



**PAKISTAN TELECOMMUNICATION AUTHORITY**  
**HEADQUARTERS. F-5/1 ISLAMABAD**

**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 in the matter of Warid Telecom (Private) Limited regarding QoS**

**File No.14-587/L&A/PTA/09**

|  |                                 |
|--|---------------------------------|
| Date of Issuance of Show-cause Notice: | 17 <sup>th</sup> December, 2009 |
| Date of Hearing:                       | 6 <sup>th</sup> April, 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:**

***"Failure to meet or exceed QoS standards as laid down in the license and KPIs"***

**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 license No.MCT-02/RBS/PTA/2004 dated 26<sup>th</sup>, May, 2004 (the "license") issued to it by Pakistan Telecommunication Authority (the "Authority") was, on 20 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 license regarding the required quality of service (QoS) to be provided and maintained by the licensee.
- 1.2. **Powers of the Authority under Section 23 of the Act** whenever provisions of the Act, the rules framed there under or the terms and conditions of license 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 license, 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, for 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 license, 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 license 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.***

**2. Relevant Provisions of the Act, the Telecom Rules 2000 (the "Rules"), the Pakistan Telecommunication Authority (Functions & Powers<sup>^</sup> Regulations. 2006 (the "Regulations") and the terms and conditions of the license Contravened by the Licensee regarding QoS:**

- 2.1. Under clause (d) of section 4 of the Act, the Authority is under obligation to promote the availability of a wide range of high quality, efficient, cost effective and competitive telecommunication services throughout Pakistan.
- 2.2. Clause (g) of sub-section (4) of section 21 of the Act, contain the licensee's obligations to provide telecommunication service to particular persons or areas to meet minimum standards for quality and grade of services requirements.
- 2.3. Under regulation 9 of the Regulations the licensee is obliged to provide good quality of services to its customers.
- 2.4. clause 6.5.1 of the license oblige the licensee at all times to meet or exceed the quality of service standards described in Appendix-3 and such other quality of service standards as the Authority may, by regulation, require.

2.5. Appendix 3 of the license prescribes the quality of service standards in detail manner and requires the licensee to take all reasonable and prudent measure to ensure that its Telecommunication System and Licensed Services are available and operate properly at all times and during each calendar month it shall meet or exceed the quality of services standards mentioned in clause 1.3 of Appendix-3 of the license.

### **3. Issue within Show Cause Notice**

- 3.1. The Authority, through its Zonal offices at Rawalpindi, Peshawar, Lahore, Karachi and Quetta conducted surveys during the year 2009 [i.e., at: (i) Rawalpindi Zone from 21<sup>st</sup> March, 2009 to 10<sup>th</sup> April, 2009, (ii) Peshawar Zone from 15<sup>th</sup> June, 2009 to 18<sup>th</sup> June, 2009, (iii) Lahore Zone from 22<sup>nd</sup> October, 2009 to 31<sup>st</sup> October, 2009, (iv) Karachi Zone from 3<sup>rd</sup> November, 2009 to 10<sup>th</sup> November, 2009 and (iv) Quetta from 15<sup>th</sup> November, 2009 to 17<sup>th</sup> November, 2009].
- 3.2. Results of the survey showed that the QoS being provided by the licensee was far below than the required standard. The detail of the average results of surveys is as under:

#### **Voice;**

| <b>Network Down Time &lt; 1%</b> | <b>Grade of Service &lt; 2%</b> | <b>Call Completion Ratio &gt; 98%</b> | <b>Call Connection Time &lt; 5 Sec</b> | <b>Call Quality (MOS) &gt;3</b> |
|----------------------------------|---------------------------------|---------------------------------------|--|---------------------------------|
| 0.28                             | 1.18                            | 97.04                                 | 7.76                                   | 2.21                            |

#### **SMS**

| <b>Service Accessibility ≥ 99%</b> | <b>Access Delay ≤ 2 Sec</b> | <b>End to End Delivery Time &lt; 5 Sec</b> |
|------------------------------------|-----------------------------|--|
| 89.03                              | 5.90                        | 10.26                                      |

3.3. The aforesaid survey results established that the licensee has contravened Clause (d) of section 4 of the Act, clause (g) of sub-section (4) of section 21 of the Act, Regulation 9 of the Regulations and Clause 6.5.1 read with Appendix 3 of the license by failing to provide the required grade of telecommunications services to its customers, hence, the notice under section 23 of the Act.

#### **4. Licensee's Response to the Notice.**

4.1. The licensee replied to the notice which is reproduced in verbatim as under:

The licensee's response to the notice: The licensee's response to the notice dated 18<sup>th</sup> December, 2008 is reproduced in *verbatim* as under:

i. *The Pakistan Telecommunication Authority (hereinafter referred to as the "PTA" or the "Authority") issued a Show Cause Notice No. 14-587/L&AVPTA/09/143 dated 17 December 2009 (hereinafter referred to as the "Notice") upon the Warid Telecom (Pvt.) Ltd., (hereinafter referred to as the "Licensee") in exercise of Us powers under clause 23(l) of the Pakistan Telecommunication (Re-Organization) Act, 1996 (hereinafter referred to as the "Act"). In paragraph 9 (at page 2 of the Notice) it is alleged that the Authority conducted surveys regarding the quality of service standards of the Licensee through the zonal offices of the Authority in Rawalpindi (from 21 March 2009 to 10 April 2009), Peshawar (15 June 2009 to 18 June 2009), Lahore (22 October 2009 to 31 October 2009), Karachi (3 November 2009 to 17 November 2009) and Quetta (15 November 2009 to 17 November 2009). In the Notice it is further alleged that the Licensee was found in contravention of meeting some of the Quality of Service Standards (hereinafter referred to as the "QoS") as mentioned in clause 1.3 of Appendix-3 of the GSM license No. MCT-02/RBS/PTA/2004 (hereinafter referred to as the "License").*

ii. *The Licensee hereby vehemently denies and challenges the legality, validity and correctness of the said Notice and its factual basis and humbly submits that it has not committed any contravention of the License, the Act, the Pakistan Telecommunication Rules, 2000 (hereinafter referred to as the "Rules of 2000") the Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006 (hereinafter referred to as the "Regulations of 2006") or any other governing laws (hereinafter collectively referred to as the "Applicable Laws") as alleged in the Notice. The Licensee further submits that the Notice is inequitable, non-transparent, inconsistent, non-speaking and discriminatory and the allegations leveled therein are in correct, unfounded and unsubstantiated and cannot stand in the eyes of law. However, without prejudice to said denial and any or all legal rights of the Licensee, in compliance of its obligations under the Applicable Laws, the Licensee hereby submits instant reply within the statutory limitation of thirty (30) days from the date of issuance of the Notice.*

#### **PRELIMINARY SUBMISSIONS**

*It is humbly submitted that as per clause 1.1 of the Appendix-3 of the License, Licensee is required to take reasonable and prudent measures to ensure that the Licensed System and Licensed Services are available and operate properly at all times. Therefore, the Licensee, ever since it has been granted the License, has always taken all reasonable and prudent measures to keep the Licensed System and the Licensed Services in accordance with QoS as required by Law, however the Authority has failed to act in accordance with law in relation to the Notice and otherwise to facilitate the Licensee in accordance with law, as briefly mentioned below:*

