



**PAKISTAN TELECOMMUNICATION AUTHORITY**  
**HEADQUARTERS F-5/1 ISLAMABAD**  
**Ph: 051-9225328, Fax: 051-9225338**  
<http://www.pta.gov.pk>

No.14-585/L&A/PTA/2010/ 889

26<sup>th</sup> February, 2010

**Subject: Decision of the Authority in Case titled M/s Pakistan Telecom Mobile Limited (U-fone)**

Please refer to the captioned matter and the hearing on 9<sup>th</sup> February, 2010, in this regard.

2. Attached please find decision of the Authority passed in the captioned matter for your information, record and further necessary action, please.

Encl: As above.

(Muhammad Shafaqat Jan)  
Director  
(Litigation & Adjudication)

To,

M/s Pakistan Telecommunication Mobile Limited (U-fone)  
through its Chief Executive officer,  
13-B, F-7 Markaz, Jinnah Super Market,  
**Islamabad.**

C/C

Copy to:

1. DG (Licensing), PTA HQs, Islamabad
2. DG (Enforcement) PTA HQs, Islamabad
3. Director (Coord-I), PTA HQs, Islamabad
4. SO to Chairman, PTA HQs, Islamabad
5. PA to Member (Finance) PTA HQs, Islamabad
6. PA to Member (Technical) PTA HQs, Islamabad.

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26<sup>th</sup> Feb, 10  
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**PAKISTAN TELECOMMUNICATION AUTHORITY**  
**HEADQUARTERS, F-5/1 ISLAMABAD**  
<http://www.pta.gov.pk>

**Re:**  
**Pakistan Telecom Mobile Limited (U-fone)**

**Enforcement Order under Section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996**

**File No.14-585/L&A/PTA/2010**

Date of Issuance of Show-cause Notice:	17 <sup>th</sup> December, 2009
Date of Hearing:	9 <sup>th</sup> February, 2010
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:**

**“Contravention of clause 1.14 of the licence by issuing a SIM in violation of the directives/SOP”**

**Decision of the Authority**

**Brief Facts:**

- 1.1. Pakistan Telecom Mobile Limited (U-fone) (the “licensee”) which is maintaining telecommunication systems and providing telecommunication services in the country under licence No.PTA/CMT(4)/PTML dated 31<sup>st</sup> August, 1998 (the “licence”) issued to it by Pakistan Telecommunication Authority (the “Authority”) was, on 17<sup>th</sup> December, 2009 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. Under the terms and conditions of the licence, the licensee is obliged to comply with the provisions of the prevailing regulatory laws comprising the Act, all the rules and regulations made/framed/issued under the Act and the terms and conditions of the license.
- 1.3. clause 1.14 of the terms and conditions of the license require the licensee to comply with the requirements of national security as contained in Section 54 of the Act and in this regard shall comply with any directions given by the Authority issued from time to time, which would be binding on the licensee to implement.

- 1.4. While performing its functions under the provision of the Act, the Authority pursuant to Policy Directive of the Federal Government, issued Standard Operating Procedure for Mobile Subscriber's Documentation and Activation of SIM After Verification and communicated it to the licensee vide directive dated 30<sup>th</sup> January, 2009 for strict compliance and implementation by CMTOs including the licensee.
- 1.5. The aforesaid procedure clearly describes each and every step required to be taken prior to activation of SIM. Vide Para 10(b)(3) and (4) of the aforesaid SOP the licensee was obliged to verify and activate the SIM if the information provided by the caller matches with the information received from NADRA and in case the information does not match, then the Call Center or CSC operator shall advise the caller to visit nearest Customer Service Center of the respective mobile company.
- 1.6. It was brought in the notice of the Authority that the licensee has issued and activated a SIM No. 0331-4770183 without complying with the procedures given in the aforesaid SOP/directive required for activation of SIM by verifying the secret information. This act of issuing the SIM which did not match NADRA's data was taken not only a disregard to the Authority's aforesaid directives but also a threat to the national security measures taken by the Federal Government and to be implemented by the Authority. It was contravention of clause 1.14 of the licence by the licensee leading to issuance of the show cause notice dated 17<sup>th</sup> December, 2009 under section 23 of the Act requiring the licensee to remedy the contravention by disconnecting the aforesaid SIM including all other numbers issued without complying the aforesaid directions/SOP and to submit 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 the said violation.
- 1.7. **Licensee's compliance report:** the licensee submitted its compliance report vide letter dated 29<sup>th</sup> December, 2009 which is reproduced in *verbatim* as under:

