issued to the franchisees and retailers for immediate compliance thereof. Several reminders are/were sent to the franchisees for implementing SOP. In the event any franchisee is found contravening the terms of SOP, their commission is withheld by warid apart form other action suggested by the PTA. Every instructions/orders issued by PTA is followed and implemented.*
12. *the contents of paragraph 12 needs no reply as the same is the matter of record.*

13. *the contents of this paragraph 13 need no reply as the same is matter of record. However as and when the instructions were issued by the PTA the same has been implemented.*
14. *the contents of paragraph 14 needs no reply as the same is the matter of record.*
15. *the contents of paragraph 15 needs no reply as the same is the matter of record.*
16. *the contents of paragraph 16 needs no reply as the same is the matter of record.*
17. *the contents of paragraph 17 are admitted.*
18. *the contents of this paragraph 18 are denied as there is no violation on the part of the respondent company of any term and conditions of its licence. The respondent company is following and implementing the order/directions/instructions of the PTA.*
19. *the contents of this para needs no reply as the same is matter of record. However it is submitted that the respondent company in compliance with the instructions of PTA has cleaned/blocked 919067 unverified connections. The SOP is being implemented in its letter and spirit.*
20. *in response to paragraph 20it is once again reiterated that the company is following the decisions of the PTA, No violation is being committed by the respondent company. The respondent company is not liable for any wring/illegal act of the franchisee. There is no ill intent on the part of the respondent comp[any to breach SOP.*
21. *The paragraph 21 of the afore-referred show cause notice needs no reply as the same is matter of record. It is further mentioned the criteria adopted by PTA for comparative analysis has been drawn/prepared without taking into account the total number of franchisee/retailers in the relevant city. The inappropriate comparative analysis criteria showed the higher percentage . without prejudice to the stance taken by warid, it is mentioned that the comparative analysis (2007 and 2008) shows that warid is improving complying in percentage in complying with the SOP. It is further mentioned that the subject matter in the show cause notice has been resolved is evident from the minutes of meeting (ref No. 2(2)/08/Coord/PTA dated 27 November 2008) prepared pursuant to a meeting held on 26th November 2008 among PTA and all CMTOs.*
22. *the content of this paragraph 22 are denied as the same is matter of record.*
23. *the contents of this paragraph 23 are denied . there is no violation on the part of the respo9ndent company for any breach of the terms and conditions of the licence or any instructions of PTA so there is no ground for invoking section 23 of the 1996 telecommunication Act. It is further mentioned that as and when the respondent company was informed by the PTA regarding any violation of the franchise, action was taken immediately and the franchise agreement was terminated and its business was closed.*
24. *this paragraph 24 need no reply.*

25. *in response to this para it is submitted that no breach has been committed by warid, however, in compliance to the Pakistan telecommunication authority's order, reply to show cause notice is being submitted. The compliance report, as mentioned in show cause notice, has already been submitted to the PTA.*

Without prejudice to the above, the respondent company assures PTA with respect to the verification of antecedents and the compliance of the SOP.

NOW THEREFORE, in view of the above, it is requested that the afore referred show cause notice under section 23 of the Pakistan telecommunication (re-organization) Act, 1996 may very graciously be withdrawn and proceeding be dropped against the respondent company.

- 1.9. Notice re continued contravention: the aforesaid reply was not found satisfactory, however, in the light of licensee's assurances regarding streamlining its system/procedures, once 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 18th 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 the its fresh violations as well.
- 1.10. The Hearing: On 18th June, 09 the licensee appeared before the Authority through Mr. Omer Abbas Haider, GM Govt. Relations and Mr. Mohammad Irshad, Head of Legal Affairs.
- 1.11. The licensee, appearing through the aforesaid representatives, at the very outset agreed that 100% compliance of the relevant SOP is not there on its part and admitted partial violations. However, submitted that it has done whatever it could possibly do as an operator. While concluding their submissions, the representatives requested for a lenient view in the matter and also requested for a final opportunity.
- 1.12. At the conclusion of the hearing, the licensee submitted the following written submissions which are reproduced in verbatim:
1. *For the sake of brevity and convenience all preliminary objections and grounds taken in reply to the Show Cause Notice may kindly also be read in conjunction with above submissions.*
 2. *The primary objective of the Standing Operating Procedure ("SOP") on "Mobile Subscribers' Documentation and Activation of SIMs after Verification" is to ensure that SIM is activated after due verification of NIC and other data from NADRA and proper record is available in the system. The SOP further ensures to prevent unauthorized issuance of SIM.*

Warid Telecom (Pvt.) Limited (“Warid”) has provided SOP and instructed all its Business Centers/Franchisee/Retailers to comply with SOP. Warid has set up Enforcement Section to monitor compliance of SOP by its sale outlets in different regions who regularly visits the franchisees and retailers. If at any time any franchisee/retailer is found violating PTA SOP or any other instructions, immediate action is taken which may include permanent closure, suspension, withholding of commission, warning letter etc.