***III Compliance by the Licensee of its statutory obligations, in general:***

**i. Network Roll-out:**

*The clause 3.2.1 of the License makes it obligatory for the Licensee that it shall within four (4) years provide coverage within seventy percent (70%) of Tehsil Headquarters with a minimum of ten percent (10%) of Tehsil Headquarters in each province, from the effective date of the License. The Licensee, despite all operational difficulties, successfully achieved this target in compliance with the mandatory obligation of the License and report in such regard was also furnished to PTA at relevant time.*

**ii. Payments and contributions by the Licensee:**

*The Licensee, under the License and the Act, is also under a mandatory obligation to make certain monetary contributions, including but not limited to; 0.5% of its annual gross revenue (minus inter-operator payment and PTA/FAB related payment) as Research and Development Fund ("R&D"); 1.5% of the Licensee's annual gross revenue (minus inter-operator payment and PTA/FAB related payment), as Universal Service Fund ("USF") etc. In spite of the financial constraints, caused due to the monetary recession that prevailed internationally and claimed irreparable dents in many international economies, the Licensee has contributed over 893 million towards USF and above 212 million towards R&D.*

**ii. Apparatus and Devices:**

*a. In accordance with the clause 5.3.1 of the License, the Licensee procured, installed and integrated all of its radio communication apparatus and devices such that they are fully compliant of the requirements of the Authority and the Board pertaining to emissions, frequencies of operations, technical characteristics, power and aerial characteristics etc.*

*b. It is the duty of the Licensee under the clause 6.9.1 of the License that any network that it shall use must meet the standards as set by ITU or such other international standards as recognized by the Authority. Therefore in compliance thereto, the Licensee has used/installed for its licensed system all such system which is approved by the International Telecom Union ("ITU") and/or the Authority. In addition the equipments used by the Licensee are the latest in the market, and have been procured from, installed and maintained by those vendors who are world leaders in telecom equipment manufacturing, installation, operation, maintenance and support services.*

*c. In accordance with the requirement of PTA particularly under the paragraph 21 of Part 6 (Miscellaneous) of Schedule 2 (Conditions Applying to All Licenses & Licensed Services) of the Rules of 2000, the Licensee has arranged for alternate and standby power generation systems. This has been made possible by providing latest power generators and solar devices in order to keep the BTS sites up and running and provide its customers the best services to maximum practicable extent.*

*d. It is a matter of record (open for inspection) that the Licensee has installed/connected such Terminal Equipment which does not breach any of the said prohibitions and is fully compliant with PTA standards and ITU standards.*

**iv Network Designs and Frequency Planning:**

*a. The information regarding all BTS sites is present with PTA including areas that are intended for coverage. A complete database of "Provision of cell sites Data" containing all information of sites has also been provided to PTA. Accordingly the most suitable and internationally settled practices design of network and frequency planning has been precisely engineered by the Licensee through highly qualified telecom experts which is always open for the inspection of PTA.*

*b. The Licensee has designed its network such that it always provides more network capacities if compared with its utilization. Regular drive testing and statistics monitoring besides live monitoring of all network nodes is done regularly, testing logs whereof are maintained as well. In addition, the current network KPIs and those of last quarter have also been complied with and the results (along with the mean opinion score (MOS) values) are available for inspection. Furthermore, the network standards envisaged under the clause 6.9 of the License have been strictly followed by Licensee.*

**v. Managed Services and Support**

*In order to meet the QoS and keep its operation in compliance of the Applicable Laws, the Licensee has executed long-term "Managed Services and Support Agreements" with top internationally reputed service providers i.e., Ericsson and Huawei for round the clock (24x7) maintenance, operation and support services.*

**vi. Internal Surveys and Audits:**

*In strict compliance of the clause 1.3 of Appendix-3 and the regulation 11(1) of the Regulations of 2006, the Licensee conducts performance audit/survey during each calendar month to ensure meeting or exceeding the QoS as provided in the Appendix-3 (except for causes attributable to another operator or a service provider that provides telecommunication services outside Pakistan). The Licensee under regulation 11(6) of the Regulations of 2006 testing keeps and maintains the results and/or logs of such periodical audits/surveys and also keeps such results available for the Authority's inspection, [emphasis provided]*

**vii. Public Impression and Industry Acknowledgments:**

*Besides customer satisfaction generally, in acknowledgment, the relevant industry entities also awarded to the Licensee the most acclaimed certificate of achievement "Brand of the Year Award 2008" in a ceremony chaired and award handed over by Mr. Yousaf Raza Gilani, respected Prime Minister of Pakistan. This certainly reflects the public impression and the Licensee's commitment to provide the best possible service to its customers and compliance of applicable laws to the fullest extent,*

**viii. General:**

*In addition to above, the Licensee has always complied with the terms of License inter alia related to; relations with customers, tariffs, relations with other operators (interconnection) etc. It is particularly submitted Licensee has also set up very effective call centers which is operational 24 hours, wide franchises network and business centers to facilitate its customers for provision of quality services. Furthermore, the Licensee has always acted in accordance with the Applicable*

*Laws, policies, directives, SOPs and notifications issued by PTA from time to time.*

***IV. Exercise of powers and responsibilities of the Authority in relation to ensuring the Licensee's compliance of QoS***

Under the Applicable Laws, and its previous assurances, the Authority is subject to or empowered with, inter alia, the following:

- i. *The Authority is empowered under paragraph 23.7 of Part 6 of the Rules of 2000, with or without notice, to conduct its own quality tests and surveys, and the Licensee is obligated to extend full cooperation to the Authority in carrying out the tests and surveys. Similarly, per regulation 10(1) of the Regulations of 2006, the Authority is empowered to conduct inspections, surveys, tests or make surprise checks, audit of quality of service of the licensee from time to time.*
- ii. *Per regulation 10(3) ibid the Authority (Inspecting Officer) shall prepare an inspection report of such QoS inspections, which shall clearly spell out the shortfalls observed during such inspection and such report shall be furnished to the licensee. Thereupon the licensee shall immediately take all remedial measures to remove the shortfalls identified in the report and submit compliance report within 30 days whereby confirms that all stated shortfalls have been removed, [emphasis provided]*
- iii. *Under clause 6(b) of the Act, it is the responsibility of the Authority to ensure that all of its decisions and determinations are made promptly, in an open, equitable, non-discriminatory, consistent and transparent manner, [emphasis provided]*
- iv. *In light of minutes of the meeting held on 25 May 2007 at PTA Headquarters, Islamabad among all Cellular Mobile Telecom Operators (hereinafter referred to as the "CMTOs") and PTA, the Authority is expected to conduct the testing and surveys only when the Licensee's representatives will be part of the survey team, with prior intimation of schedule of survey.*