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

*Without prejudice to the legal defence and stance to be taken in respect of the allegations mentioned in the SCN, the following is submitted for your kind consideration as regards PTML's fulfillment of the requirements prior to issuance of a number/connection to subscribers, particularly regarding the issuance and activation of number 0331-4770183:*

1. *Please note that PTML has been fulfilling all requirements in respect of verification of subscriber's antecedents from NADRA as per the procedure detailed in the SOP.*
2. *The "789" regime as contained in the SOP is being successfully implemented and PTML is adhering to it in order to ensure that each number is issued and activated to an identified person by employing the means and methodology prescribed in the SOP.*

3. *PTML has not issued any SIM/connection without following the procedure under the "789" regime laid out in the SOP and in case any information provided by the intending subscriber does not match with the information provided by NADRA as per para 10 of the SOP, the same is withheld from activation.*
4. *The number 0331-4770183 was issued completely following the "789" regime prescribed in the SOP.*
5. *Please note that the aforesaid number (331-4770183) has now been disconnected with effect from 24<sup>th</sup> December 2009.*
6. *The process of disconnection was, however, already underway even prior to receipt of the captioned SCNM from PTA. This was being done pursuant to PTA's SOP on Cleaning of Old Data i.e. the "668" regime, issued vide letter No. 15-28/2009/Enf/PTA dated 17<sup>th</sup> September, 2009 (including subsequent amendments thereto).*
7. *A complaint was filed with PTML on 7<sup>th</sup> December, 2009 and the said number was disowned. As per the SOP containing the "668" regime, the said connection had to be disconnected within seventeen (17) days of the lodging of complaint, which has accordingly been achieved in timely manner.*

*The foregoing is for information and may kindly be treated as the compliance report sought vide the captioned SCN. Please do note that the slight delay in submitting this report has been caused due to intervening holidays of 25<sup>th</sup> December and Ashura, which is regretted.*

*It is also requested that there being no violation of para 10 of SOP on part of PTML, the SCN may kindly be withdrawn without any further action. PTML shall submit its written response to the SCN in due course."*

- 1.8. Licensee's response to the notice: The licensee has submitted its response to the notice vide letter dated 15<sup>th</sup> January, 2010 which is reproduced in verbatim as under:

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

*In the SCN, PTML has been asked to show cause and explain as to why an enforcement order under sub-section (3) of section 23 of the Pakistan Telecommunication (Reorganization) Act, 1996 ("the Act") may not be issued against PTML for allegedly disregarding and not complying with the Authority's directives/instructions/orders contained in para 10 of the "SOP on Mobile Subscribers' Documentation and Activation of SIMS After Verification" issued by the Authority vide letter No.15-9/2009/Enf/PTA Dated 30<sup>th</sup> January, 2009 ("SOP"), in particular, the steps to be taken before activation of number under the "789" regime stipulated in the said para 10 of the SOP.*

Needless to mention that the SOP has purportedly been issued under the legal mandate of Federal Government's Policy directive issued on 24<sup>th</sup> January, 2008 ("**GOP's Policy Directive**"). However, the SOP was issued beyond the mandate given by GOP's Policy Directive by shifting from pre-activated SIMs to Non active SIMs and from off-line verification to online verification to online verification, the validity and legality whereof alongwith the scheme governing sale of SIMs under the said regime, already stands challenged by PTML alongwith the Cellular Industry before the Honorable Lahore High Court at Lahore in FAOs filed against an earlier determination/enforcement order of the Authority dated 6<sup>th</sup> July, 2009.

Without prejudice to the legal and factual stance of PTML outlined earlier in the aforesaid litigation and the various communications with the Authority on the subject as well as now in the instant communication, the following may please be noted in this regard.

1. To start with, we wish to bring to the kind notice of the Authority that PTML has fulfilled the requirements of para 10 of the SOP i.e. the "789" regime.
2. A compliance report dated 29<sup>th</sup> December, 2008 has already been submitted to the Authority which evidences PTML's compliance with the "789" regime. The following may additionally be noted:
  - a) Without any distinction to a specific number, the procedure as laid down in para 10 of the SOP has been adopted by PTML, especially the requirements in respect of verification of subscribers' antecedents from NADRA under the "789" regime.
  - b) The same procedure was followed in the issuance and activation of number 0331-4770183.
  - c) As informed vide the compliance report submitted earlier, the said number stands disconnected with effect from 24<sup>th</sup> December, 2009 pursuant to PTA's SOP on 'Cleaning of Old Data i.e. the "668" regime, issued vide letter No.15-28/2009/Enf/PTA dated 17<sup>th</sup> September, 2009 (including subsequent amendments thereto).
  - d) The process of disconnection was already underway under the 668 regime prior to receipt of the SCN pursuant to a complaint made to PTML on 7<sup>th</sup> December, 2009 whereby the said number was disowned.
  - e) Please note that as per the SOP containing the "668" regime, the said connection had to be blocked on seventeenth (17<sup>th</sup>) day of the lodging of complaint (if subscriber's antecedents are not obtained and verified within the stipulated time), which was also observed in the instant matter; hence, the disconnection made effective on 24<sup>th</sup> December, 2009.
3. It would, therefore, be appreciated that the allegations contained in the SCN regarding PTML's non-compliance with para "10 of the SOP are liable