It is further mentioned that the activation of SIM on “789” by Warid ensures compliance with the SOP. The updated subscribers’ data including voice recording is also available with Warid as per SOP. The prime concern of activation and verification is met in this way.

3. To educate and train the staff of business centre, franchisee and retailers in terms of SOP, Warid regularly organize training program to keep them aware and abreast of all PTA instructions/SOP. In this regard it is submitted that SOP was issued on 30th January 2009 and survey has been conducted in the month of March 2009. In this short span of time, it is practically difficult to train each and every person in respect of SOP, although SOP was circulated to all sale outlets immediately upon its issuance.

3. It is submitted that Warid has taken all steps as per SOP to ensure implementation, on line verification under the auspices of the authority which can be checked and inspected by the authority. Warid has done whatever is required under SOP to monitor compliance of SOP, therefore, it is most humbly requested that Warid may not be held responsible for violations, if any, by any unauthorized or wrong activity of any of Franchise/Retailers or their employees.

4. That there is a logical gap between CSAF and activation of SIM through “789”. The person who calls on “789” cannot be recognized whether he is the same person who has filled CSAF or have obtained SIM. The considerable time required in reaching the CSAF to the Warid office whereas SIMs have to be activated within 24Hrs in terms of clause 9 (a) (3) of SOP. In order to ensure filling of CSAF by the franchisee and retailers Warid has also introduced incentives scheme for them on provision of each CSAF and their commission is also linked with provision of CSAF.

5. Warid has vast network sale outlets i.e., Business Centers (“BCs”), owned and operated by Warid, about 383 Franchises, hundreds of Retailers and at least 8/10 people are working in sale outlet who are involved in sale of SIMs. It is further submitted that out of 31 Franchisees only 7 Franchisees have been found mildly violating SOP and percentage of violation is very low i.e., in one instance it is 29% and in other survey it is 14%, which may be ignored. Although our monitoring team regularly and randomly check them but it is humanly not possible to monitor SOP compliance by each and every person and all time. Warid is incessantly making efforts and as and when it comes into the knowledge of Warid, any activity in contravention of the PTA’s instruction, it immediately takes action and terminates/suspends the franchise agreement.

6. After receipt of the subject notice Warid has also taken the immediate steps and accordingly the Franchises mentioned in the subject notice have been suspended.

As far as Retailers are concerned, that too have been blacklisted with Warid in compliance of the PTA directions.

7. *Warid is adhering to the applicable laws, its license as well as any instructions, order, determinations issued by The Pakistan Telecommunication Authority under the Pakistan Telecommunication (Re-Organization) Act 1996 (“Act”).*

8. *The system under SOP is at nascent stage and will take time to mature, so it is requested that enforcement orders may kindly not be issued against Warid for any violation of SOP which may have been committed by Franchises or Retailers.*

9. *The subject Show cause notice is also not completely in accordance with section 23 of the Act, and is not actually providing any particular steps which Warid should take to redress partial violation mentioned in therein.*

10. *The subject Show Cause Notice was issued in November 2008 and thereafter new SOP has been issued therefore said Show Cause Notice has become redundant and cannot be proceed with and similarly no enforcement order can be passed in pursuance thereof.*

In view of above and in the interest of justice, equity and fair play, it is humbly prayed that enforcement orders may kindly not be issued against Warid for any violation of SOP which may have been committed by Franchises or Retailers and subject Show Cause Notice may kindly be withdrawn.

2. Findings of the Authority

2.1 Though in reply to the notice, the licensee has referred to few instances 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. The enforcement division’s evidence is further supported by the licensee’s admission of slight lapses and violations on its part.

2.2 The licensee’s argument in its reply to the notice that the licensee and its franchisees are two different entities and one entity can not be held responsible for the act or omission of another is against the law on the subject and is not acceptable. 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 licensee 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?

2.3 Whether sold by the franchisees/retailers or by the licensee itself directly, the fact is that 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 not the franchisees/retailers.

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.

2.5 However, in light of the admission made by the learned counsel and his request for a lenient view in the matter, the following order is passed;

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