***Contribution of the Licensee in Economic Uplift of the Country and Revolution in the Telecommunication Regime:***

*The telecom sector has proved to be the most important and vital player in the uplift of the national economy in the last decade. Such an unprecedented economic activity has recorded an immense increase in the GDP. Miraculously, a state of the art telecommunication infrastructure has been built and being maintained by the modern technology. Due to enormous contribution in economic activity, the growth of many other sectors such as banking, media, construction and all related/connected industry, also owes to the economic participation of the CMTOs. Almost four thousand highly skilled and semi skilled workers have been employed by the Licensee excluding the huge number of the outsourced headcount who are playing role in national economy due to operations of the Licensee. In additions the contents of paragraph HI (ii) above are reiterated.*

*In addition, it is a matter of public knowledge that the Licensee plays a very progressive role in social, ethical and moral propagation of the community*

nationwide. Many voluntary steps e.g. earthquake relief, public awareness campaigns, environmental protection programs etc., are frequently conducted by the Licensee. The employees of the Licensee contributed almost 20 million for the rehabilitation and support towards Balochistan earthquake victims in 2008. Significant relief to Internally

Displaced Pakistanis (IDP) was also provided by the Licensee. Licensee has joined hands with Rotary Foundation in National Polio immunization drive and also notified its subscribers through its SMS broadcasting service in the national immunization efforts in a significant manner. To donate various charities a designated short code with the name 'GIVE' has been established.

### **PRELIMINARY OBJECTIONS**

VI. It is humbly submitted that the Licensee is exempted to perform its legal obligation partly or wholly, which is more specifically provided in clause 12.4.1 of the License which for ready reference is mentioned below:

#### **12.4.1. Force Majuere**

Notwithstanding anything to the contrary contained in this License, if the Licensee shall be rendered unable to carry out the whole or any part of its obligations under this License for any good reason beyond the control of the Licensee, including but not limited, to acts of God, strikes, war, riots etc., then the performance of the obligations of the Licensee as it is affected by such clause shall be excused during the continuance of any inability so caused, provided that the Licensee has taken all appropriate precautions and reasonable measures to fulfill its obligations and that it shall within 14 days of its first occurrence notify to the Authority the same and cause of such inability and its efforts to remove such cause and remedy its consequences. " [emphasis added]

Reference in this respect is also made to clause (c) of paragraph 8 (Compliance) of the Appendix-B (General License Conditions) of the Rules of 2000, which runs as under:

#### **8. Compliance:**

(C) The Licensee shall have no liability for any failure or delay in complying with any provision of this License if, and to the extent and for so long as, that compliance is prevented or substantially hindered by any act of Nature, flood, fire, tempest, severe weather conditions, other natural disasters, war (whether declared or not), civil disturbances, revolution, riot, insurrection, act of terrorism, sabotage, industrial disputes, other public emergencies, any change in legislation (including, without limitation, any applicable Rules and Regulations), any other act of governmental or municipal authorities, or other national authorities, or international organizations, or any other cause whatsoever which is substantially beyond the control of the Licensee.

Despite occurrence of such unprecedented hazards in the history of Pakistan, the Licensee has taken all reasonable and prudent measures to meet the QoS. It is humbly submitted that some times QoS are affected due to various reasons attributable to environment, incidents, and administrative impediments, which are beyond control of the Licensee, few of which are mentioned below:

#### **Administrative Impediments**

i. In view of the law and order situation that prevailed in the country throughout the year 2009 (the relevant year for the purposes of the Notice) the quality of services faced serious problems. Not only the network performance has been affected but on occasions the incidents of abduction and harassment of the designated staff have been reported too. Main cities including Lahore, Karachi, Rawalpindi, Quetta, Dera Ismail Khan, Dera Ghazi Khan and Peshawar have been worst stuck with the law and order crises, which continuously pose threat to efforts of the Licensee to maintain its network and provide services. The interference of security agency, governmental bodies, public or private jamming devices etc., created a great hurdle specifically in all major cities like, Peshawar, Lahore, Karachi, Quetta etc. However, without conceding to the allegations leveled in the Notice, the Licensee submits that it has done everything that reasonably could within its power and control in order to meet the QoS and Licensee is still meeting its legal obligations.

ii. The Licensee further submits that another major impediment for the Licensee to exceed the QoS, is mobile jamming devices. Such devices are installed permanently at various locations in the country, viz; mosques, markets, jails, government offices etc. Also, the jamming devices installed in VIP escort vehicles (which are always on the move and cannot be controlled) and of course no prior information of such signal jamming devices could be obtained. It must be in the notice of PTA when it took almost six months and only after the intervention of PTA the jamming devices installed at Karachi Central jail (which is a central place of the city) were mitigated, Mobile jammers not only affect the network availability and voice quality (and thereby testing results of QoS) but also cast serious impacts on the revenues of the Licensee. Regarding the issue of jamming devices that affect the QoS, extensive correspondence have taken place between the Licensee and the Authority. Few instances are:

- a. Email dated 7 January 2010 by Mr. Rashid Rahim (Licensee) to Mr. Nasir Ali Khan (PTA). Attachment emphasized.
- b. Email dated 22 December 2009 by Mr. Rashid Rahim (Licensee) to Mr. Nasir All Khan (PTA). Attachments emphasized.
- c. Email dated 29 September 2009 by Mr. Rashid Rahim (Licensee) to Mr. Nasir AH Khan (PTA). Attachment emphasized. Reminder dated 22 December 2009 followed.
- d. Email dated 2 December 2009 by Mr. Rashid Rahim (Licensee) to Mr. Nasir Ali Khan (PTA). Attachment emphasized.
- e. Email dated 25 November 2009 by Mr. Rashid Rahim (Licensee) to Mr. Nasir Ali Khan (PTA). Attachment emphasized.
- f. Email dated 24 November 2009 by Mr. Rashid Rahim (Licensee) to Mr. Nasir Ali Khan (PTA). Attachments emphasized.
- g. Email dated 20 October 2009 by Mr. Rashid Rahim (Licensee) to Mr. Nasir Ali Khan (PTA). Attachments emphasized.
- h. Email (along with e-mail trail) dated 29 September 2009 by Mr. Rashid Rahim (Licensee) to Mr. Nasir Ali Khan (PTA). Attachment emphasized.

- i. Email dated 26 November 2009 by Mr. Rashid Rahim (Licensee) to Mr. Yawar Yasin (PTA). Attached letter from Chief Technical Officer of the Licensee is heavily emphasized.
- j. Email dated 22 July 2009 by Mr. Rashid Rahim (Licensee) to Mr. Yawar Yasin (PTA). Attachment emphasized. Reminder followed on 28 July 2009.
- k. Email dated 27 March 2009 by Mr. Rashid Rahim (Licensee) to Mr. Yawar Yasin (PTA). Attached letters from Inter-Services Intelligence emphasized.