to be withdrawn together with the SCN without any further action adverse to PTML

4. As always in the past, PTML being a responsible corporate citizen and a participant in the growth and development of the telecom industry in Pakistan, extends its assurance to keep making good faith efforts to cooperate in all concerted efforts of the industry; hence, the continued good faith cooperation for implementation of the "789" regime.
5. It may nonetheless kindly be appreciated that given the realities on ground, PTML cannot be held responsible for any misuse of a number/connection after its activation as per the "789" regime. It is beyond reasonable control of a CMTO to know beforehand and accordingly restrict or prevent a subscriber from using his/her number/connection for unlawful purposes.

Apart from the foregoing, please note that the SCN should not have been issued to as there is not sufficient legal basis therefore. Following submissions may kindly inter alia in this regard:

A. SCN can not be issued for violation of the SOP

1. Proceedings under section 23 of the Act could not be initiated for violation of the SOP in respect of mobile subscribers' documentation and antecedents verification.
2. Section 23 of the Act does not cite violation or contravention of anything in the nature of an SOP as a ground for invoking the said provision of the Act.
3. It is only the contravention of the provisions of the Act, the rules made thereunder or the terms and conditions of the license, which could form basis for initiating proceedings under section 23 of the Act.
4. All SOPs thus far issued in respect of mobile subscribers' documentation and antecedents verification could not be termed or treated as a provision of the Act, a provision of the rules made thereunder or a term or condition of PTML's license.
5. In fact, PTA has yet to frame regulations as directed by the Federal Government in sub-section (1) of section 8 of GOP's Policy Directive. However, even if framed, the regulations alone do not afford basis for invoking the provisions of section 23 of the Act as Contravention of "regulation, is not an actionable incident mentioned therein. At present though, no regulations have been framed despite the express requirement of GOP's Policy Directive.
6. This is, however, without prejudice to the fact that assuming (though without conceding) that verification of mobile subscribers' antecedents is a matter of "national security", only rules under section 57(2)(ag) could be made in this regard and not regulations. Admittedly, no rules have been made by the

*Federal Government under the said provision to date.*

7. *Needless to state that GOP's Policy Directive is not issued under section 8(2)(a) of the Act which allows Federal Government to issue policy directive regarding the conditions on which licenses for telecommunication, services should be granted. As such, it was never intended to make the SOP or any obligation therein to be a condition of PTML's or, for that matter, any CMTO's license.*

**B. Penal actions can not be taken for violation of the SOP**

8. *It is an established and well-settled principle of law that to penalize someone for violation of an obligation:*
  - a. *the obligation must be clearly defined;*
  - b. *it must have binding legal force; and*
  - c. *the penalty for its violation must also be clearly and lawfully prescribed.*
9. *The SOPs and obligations of CMTOs contained therein have throughout been undergoing improvements and changes both with practical experiences gained during the process as well as the different technologies and technical solutions employed/experimented.*
10. *The verification of mobile subscribers' antecedents was, to start with, not the area of concern either for PTA or the CMTOs, nor is it required to be so under the scheme of the Act. It was on concerned agencies' requirement that the SOPs were put in place and revised from time to time as aforesaid.*
11. *The purpose was to cater for the ground realities and to balance the growth of the industry and interest of users of mobile telecommunication services – something protected by the Act, with concerns of law enforcing agencies – something that was extraneous to the purposes of the Act.*
12. *The legal backing for SOP was not clear and was in fact absent. In these circumstances, PTML had been throughout cooperating with PTA in good faith to help achieve the purposes of the SOP and in the absence of a clear legal mandate for the SOP and given the practical ground realities, it was not expected to incur any liability for any alleged violation of the SOP by its franchisees or retailers. Hence, even when GOP's Policy Directive came, it did not provide for any penal consequence for CMTOs.*
13. *With changing SOPs, no clearly spelt binding obligation with categorically stated penal consequences existed at anytime which could provide the basis for proceeding against PTML under section 23 of the Act.*
14. *Besides foregoing, all SOPs relating to mobile subscribers' antecedents verification are, by nature, non-statutory instruments/notifications.*

15. *The fact that an SOP is made pursuant to a governmental policy directive issued under section 8 of the Act (like GOP's Policy Directive) does not elevate its status from that of a non-statutory instrument to any better.*
16. *As such, in any case, an SOP would legally merely be a guideline and would not afford necessary legal basis for penalizing a CMTO for any alleged violation of the SOP under section 23 of the Act.*

**C. SOP not covered bit GOP's Policy Directive**

17. *The purported legal basis for issuance of the SOP is GOP's Policy Directive.*
18. *GOP's Policy Directive undeniably relates to the mobile subscribers' antecedent verification in the scenario of pre-activated SIMs. It does not contemplate nor provide for verification of SIMs in a regime where SIMs are only to be activated post verification from NADRA.*
19. *This has been clearly acknowledged by PTA in its written submissions before the august Supreme Court of Pakistan in 1 IRC No. 2843/2007 when in response to a written suggestion made by Mr. Rana Shahid Pervaiz, DSP Cantt, Rawalpindi, before the august Supreme Court seeking sale of only deactivated SIMs, it was categorically stated by PTA that "Sale of deactivated SIMs is not contemplated by the Federal Government's policy directive on the subject, which is presumed to be aware of any security/law and order concerns related to sale of activated SIMs.*
20. *It was further stated by the Authority before the Supreme Court that "Sale of deactivated SIMS also raises a serious issue of hampering the growth of mobile phone industry".*
21. *Given the above stance taken by PTA before the august Supreme Court, the SOP being essentially a procedure for sale of inactive/deactivated SIMs and activation thereof after verification, it would not be covered by GOP's Policy Directive and, as such, unless a fresh policy directive is issued by the Federal Government in line with the SOP, it would be without the legal cover and backing that it purports to have.*
22. *Being admittedly deficient in legal backing/support by GOP's Policy Directive which is purportedly its sole legal basis, the SOP cannot be legally made basis for invoking any penal provisions or proceedings under the law. The SCN may, therefore, be withdrawn without any further action.*

**D. Absence of any penal action against CMTOs in GOP's Policy Directive**

23. *GOP's Policy Directive, which is purportedly the only legal basis for issuance of the SOP (or both the old and the new one), does not provide for nor contemplate any action against CMTOs for the violation of any SOP.*
24. *Section (9) of GOP's Policy Directive is very clear in this regard which only penalizes the concerned franchisee and retailer of the CMTO and not the*

*CMTO.*

25. *No other penal consequence is provided for the CMTOs in GOP's Policy Directive in respect of SOP's violation.*
  26. *It is only in paragraph 20.b of the SOP, purportedly made in pursuance of GOP's Policy Directive, that PTA has on its own. provided for "legal action under the provisions of the Act" as one of the actions to be taken in case of non-compliance with the SOP besides the action of permanently sealing the concerned franchisee.*
  27. *To that extent, being in derogation of GOP's Policy Directive (which is binding on PTA as per section 8(1) of the Act) and ex; ceding its mandate thereunder, paragraph 20.b. of the SOP is to be disregarded.*
  28. *Resultantly, the SCN against PTML may kindly be withdrawn since it should not have been issued to PTML in the first place as per the mandate of GOP's Policy Directive.*
- E. GOP's Policy directive not in line with section 8(2)(c) of the Act**
29. *GOP's Policy Directive has purportedly been issued under section 8(2)(c) of the Act which allows the Federal Government to issue policy directives to the Authority in respect of "requirements of national security and of relationships between Pakistan and the Government of any other country or territory outside Pakistan and other States or territories outside Pakistan".*
  30. *"National security" is not defined in the Act although it has been used at two other places in the Act in sections 54(1) and 57(2)(ag) thereof. "National security" has to be thus properly interpreted.*
  31. *In plain English, this would mean security of the nation. At one place in section 54(1) of the Act, the overall context in which the phrase "national security" has been used seems to be the same i.e. security of the nation or state.*
  32. *Somewhat akin to this understanding, Article 260 of the Constitution of the Islamic Republic of Pakistan, 1973 defines "security of Pakistan" in terms of "safety, welfare, stability and integrity of Pakistan and of each part of Pakistan" but excludes public safety.*
  33. *A "National Security Council" is mentioned to be established under section 3 of the National Security Council Act, 2004 "to serve as a forum for consultation on matters of national security including the sovereignty, integrity, defence, security of the State and crisis management".*
  34. *Given the state or national level implications of a security issue, it remains arguable whether the verification of mobile subscribers' antecedents is a matter of "national security" or not.*
  35. *The preamble of GOP's Policy Directive clearly mentions the purpose of the*