*The copies of above e-mails are attached herewith as Annex-1. Furthermore, there have been numerous occasions when PTA and law enforcement agencies operating in the country have been giving written and verbal instructions to the Licensee to stop/close its services/BTS sites in different areas for various security reasons.*

iii. *The Licensee in its day to day operations faces several issues of delay on part of PEPCO, Environmental Protection Agencies ("EPA") and Town Municipal Authorities ("TMAs"), etc. Despite having made payments and following the procedures prescribed in law, the operation of many BTS sites of the Licensee remains affected due to unlawful and unreasonable interference of the governmental agencies. This has caused the Licensee a drawback in that despite the availability of full working potential, capabilities and resources, the optimum performance cannot be achieved which results into significant impacts on the capability of the Licensee to meet the QoS. Besides the said delays, an irresolvable situation arises when EPA discourages the use of generators and seals those BTS sites where generators are installed and on the other hand, perpetual and unscheduled power cuts (load shedding) by PEPCO and associated distribution companies do not provide regular power supply. The unscheduled outages caused thereby result into Licensee's failure to meet the QoS. The contents of paragraph II (Hi) (c) are reiterated here as well. It is emphatically stressed that where PTA demands the Licensee to maintain virtually hundred percent of its potential performance, there should be some role of PTA in removing or assisting to remove those administrative impediments that create hurdle for the Licensee meet the QoS, particularly when there is no fault on Licensee's part. The Licensee lays heavy reliance on section 6(a) of the Act in this regards, which says:*

#### **6. Responsibilities of the Authority:**

*In exercising its functions and powers under this Act, the Authority shall ensure that:*

- (a) rights of licensees are duly protected;
- (b) would not be out of place to mention that during last one year, at least 109 sites were affected either due to unreasonable delays of WAPDA, EPA, TMA, Cantonments, or due to military operations carried out in different war-affected areas of the country. Almost 550 sites faced (severe or mild) power outages due to law and order situations restricting the traveling of the related staff particularly by night and/or in remote areas. At least 23 sites have gone critical of being integrated in the network, dues to unexplained delays on part of the Cantonment Boards and the Capital Development Authority ("CDA") to issue the relevant NOCs. In addition, over 60 sites have been closed/sealed on account of such circumstances that are beyond reasonable control of the Licensee, including at least 26 sites forcibly halted by security agencies/army; 15 cells where signals were restricted by agencies (since

*October 2009 to date) in major city like Dera Ismail Khan and surrounding areas; and sites closed/affected due to building constructions; cantonment instructions; no or low/poor commercial power by PEPCO; blasts/fire and connected damage etc. Instructions from security agency for shutting down sites were received by the Licensee for Swabi, Tarbela, Quetta etc. Delay(s) in not shutting the sites or disconnecting the services have also been reprimanded by the concerned agencies.*

*VIII. The Licensee also submits that it has been allocated a frequency spectrum of 890.1 MHz to 894.9MHz in the Uplink and 935.1MHz - 939.9MHz in the Downlink. In the other license of the Licensee granted by PTA for AJK & NA, frequencies has been allocated as 900.5MHz-905.3MHz in the Uplink and 945.5MHz-950.3MHz in the Downlink. Whilst both are 5MHz, there are severe issues of interference on the border of Pakistan and AJK & NA. Such situation necessarily results in poor voice quality for no fault of Licensee.*

*This concern has been raised by the Licensee to both the Frequency Allocation Board ("FAB") and PTA, assistance is still awaited. It is notable to mention that through the network from Kahuta towards Kotli, Gujrat towards Dadyal, Sohawa towards Mirpur and Magla to Mirpur serious interference has been observed by the Licensee and the same was also reported to PTA and FAB.*

- IX. It is of utmost importance to highlight that in specific view of the submissions made above and non-consideration by the Authority of the circumstances mentioned in paragraph 9 (c) below, the Licensee is already forced to face frequent litigations from consumers under the Telecom Consumers Protection Regulations, 2009 and Punjab Consumer Protection Act, 2005 and general laws. Under such circumstances, the Notice from PTA, alleging the QoS contravention is unjust and inequitable.*
- X. In view of above mentioned circumstances a consolidated communique on behalf of Warid, Mobilink, Telenor, Ufone and Zong dated 8 July 2009 (hereinafter referred to as the "Industry Letter") was also submitted to the Authority but concerns so raised are not addressed so far.*
- XI. The Notice is barred by time. It is humbly submitted that some of the survey some of the surveys were conducted in March, June, October and November, 2009 but same allegations are communicated to the Licensee after long time, whereas law and principles of natural justice require that allegation must be communicated at the earliest. This is tantamount to usurping the Licensee's fundamental right of being dealt with in accordance with law as guaranteed in the Constitution of Islamic Republic of Pakistan, 1973. The Notice therefore is time-barred as of present day, discriminatory and against the principal of natural justice.*
- XII. The Notice is vague and does not specify the allegations, circumstances, date, time, methodology etc. to allow the Licensee to reply the same, therefore, the Licensee reserve its right to reply and rely on legal protections when specific allegations are communicated to the Licensee.*

XIII. Under the Applicable Laws, and its previous assurances, the Authority has failed to comply with regulation 10(3) of Regulation of 2006, clause 6(b) of the Act and meeting held on 25 May 2007 at PTA Headquarters, Islamabad among all Cellular Mobile Telecom Operators (hereinafter referred to as the "CMTOs") and PTA, as mentioned above, therefore the Notice is issued without authority, power and in violation of law.

#### **PARAGRAPH-WISE REPLY**

1. The contents of paragraph 1 (at page 1 of the Notice) relate to award of Cellular Mobile License to the Licensee and need no reply.
2. The contents of paragraph 2 (at page 1 of the Notice) relate to the obligation of the Licensee to comply with the Applicable Laws and conditions of the License and need no reply.
3. The contents paragraph 3 (at page 1 of the Notice) needs no reply as the same relates to the statutory obligations of PTA.
4. The contents of paragraph 4 (at page 1 of the Notice) relate to statutory obligations of all the licensees and need no reply.
5. The contents of paragraph 5 (at page 1 of the Notice) are denied. The Authority can exercise its statutory powers only in accordance with the procedure prescribed under the Applicable Laws that too after making sure that it has not usurped/injured any of the rights that have been conferred upon the Licensee by the License and the Applicable Laws.
6. The contents of paragraph 6 (at page 1 of the Notice) relate to statutory obligations of the Licensee and are admitted only if read with such provisions of the License and the Applicable Laws that recognize the practical limitations of the Licensee such as force majeure.
7. The contents of paragraph 7 (at page 1 of the Notice) relate to obligations of the Licensee under condition 6.5.1 and Appendix-3 of the License and are admitted subject to the submissions made in preceding paragraph 6.
8. The contents of paragraph 8 (at page 1 and 2 of the Notice) relate to monthly obligations of the Licensee under Appendix-3 of the License and are admitted subject to the foregoing submissions. It is humbly submitted that the Licensee has taken all reasonable and prudent measures to meet the QoS tabulated under Clause 1.3 of the Appendix-3 as mentioned above, but the Authority has failed to identify any measure which the Licensee should further take to meet its legal obligations.
9. The contents of paragraph 9 (at page 2 of the Notice) are denied, facts mentioned therein are incorrect and the Licensee challenges legality and validity of the same, *inter alia*, on the following grounds:
  - a. The regulation 10 of the Regulations of 2006 expressly provides a modus operandi for the Authority to conduct the inspection and performance audit regarding QoS. The Authority (through Inspecting Officer

*by virtue of the mandatory provision contained in regulation 10(3) ibid is bound to prepare and furnish upon the Licensee an inspection report of the QoS which report shall clearly spell out the shortfalls observed by the Authority. Thereafter the Licensee shall be allowed thirty (30) days to submit a compliance report as to the removal of such shortfalls. Regulation 10(5) ibid manifestly provides that the action under section 23 of the Act is strictly subject to furnishing the report under regulation 10(3) and the Licensee's failure to submit the compliance report within thirty (30) days therefrom. Since the Authority failed to furnish the report as aforesaid, the instant Notice is served without lawful authority and in oblivion of the statutory mandate therefore is void ab initio.*

- b. The Notice surreptitiously keeps invisible the bases, criteria, methodologies, modalities, surrounding circumstances, locations, timings, durations, logs and reports about the survey it alleges to have been conducted. This is tantamount to usurping the Licensee's fundamental right to be confronted with the material relied upon against it, which is against the principals of natural justice. In discharge of its obligations under the License or the Applicable Laws, the Licensee has always complied with the obligations cast upon it under the License or the Applicable Laws. For instance;*
- i. the radio communication apparatus and devices being used by the Licensee, pursuant to clause 5.3.1 of the License have been installed and integrated in full compliance with the requirements of the Authority and the Frequency Allocation Board pertaining to emissions, frequencies of operations, technical characteristics, power and aerial characteristics.*
  - ii. The Licensed System and the Licensed Services of the Licensee, in compliance with the clause 6.5.1 of the License have always remained available at all times.*
  - iii. In compliance with clause 6.9.1 of the License, Licensee has used/installed such network which is approved either by the ITU and/or the Authority or other international standards as recognized by the Authority. Furthermore in accordance with the paragraph 21 of Part 6 (Miscellaneous) of Schedule 2 (Conditions Applying to All Licenses & Licensed Services) of the Rules of 2000, the Licensee has taken all reasonable efforts in employing the modern technology so as to provide modern and efficient services to its customers to the maximum practicable extent. This fact is also open for inspection of the Authority, should it so desire.*
  - iv. It is again matter of record and open for inspection of PTA that the Licensee has installed/connected such Terminal Equipment which is fully compliant with PTA standards and the equipments used by the Licensee are the latest in the market, and have been procured from those vendors who are world leaders in the telecom equipment manufacturing industry, etc.*
  - v. In order to meet the QoS the Licensee has arrangements in place with Ericsson and Huawei who provide (24x7) managed services and support services to the Licensee and these services are the best available in the international market.*

*Given the submission mentioned in preceding sub-paragraphs, the alleged results of the survey conducted by the Authority appear to be highly dubious and incredible. The results/logs of the internal surveys, audits and inspections conducted by the Licensee are in compliance with its legal obligations. A tabulation of summarized results of the testing conducted by the Licensee is attached herewith as Annex-2. The Licensee therefore denies the same and asserts the immediate withdrawal of the Notice leaving no legal effect.*

*The testing or gauging of those QoS, contraventions whereof has been alleged in the Notice, is by and large dependent to a great extent on a number of such variable factors some of which are either beyond reasonable control of the Licensee and some are to be necessarily notified in results/logs of the surveys at the time of communicating such results/logs to the Licensee. Some of the instances are mentioned below:*

**Factors beyond reasonable control:**

- i. unscheduled and unprecedented load-shedding;
- ii. mobile jamming devices (fixed and moving);
- iii. off-net calls where the performance of other networks) also becomes equally relevant (Reference is made to the clause 1.3 of Appendix-3 of the License which expressly excludes the causes attributable to other operators)
- iv. poor law and order situation; due to daily/weekly terrorist attacks in all major and minor cities; sudden rise in number of calls during and after the hours of emergency/turmoil (when the network is already affected by the incident)
- v. difference in gauging tools used by PTA and the Licensee, etc.,
- vi. The delays on part of the EPA, TMAs, Cantonments, in granting NOCs for the installations of standby power generators and unreasonable delays on part of WAP DA in providing commercial power etc.
- vii. The frequent interference of security agencies in terror-affected areas (throughout the country) which do not follow any specific pattern, and substantially distresses the QoS particularly in those urban areas where PTA has conducted the surveys such as Lahore, Karachi, Islamabad/Rawalpindi, Peshawar and Quetta. Such interference is completely without notice, silent, uncontrollable and potential enough to cast heavy effects on the testing results even in rural areas like Arijwala, Jhelum, Abbotabad etc.

**Factors that must be notified to the Licensee:**

- i. Sample size (number of calls or SMS made per city during testing) and lot representation
- ii. Time of survey (offpeak/peak hours)
- iii. Location (indoor, outdoor, deep indoor, outside
- iv. coverage, office complexes, open halls etc.)
- v. Call profile distribution Fixed 'B' Party (as envisaged by ETSI specifications)
- vi. The manner and circumstances whereunder the on-net and off-net calls were tested.

*Regrettably, the Notice only generally refers to the figures and does not disclose the criteria, methodology (ies), technological tools, locations, timings or any such relevant circumstances that necessarily can produce a substantial shift in the testing results. The internal tests, surveys, inspections, audits conducted by the Licensee show entirely different and better than those alleged in the Notice. The Licensee respectfully submits that the contents of the Notice are notional, mechanical, inequitable, non-transparent, unsubstantiated and lack reasons for the conclusions it draws. There is no breach on part of the Licensee as alleged, the same is vehemently denied and the Authority is put to strict proof of the allegations leveled. It is submitted however, that if and when the said testing logs along with those information referred to herein are provided to the Licensee the Licensee reserves its right to furnish its reply thereupon accordingly, as the law mandates.*

- d. *It is submitted that if such variables factors are not discussed, standardized, or neutralized between the Licensee (or the CMTOs) and PTA before conducting any inspection, the testing done by PTA and by Licensee are bound to yield different results. Some of these variables have already been communicated to PTA vide Industry Letter addressed to Mr. Yawar Yasin, Director (Enforcement-Coord) PTA (attached herewith as Annex-3). The Licensee reiterates entire contents of the Industry Letter along with the contents of preceding paragraph 9(c). Since allegations in the Notice are vague the Licensee is in complete darkness as to whether such variable factors were taken into account by the Authority during survey. The Notice lacks judiciousness and is therefore liable to be withdrawn.*
- e. *Most importantly, it was also requested in the Industry Letter to re define certain terms and expression such as Network Accessibility, and the values of certain KPIs were also requested to be reviewed keeping in view the practicality, proprietary, fairness, ground realities and in spirit of mutual effort a common aim to provide best services to the ultimate consumers, however, no such review was undertaken by the Authority despite the explicit provision of law in place providing room for negotiations inter se the Authority and licensees. The rule 10(1) of the Rules of 2000, section 22 of the Act, and clause 11.2 of the License are reiterated in this regard. The Notice hence being violative of the Licensee's legal rights is denied.*
- f. *In continuation of preceding sub-paragphs c, d and e it is submitted that if significant variables factors are discussed and the Licensee (or the CMTOs) are frequently consulted on their similar concerns, the benefit shall be three-fold viz; it will help the Licensee (CMTOs) know precisely, what aspects of service they are supposed to modify, fix, correct or improve; it will enable PTA to keep better control and perform more specific supervision and audit of the CMTOs and it will also help the CMTOs in providing best quality services to their customers. The Notice served in oblivion of such necessary facts, is therefore liable to be withdrawn.*
- g. *On technical side, it was highlighted in the Industry Letter that in order to enable the CMTOs to render good quality of services PTA should accompany the representatives of the CMTOs while conducting any tests or surveys. This*