*antecedent verification i.e. to act as an aid in investigation of crimes.*

36. *Undeniably, as a mode of communication like any other, mobile phones can be expectedly used by criminals. However, this alone should not make it a matter of such high significance as to qualify as a matter of national security.*
37. *GOP's Policy Directive does not specify any specific category of crimes at a scale that could affect or threaten national security, which could justify issuance of a policy directive under section 8(2)(c) of the Act.*
38. *Moreover, GOP's Policy Directive has been only approved by the concerned Federal Minister as evident from the last sentence of the said document.*
39. *Under the Rules of Business, 1973, approval of a policy by the Minister, instead of the Prime Minister, signifies that it has not been treated as an "important policy decision".*
40. *Sub-rules (i) and (5) of rule 5 of the Rules of Business, 1973 in this regard state  
as  
under:*
41. *Having not been treated as an important policy decision, it could be assumed that the GOP's Policy Directive was not important enough to qualify as a matter or requirement of "national security" as per section 8(2)(c) of the Act.*
42. *Moreover, there is no evidence if the matter of mobile subscribers' antecedents verification was ever taken up by the National Security Council established for this very purpose under the National Security Council Act, 2004 as aforesaid.*
43. *Since it is arguable if GOP's Policy Directive could even be validly issued under section (2)(c) of the Act which it purportedly invokes, it does not offer sufficient and sound legal footing for PTA to issue any SOP pursuant thereto, let aside penalizing CMTOs for an alleged violation of such SOP. The SCN should, therefore, be withdrawn.*

**F. GOP's Policy directive not in line with section 57(2)(ag) of the Act**

44. *In sub-section (1) of section 8 of GOP's Policy Directive, the Federal Government has directed PTA to devise "regulations" for the implementation of GOP's Policy Directive.*
45. *On the other hand, section 57(2)(ag) of the Act specifically empowers the Federal Government itself to make "rules" for "enforcing national security measures in the telecommunication sector".*
46. *It is a well-settled legal proposition that when law prescribes something to be done in a particular manner, it must be done in that prescribed manner and doing it in any other manner would not be valid nor upheld by the courts of law.*

47. *Federal Government's direction in section 8(1) of GOP's Policy Directive to PTA to frame regulations would amount to abdicating its own rule-making powers, which is not permissible under the law.*
48. *Therefore, assuming for the sake of argument that verification of mobile subscribers' antecedents does constitute a matter of "national security", only rules under section 57(2)(ag) could be made in this regard and not regulations.*
49. *To that extent, GOP's Policy Directive is in direct conflict with, and ultra vires, of the parent/primary legislation i.e. the Act, in particular, section 57(2)(ag) thereof.*
50. *In this view of the matter and the fact that no rules have been made by the Federal Government till date, the GOP's Policy Directive and any SOP made pursuant thereto do not afford sufficient legal grounds for penalizing anyone for a violation thereof.*

*In view of the foregoing, in particular PTML's good faith cooperation and compliance with "789" regime and submissions at paras A to D above, it is respectfully requested that the SCN may kindly be withdrawn without any further action thereon.*

*Without prejudice to the foregoing request, we may mention that PTML's submissions made at paras A to D above were also raised in response to an earlier SCN but the same were not taken up nor disposed off in an earlier determination/enforcement order of the Authority dated 6<sup>th</sup> July, 2009, which as aforesaid now stands challenged in FAOs filed by the Cellular industry before the Honourable Lahore High Court on inter alia the same grounds contained in paras A to D above. The Authority could either take up these submissions/grounds and dispose them off now or, more desirably, showing deference to the Honourable Lahore High Court, postpone further proceedings in the captioned SCN till the disposal on merits of the said litigation by the Honourable Lahore High Court.*

*As regards the submissions pertaining to GOP's Policy Directive mentioned at paras E and F above (also raised by PTML in response to an earlier SCN), PTML understands that the same were not entertained by the Authority in a previous determination/enforcement order dated 6<sup>th</sup> July, 2009, on the ground that the Authority was bound by governmental directives issued under the Act. The same grounds have also been agitated before the Honourable Lahore High Court by PTML alongwith the Cellular Industry in their FAOs against the aforesaid determination/enforcement order dated 6<sup>th</sup> July, 2009 wherein the very vires of GOP's Policy Directive and the SOPs issued thereunder have been assailed. While the Honourable High Court is seized of the matter, here is no bar on the Authority if, on account of fundamental nature of these objections going to the very root of the legality/vires of the GOP's Policy Directive, brings the same to the notice of Federal Government for appropriate corrective action (as deemed fit and necessary by the Federal*

Government). The same is accordingly requested for by PTML in the interest of justice and legal propriety.

Please note that the aforesaid request is being made under Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 whereby PTML and, in fact, the whole Cellular Industry has the Constitutional right to be treated in accordance with law, from which the GOP's Policy Directive and the SOP both derogate. For convenience of reference, Article 4 of the Constitution is reproduced below:

**"4. Right of individuals to be dealt with in accordance with law, etc.-(1)** To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

(2) In particular-

- a. no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;
- b. no person shall be prevented from or be hindered in doing that which is not prohibited by law; and
- c. no person shall be compelled to do that which the law does not require him to do." [Emphasis added]

Needless to mention that the Cellular Industry's fundamental right of freedom of business is directly affected by a strict implementation of the GOP's Policy Directive and the SOP and any penal action without a sound and sufficient legal basis against any CMTO would run afoul of Article 18 of the Constitution which guarantees freedom of business to all and sundry.

PTML looks forward to a favourable outcome and, as always, to continued good faith mutual cooperation in implementation of SOP for the larger good."

1.9. Licensee's 2<sup>nd</sup> response to the notice: In its 2<sup>nd</sup> response dated 4<sup>th</sup> February, 2010 to the notice and in continuation of the licensee's earlier response, the licensee submitted as under:

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

In the aforesaid reply (reply dated 15<sup>th</sup> January, 10), we have informed Pakistan Telecommunication Authority ("**the Authority**") that, without prejudice to the legal and factual stance taken by PTML regarding penal consequences of non-compliance with the "SOP on Mobile Subscribers' Documentation and Activation of SIMS After Verification" dated 30<sup>th</sup> January, 2009 ("**SOP**"), PTML has been following in good faith and for larger good the instructions/directions contained in para 10 of the SOP, in particular, the steps to be taken before activation of a SIM/number under the "789" regime as stipulated in the said para of the SOP.

*PTML wants to add some supplemental information to the already submitted reply before the Authority regarding the facts which later came into its knowledge. With absolute good faith and sincerity, following is brought to the kind notice of the Authority:*

- 1. PTML has further inquired internally and found a mistake on part of the call center agent working in the "789" call center handling the call made for verification from 0331-4770183.*
- 2. The record of the call reveals that the call center agent did follow the SOP and asked the necessary questions as per para 10 of the SOP. To be precise, he asked about CNIC Number, customer's name, mother's name, place of birth and father's name. It was in view of this that PTML took the stance earlier that the SOP had been complied with since all necessary questions had been asked by the call center agent further more than just 2 or 3 questions as stipulated in para 10 of SOP).*
- 3. While the caller correctly answered all other questions, his answer to the question regarding mother's name did not match with the information provided by NADRA.*
- 4. For what appears to be sheer negligence on part of the call center agent, this was not noticed by him and verification and activation process was completed without referring the caller to Customer Service Centre as required by para 10 of SOP.*
- 5. This was only discovered after PTML had sent its earlier reply to the SCN, which is deeply regretted. Transcript of the recorded call has been prepared and is being attached for convenience of reference by the Authority.*
- 6. Clear standing instructions exist and training is also imparted to all agents at PTML handling calls for activation through 789 to comply with para 10 of SOP. There was thus no room or scope for such an omission by the call center agent in the case of activation of 0331-4770183.*
- 7. Disciplinary action has, therefore, been taken against the concerned call center agent. Copy of his suspension letter is enclosed while an HR committee is investigating his case to decide the final outcome which may also lead to his termination from service.*
- 8. We would like to point out here that PTML has adopted the policy of "Zero Tolerance" in respect of non-compliance with the "789" regime as contained in para 10 of the SOP and the concerned employees of PTML are well-acquainted with this policy.*
- 9. PTML has already issued strict instructions in very clear and unequivocal terms to the agents handling calls made to 789 for*

activation to faithfully follow para 10 of the SOP without any negligence or slothfulness on their part.