*request was made with an 'optimistic' mind so as to work hand in hand with mutual effort, time and resources of both PTA and the CMTOS, with an aim to provide the best services to the customers. The minutes of the meetings held on 25 May 2007 at PTA Headquarters, Islamabad among the CMTOS and PTA (where the Licensee was represented by Mr, AsifRumi) are very pertinent in this regard. On page 3 at paragraph 4 of the said minutes of meeting it was categorically agreed by the respected Chairman PTA as follows:*

#### **4. Quality of Service.**

*"... Companies' representatives will also be part of the survey team. Schedule of the survey will be intimated to companies in advance. "*

*The said minutes of meeting are attached herewith as Annex~4. Regrettably, the Authority did not adhere to its earlier commitment and the Licensee was never consulted or accompanied in the alleged testing or surveys. For the purposes of instant Notice, the schedule of survey was also not communicated to the Licensee. Instead of assisting the Licensee (or the CMTOS) for the larger consumer benefit, this Authority chose to serve the Licensee with the instant Notice, which is not likely to serve the interest of any stakeholder including the customer. The same is therefore vehemently denied.*

*h. It is a fundamental right of the Licensee to know the bases of the results alleging it of QoS contraventions. The conduct of the Authority as highlighted above is also in defiance of the statutory responsibilities of the Authority envisaged under clause 6(b) and 6(f) of the Act. The Notice therefore being served in a manner that is in contrast with the statutory provisions is a nullity in law.*

*i. Vide paragraph 3(d) of the Industry Letter it was also highlighted that since PTA conducts testing by using NEMO Tool, it may not precisely gauge the QoS of CMTOS that use the TEMS Tool; or the results by the two testing Tools may vary. To remove this doubt the CMTOS offered cooperation to PTA in the Industry Letter whereby PTA was offered to utilize the TEMS Tool of CMTOS. Conducting testing on TEMS Tool would have ensured that there was no ambiguity regarding the basis for carrying out tests and associated scenarios as mentioned herein. No cooperation in this respect too was seen from the side of the Authority. The Licensee is forced to consider the Notice as unilateral, discriminatory and lacking sound basis.*

*j. The Licensee dissects its further submissions into two categories i.e. "Voice" and "SMS" as under:*

#### ***"Voice"***

- i. PTA has conducted its survey with respect to Jive (5) parameters namely;*
  - i. Network Down Time*
  - ii. Grade of Service*
  - in. Call Completion Ratio*
  - iv. Call Connection Time*

v. *Call Quality (MOS)*

- i. *The figures shown in the Notice regarding parameter Nos. (i) and (ii) are well within the specified range mentioned in the Appendix-3 of the License therefore the Notice alleges no contravention of QoS. Without prejudice to the Licensee's denial to the issuance of the instant Notice, no reply is needed to such extent. The figures alleged in the Notice regarding parameter Nos. (Hi) to (v) allegedly constitute contravention of the QoS, which the Licensee denies for the reasons set out herein.*
- ii. *First contravention of QoS alleged in the Notice is of parameter No. (in) i.e. Call Completion Ratio. Without prejudice to the denial, if it is assumed for the sake of arguments that survey results conducted by the Authority are true even then it is submitted that alleged contravention of 0.6% is insignificant. Although the results of testing conducted by the Licensee are better and within the range specified in the Appendix-3, it is stated that given the length and breadth of Licensee's network and uncontrollable circumstances mentioned in paragraph 9 (c) above such a diminutive difference from the QoS does not provide any reasonable basis for the Authority to issue the instant Notice, cautioning of a consequent enforcement order against the Licensee. However, the Authority is put to strict proof of the alleged contravention.*
- iii. *Second alleged contravention in the category of "voice" is of parameter (in) i.e. Call Connection Time. The Notice alleges that survey result of this parameter is 7.76 seconds whereas tests conducted by the Licensee are much better than results mentioned in the Notice. Without prejudice to the denial, if it is assumed for the sake of arguments that survey results conducted by the Authority are true even then it is submitted that alleged contravention of 2.76 seconds is insignificant. Although the results of testing conducted by the Licensee are better, it is stated that in view of paragraph 9 (c) above such a diminutive difference from the QoS does not provide any reasonable basis for the Authority to issue the instant Notice, cautioning of a consequent enforcement order against the Licensee. However, the Authority is put to strict proof of the alleged contravention.*
- iv. *Third and last contravention alleged by the Notice is of parameter (v) i.e. Call Quality. According to Appendix-3, the benchmark is "3 or more" and the purported result shows the Licensee's performance at "2.21". Without conceding the alleged figures, the Licensee submits that the results of internal and periodical testing conducted by it, show the MOS safely well above 3. It is also mentioned that at MOS 2.21, as alleged in the Notice, the voice quality will be almost unintelligible, which is nearly out of question to be alleged on a network which is fully compliant with the requirements set by PTA or the Applicable Laws. The narration of paragraph III above reiterated here. Such poor results would have necessarily outraged the public impression of the Licensee's operations and goodwill, resulting into substantial decline in number of customers. In contrast, it is a matter of public knowledge and record that the consumer base, number of customers porting into the Licensee's network has been increasing ever since. The letter dated 26 November 2009 from Mr. Muhammad Irfan (Chief Technical Officer, Warid Telecom) to Mr. Yawar Yasin, (DG Enforcement, PTA) in this regard is vigorously relied upon. The said letter is attached herewith as Annex-*

*5. In the circumstances, the alleged contravention is unrealistic, notional and technically flawed. The allegations in Notice are vehemently denied.*

**"SMS"**

*v PTA has conducted its survey with respect to three (3) parameters namely;*

- i. Service Accessibility*
- ii. Access Delay*
- iii. End to End Delivery Time*

*Without prejudice to the Licensee's denial about the alleged contravention, the Licensee asserts that QoS for SMS are not part of the Licensee's obligation under the License Appendix-3). However, the Licensee has reasons and records that may be produced if required, that the figures alleged in the Notice are incorrect and does not reflect the factual position. The testing logs available with the Licensee show the QoS having been met in a manner much better than the alleged in the Notice however the Authority is put to strict proof for the allegation leveled.*

*k. The Licensee in light of the above submissions concludes that:*

- i. The instant Notice is void ab initio and has been served in oblivion of relevant procedure/provisions provided in law.*
- ii. The conduct of the Authority is in contrast with its previous commitments and the Authority also fails to take into account the suggestions and concerns raised by the Licensee (or the CMTOs).*
- iii. Without conceding, it is submitted that, the Authority has failed to take prompt decision as envisaged under the Act. Alleging and communicating to the Licensee the contraventions occurred quite a long ago, compiled and communicated belatedly is against the principles of natural justice and render the instant Notice time barred.*
- iv. The Authority has failed to perform its statutory responsibilities to make decisions in equitable, non-discriminatory and transparent manner.*
- v. Keeping the Licensee in complete ignorance of the testing methodologies, testing scenarios etc., in gauging the QoS is not only against the principles of natural justice but is also very distanced from practices and standards of other regional and international telecom watchdogs. As an instance reference is made to the QoS objective assessment reports prepared by significant telecom auditor i.e. IMRB. A perusal a specimen objective assessments conducted by IMRB reveals that (i) testing is conducted broadly on Survey Module and Audit Module; (ii) it clearly depicts the Sampling Methodology for Cellular Mobile Service Providers; (Hi) the assessment is sub-categorized in three [ categories; Network Performance, Customer Helpline and Billing Complaints; (iv) assessment is separately conducted for busy hours (v) presence of regulatory auditors in vehicles of operators is ensured; (vi) sampling procedures, timings, distances, types of locations i.e periphery, congested, across city, office complex, shopping complex, etc. have been clearly mentioned; (vii). It also provides assessment of on the basis*

*of one-month data that could provide more realistic picture of the overall QoS being maintained by the operators (viii) the complete audit methodology is explained so as to enable the operator how its performance has been gauged.*

- vi. The Licensee has not been dealt -with in accordance with law and the conduct of Authority regarding the instant Notice amount to usurping the constitutional right of the Licensee.*
  - vii. In addition to unlawful non-disclosure of test result and testing scenarios, the Notice also fails to point out precisely what shortfalls and what remedial measures (if any) should have been taken by the Licensee in order to remedy the alleged contraventions.*
  - viii. The testing results measured by the Licensee are far better than those alleged in the Notice and necessary reason for this difference is failure of PTA to accompany the Licensee in the process of QoS survey. The Authority should have and is hereby offered to conduct joint testing in presence of the Licensee's representatives.*
  - ix. The force majeure element appears to have been completely disregarded during the survey by the Authority.*
  - x. The specifications of the licensed system, equipments, network designs and technologies used by the Licensee are strictly in accordance with the applicable laws.*
  - xi. Due to (i) unforeseen interference by the Authority and security agencies in provision of services by the Licensee (ii) adamant conduct of the Authority in assisting the Licensee to remove the permanently mobile jamming devices (Hi) unlawful and unreasonable interference and delays on part of Cantonments, Army, DHAs, CDA, TMAs, PEPCO, EPA, etc., and (iv) the fragile law and order situation in the country throughout the last year; the Licensee has suffered substantial losses of revenue. In addition, owing to these factors, the Licensee, despite its potential to perform, was caused restrained to perform at its best.*
  - viii. In spite of uncontrollable odds of rising inflation, incredibly high fuel prices, high tax rates, fragile law and order situations, etc., the Licensee has managed to keep the tariffs economically viable even for the poorest class of the society. More importantly, living with all the said circumstances the Licensee has always been providing the latest technologies, cellular facilities to its customers along with the best quality of service taking all reasonable and prudent measure to meet the QoS.*
10. *The contents of paragraph 10 (at page 2 of the Notice) are denied as the Licensee has not failed to provide the required grade of telecommunication services to its customers. The Licensee did not commit contravention of the applicable laws or the conditions of the License. In addition the averments made in paragraphs 9 above are reiterated.*
11. *The contents of paragraph 11 (at page 2 of the Notice) are denied. The corresponding paragraph states that despite repeated instructions of the*

Authority the Licensee has failed to provide the required erode of telecommunication services to its customers. This is vehemently denied and the Licensee submits that fact the Authority did not communicate (as prescribed in regulation 10 (3) of the Regulations of 2006) what shortfalls, in what circumstances/scenarios have been recorded by it. The instant Notice only generally provides figures thereby alleging the contraventions. The Licensee re-emphasizes that it has always complied with the applicable laws and the conditions of the License in letter and spirit,

12. The contents of paragraph 12 (at page 2 of the Notice) are denied and the submissions made above particularly paragraph 9 supra are reiterated. No such circumstances exist or have existed that could justify for PTA to invoke the provisions of section 23 of the Act. The Licensee has not committed any contraventions for which it could lawfully be exposed to any liability as alleged particularly, without conceding, when alleged contraventions are either too insignificant or unsubstantiated.

13. The contents of paragraph 13 (at page 2 and 3 of the Notice) are denied. The contents of paragraphs III to X and 1 to 12 hereinabove are reiterated. This reply is being submitted within the prescribed period.

14. The contents of paragraph 14 (at page 3 of the Notice) are denied for the reasons categorically mentioned above and on the ground that the Licensee has not breached its obligations.

15. The contents of paragraph 15 (at page 3 of the Notice) are a matter of record for PTA and need no reply from the Licensee.

**NOW THEREFORE**, in view of the above, it is submitted that:

1. The Notice being, void ab initio, served in a manner contrary to the prescribed procedure, law and principles of natural justice, in oblivion of the statutory responsibilities of the Authority may very graciously be withdrawn without further proceedings.

2. In case the Authority desires to proceed with the inspection, a joint testing may be conducted with due representations from the Licensee followed by a comprehensive survey reports fully disclosing scenarios, test logs, timings, locations, methodologies, modalities etc. as mentioned above, before issuance of any show cause notice.

3. As per rule 10 of the Rules of 2000 and section 22 of the Act meeting(s) of the Licensee, along with all CMTOS, may kindly be convened by PTA in order to rationalize QoS in view of the changing circumstances and environment.

## **5. The Hearing:**

The matter was fixed for hearing on 21st April, 2010 and licensee submitted the following written arguments:

- A. These brief arguments are submitted by the Licensee as desired by the Authority and the contents hereof may very kindly be read and interpreted in addition to and explanation, clarification of the detailed Reply to the subject noted Show Cause Notice submitted earlier.
- B. The words and expressions capitalized hereunder may kindly be read and construed to bear such meanings as have been assigned to them in the Reply submitted earlier or the Applicable Laws.

*The Licensee submits as under:-*

1. PTA has not conducted tests of QoS as required by law and principles of natural justice:

*Definition of QoS as per ITU-T- "the collective effort of service performance, which determined the degree of satisfaction of a user of the service.*

*Quality of Licensed Services as per law is required and measured (i)for whole Licensed System, (ii) at the premises of Licensee, and (Hi) on each calendar month average basis.*

#### *1.1 License:*

*1.1.1 - 6.3.1. provides that PTA can monitor, amongst others, quality of service at the premises of Licensee.*

*I.I.2.-6.5.1.— 6.5.2. requires Licensee to provide Licensed Services as per Appendix-3 and maintain its record and submit such record on quarterly basis.*

*1.1.3.- Appendix 3.1.1. Licensee to take reasonable and prudent measures to provide quality services. 1.3 requires that Licensee shall for each calendar month maintain QoS as provided therein.*

#### *1.2 Pakistan Telecom Rules, 2000.*

*1.2.1.- 23.7 of part 6 of schedule 2 authorize the PTA to conduct test at premises of Licensee.*

*1.3. Pakistan Telecommunications Authority (functions and powers) Regulations, 2006 1.3.1- Rule 10- (3) - Inspection Report has to be given to Licensee to compliance -within 30 days.*

#### *1.4. Minutes of Meeting dated 25 May 2007.*

*PTA committed that test shall be conducted (i) with prior intimation to the License, (ii) with participation of Licensee's representative, and (in) in the last quarter of the year.*