10. *In the particular context of instant case, PTML has issued a general warning to all concerned that non-compliance with para 10 of the SOP, whether intentional or negligent, shall not be tolerated and shall entail serious disciplinary action against the delinquent person.*
11. *Copies of most recent Notices containing appropriate instructions/warning to the agents handling "789" calls are enclosed herewith.*
12. *Since inception of "789" regime, PTML has been making its best efforts to faithfully implement the "789" regime. PTML wants to reassure the Authority that for the larger good, despite not being legally obligated to do so, PTML shall continue to implement the "789" regime as effectively as possible.*
13. *In this regard, as stated earlier, PTML has taken appropriate measures to avoid similar incidents in future.*
14. *It is nonetheless pointed out that isolated incidents (like the instant case) are not reflective of PTML's commitment and efforts to follow the SOP. Statistically, this is not a representative sampling of PTML's performance where millions of calls to 789 have already been successfully handled by PTML's agents in the respective call centers.*
15. *Although measures are and will always be taken at PTML's end to uphold faithful implementation of the SOP (like trainings, etc), human error and failings may still come in the way deserving to be dealt with accordingly on a case by case basis. PTML may kindly, therefore, not be judged on the basis of an isolated occurrence.*
16. *Taking this opportunity and with a view to limiting the scope for mistakes, PTML would request that the Authority may kindly elaborate / clarify the following regarding para 10 of the SOP:*
  - a. *What should be the minimum number of questions asked?*
  - b. *Whether one or both of secret questions be asked? (Note: In the instant case, both were asked. However, had only place of birth been asked, there would have been no discrepancy or mismatch of data and SIM activation would have been in full compliance with para 10 of the SOP)*
  - c. *How can objectivity be brought to the standard of "satisfaction" of a call center agent as envisaged by para 10.b.(3) of the SOP? (Note: In the instant case, the call center agent's subjective "satisfaction" on one of the secret question's answer being correct i.e. place of birth, might have prompted him to proceed further in the instant case thereby defeating the purpose of verification.)*

- d. *What should be the order / sequence of questions to be asked in terms of their preference?*
  - e. *Should caller be asked to call back if a question is answered incorrectly- please clarify in case of a secret question and otherwise?*
  - f. *Secret questions need to be clearly identified in the SOP.*
  - g. *Any other clarification that the Authority may deem necessary.*
17. *PTML is currently following a practice that it considers best serves the purpose of verification through the "789" regime (Please see the contents of PTML's internal communication to call center agents vide Notice dated 30<sup>th</sup> January, 2010), Nonetheless, the language of para 10 of SOP also affords scope for a different interpretation. The Authority may kindly look into the matter to ensure more objective compliance with the SOP in future also avoiding similar incidents in future.*

*PTML trusts that the Authority shall take a holistic view of the matter and shall not let an isolated incident overwhelm its judgment regarding the overall efforts and performance of PTML in implementing para 10 of the SOP. The instant letter may kindly be accepted as further compliance with the SCN to the satisfaction of the Authority."*

- 1.10. **The Hearing:** On the licensee's request, the hearing scheduled for 2<sup>nd</sup> February, 2010 was later adjourned to 9<sup>th</sup> February, 2010. On the said date the licensee appeared before the Authority through Mr. Abdul Aziz Khan, CEO, Mr. Naveed K Butt, VP CS&RA, SM Irfan, Mr. Hamid Bashir Alvi alongwith legal counsel Mr. Afnan Karim Kundi, ASC, and Misbah ul Mustafa, Advocate.
- 1.11. The learned counsel representing the licensee, regretted the aforesaid contraventions and admitted that the aforesaid number was activated mistakenly by one of its Call Center's agent and reiterated the points submitted earlier in its response dated 4<sup>th</sup> February, 2010 and also elaborated on the points raised in its reply dated 15<sup>th</sup> January, 2010, particularly on the validity of Policy Directive on the subject issue.
- 1.12. The licensee maintained that it is issuing about 25,000 connections per day and is trying to minimize the chances of mistake. It pointed out that the call center's agent has asked, in actual, four questions whereas in the procedure it is provided two/three questions. As per the response, the subscriber had answered three questions correctly, and the call center agent, therefore, was satisfied and activated the SIM. The licensee informed that it has, in respectful compliance to the SOP, taken serious notice of the mistake and has suspended the employee and also issued general warning to all call centers that zero tolerance shall be shown to such mistakes. It highlighted that there is need for some clarifications regarding of the secret questions and the standard of satisfaction in this regard.

1.13. During the hearing the fact of the SIM having been used in the tragic incident of terrorism at Lahore by those abetting and facilitating the heinous crime which resulted in the loss of many invaluable lives was also brought in the knowledge of the licensee. However, the licensee was already aware of the said fact and termed the said incident and use of the SIM in it as the most unfortunate occurrence.

#### **Findings of the Authority**

1.12. The contents of the licensee's reply to the SCN dated 4<sup>th</sup> February, 2010 carries an unambiguous admission of violating the SOP in activating the SIM in question, by the licensee, which in effect is contravention of clause 1.14 of the licence providing a justifiable cause for invoking the provisions of section 23 of the Act by issuing the notice.

1.13. The licensee 2<sup>nd</sup> reply also shows that the Authority's concern was taken for granted at the first stage and the show cause notice was responded to with denial of the violation without proper inquiry, and when proper (further) inquiry was carried out, the mistake/violation was found to have been committed. This further inquiry was in fact should have been conducted earlier at the first stage.

1.14. Next important point is that mere asking the required questions is not following the SOP. Receiving correct answers to the questions is equal part of SOP. Hence, without receiving correct answers to the questions asked cannot be termed as following the SOP.

1.15. The number of questions asked is immaterial. What has to be seen is whether the questions asked have been answered correctly. The SOP, therefore, cannot be said to have been followed by any stretch of imagination. Receiving correct answers to all other questions except one tantamount to receiving "no correct answers", hence, activation of connection on such incorrect information is clear violation of the SOP.

1.16. The statement of the licensee that show cause notice cannot be issued for violation of the SOP is misplaced. The SOP is in the nature of direction/instructions of the Authority which has been issued pursuant to para 8 of the Policy Directive issued by the Federal Government for implementation by all Cellular Mobile Operators. The licensee is obliged vide clause 1.14 of the license to comply with such directions of the Authority, and non-compliance of aforesaid directions amounts to contravention of clause 1.14 of the license, hence, action under section 23 of the Act can be initiated.

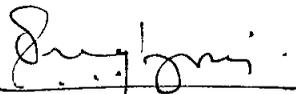
1.17. Moreover, mere non-promulgation of regulations on the subject does not curtail the powers of the Authority to enforce the policy directive through SoP/instructions and its powers to issue show cause notice due to violation of its instructions. The Federal Government is competent to issue Policy Directive under Section 8(2)(c) or to frame rules under section 57 (2)(ag) of the Act on the subject.

1.18. The points raised by the licensee that (i) GOP's Policy directive is not in line with section 8(2)(c) of the Act, and (ii) GOP's Policy directive is not in line with section 57 (2)(ag) of the Act are irrelevant to the subject show cause notice. The

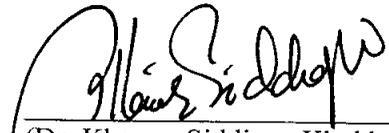
Federal Government has issued Policy Directive under 8(2)(c) of the Act which the Authority is bound to implement.

2. **Order of the Authority:**

- 2.1 The matter of streamlining the process of issuance of SIMs by CMTOs is of such a great concern for the Federal Government as well as for the Authority that any slight deviation from the given procedure can not be ignored or tolerated. Taking a very serious notice of issuance of a single SIM in violation of the SOP at a time where about 25000 SIMs are issued a day (as stated by the licensee) may be taken, by many, as a matter of tightening the noose unnecessarily. However, it may be noted that the matter of grave concern for the Federal Government as well as the Authority is not the possible human error out of which the activation of a particular SIM may skip the procedure but it is the risk to the national security and law and order which such a slight deviation, in appearance, may always carry with itself.
- 2.2 Fact of the SIM having been used in the fateful incident of terrorism at Lahore, admittedly issued by the licensee in violation of SOP, speak volumes of the concerns of the Federal Government as well as the Authority on the issue.
- 2.3 Deviation from the given procedure i.e. the SOP/PTA's directives/directives of the Fed Government, in this regard, therefore, can not be taken lightly even if it is found to have been taken with regard to a single SIM out of millions.
- 2.4 However, since the licensee has admitted the contravention and has thus extended a helping hand to the Authority in establishing the contravention of the terms and conditions of the licence, a lenient view is taken in the matter by imposing a fine of Rs.150,000,000/- (Rupees One Hundred and Fifty Million Only) to be paid by the licensee within one month from the date of issuance of the instant enforcement order.
- 2.5 In case of the licensee's failure to deposit the aforesaid amount in the aforesaid period, the same shall be recovered through all permissible means including filing of recovery petition under section 30 of the Act.



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



(Dr. Khawar Siddique Khokhar)  
Member (Technical)



(Dr. Mohammed Yaseen)  
Chairman

Signed on this 26<sup>th</sup> day of February, 2010