*1.5. International practice in conducting QoS as envisaged in an objective assessment report issued by IMRB (QoS auditor) usually takes following factors:*

- i. Sample size

- ii. *Time for Survey (offpeak/peak hours)*
- iii. *Location (indoor, outdoor, deep indoor, outside coverage, office complexes, mopen halls etc.)*
- iv. *Call profile distribution.*
- v. *Fixed 'B' Party (as envisaged by ETSI specifications)*
- vi. *The manner and circumstances whereunder the on-net and off-net calls were tested,*
- vii. *Difference in gauging tools used by PTA and the Licensee, etc.,*

**Whereas the PTA:**

- (i) *allegedly has conducted tests in different Zones rather for whole Licensed System;*
- (ii) *allegedly has conducted tests on the basis of few days average rather on calendar month basis;*
- (iii) *allegedly has conducted tests outside the premises of the Licensee, (which technically cannot provide results of the Licensed System);*
- (iv) *Inspection Report is not provided to the Licensee prior to issuance of Show Cause Notice;*
- (v) *has not provided 30 days remedial period to the Licensee prior to issuance of Show Cause Notice;*
- (vi) *has conducted tests without prior intimation, participation of the Licensee and in last quarter of the year as promised in minutes of meeting dated 25 May 2007.*
- (vii) *refused to provide logs of alleged tests vide letter dated 2 January 2010, which was requested by the Licensee vide letter dated 4 January 2010 (both letters attached herewith).*
- (viii) *testing scenarios and methodologies are not disclosed.*

*Show Cause Notice is not issued as required by law:*

*2.1,-s 23.1 authorise the PTA to issue notice upon contravention of Act, Rules and License.*

*2.2- s. 23.2. requires the PTA to mention the nature of contravention and steps to remedy the contravention-*

*Whereas PTA has not mentioned steps to be taken by the Licensee to improve QoS.*

**3. The Licensee failed to protect rights of the Licensee:**

- 3.1. *6(a) of the Act, requires the PTA to protect rights of the Licensee:*
- 3.2. *Rights of the Licensee: s. 27 of the Act. Licensee has privileges equal to Federal Government under Easement Act. 1882 and Telegraph Act, 1885. S.10 and 12 of telegraph act authorize the Licensee to install public switch network, without any interruption on reasonable basis.*

*Whereas the PTA failed to protect right of the Licensee and mentioned below:*

*3.2.1 The testing results of QoS are bound to depend on a great number of variable factors which may either be beyond reasonable control of the Licensee or should otherwise necessarily be notified in results/logs of the surveys. For example:*

*3.2.2 Factors beyond reasonable control of the Licensee:*

- i. unscheduled and unprecedented load-shedding:*
  - ii. mobile jamming devices (fixed and moving):*
  - iii. other network dependencies during off-net calls (expressly excluded vide clause 1.3 of Appendix 3 of the)*
  - iv. poor law and order situation, resulting in delays to access any affected site requiring maintenance:*
  - v. The unreasonable delays on part of PEPCO, EPA, TMAs, Cantonments, granting NOCs for the installations of standby power generators:*
  - vi. The frequent interference of security agencies in terror-affected areas throughout the country) which do not follow any specific pattern and is completely without notice, silent, uncontrollable and potential enough to cast heavy effects on the testing results, etc.*
  - vii. A recently letter of the Authority dated 30 March 2010 (attached herewith) is referred to whereby it is confirmed that jammers were found and removed from as many as ten important places in Lahore and Gujranwala:*
- 4. The Licensee is allocated a frequency spectrum of 890.1 MHz to 894.9 MHz in the Uplink and 935.1 MHz - 939.9MHz in the Downlink. In the other license of the Licensee granted by PTA for AJK & NA, frequencies has been allocated as 900.5MHz-905.3MHz in the Uplink and 945.5MHz-950.3MHz in the Downlink. Whilst both are 5MHz, there are service issues of interference on the border of Pakistan and AJK & NA. Such situation necessarily results in poor voice quality for no fault of License. This concern has been raised by the Licensee to both the Frequency Allocation Board ("FAB") and PTA. It is notable to mention that through the network from Kahuta towards Kotli, Gujrat towards Dadyal, Sohawa towards Mirpur and Magla to Mirpur serious interference has been observed by the Licensee and the same was also reported to PTA and FAB.*
- 5. The Licensee has been granted less spectrum in 900 MHz t as compared to other operator, which results in higher CAPFX and OPEX requirements for the same OoS obligations under the License, which is discriminatory in nature.*
- 6. The Licensee, under the provision of the License, has taken all reasonable and prudent measures to ensure that the Licensed System and Licensed Services are available and the inspection thereof is always open for inspection of the Authority. Even otherwise, the Licensee is fully, compliant with all of its statutory and other obligations, namely:*
- i. Network Roll-out*

- ii. *Payments and contributions by the Licensee*
- iii. *Apparatus and Devices*
- iv. *Network Designs and Frequency Planning:*
- v. *Managed Services and Support:*
- vz. *Internal Surveys and Audits:*
- vii. *Public Impression and Industry Acknowledgments*
- viii. *Share in economic dynamics*

***"Arguments related alleged contraventions on Voice"***

7. *The figures shown in the Notice regarding parameter Nos. (i) and (ii) are well within the specified range mentioned in the Appendix-3 of the License therefore the Notice alleges no contravention of OoS to the to the extents of said parameters. The figures alleged in the Notice regarding parameter Nos. (Hi) through (v) allegedly constitute contravention of the OoS, which the Licensee denies for following reasons:*
- 7.1 *Regarding Call Completion Ratio, assuming without conceding, that survey results conducted by the Authority are true even then the alleged contravention of 0.6% is insignificant. Although the results of testing conducted by the Licensee are better and within specified range such a diminutive difference does not provide any reasonable basis for the Authority to issue the Show Cause Notice. However the Authority is put to strict proof of the alleged contravention.*
- 7.2 *Regarding Call Connection Time, the alleged survey result is 7.76 seconds. Again, assuming without conceding, it survey results conducted by the Authority are true even then it is submitted that alleged contravention of 2.76 seconds is insignificant. Although the results of testing conducted by the Licensee are much better, such a diminutive difference from the QoS does not provide any reasonable basis for the Authority to issue the Show Cause Notice however, the Authority is put to strict proof of the alleged contravention.*
- 7.3 *Reference is made to the Industry Letter, whereby the industry as a whole recommended a call setup time threshold of 8 seconds. Obviously it was for certain practical problems, especially with new and emerging technologies like Mobile Soft Switch and SIGTRAN that increases the signaling time when making calls. Notably, without conceding, it is highlighted that the values alleged in Notice for Call Set-up Time-are less than 8 seconds.*
- 7.4 *Regarding Call Quality the benchmark is "3 or more" and the result alleged by the Notice is "2.21". Without conceding the alleged figures, the Licensee submits that the results of internal and periodical testing conducted by it, show the MOS safely well above 3. It is also mentioned that at MOS 2.21, as alleged in the Notice, the voice quality will be almost unintelligible, which is nearly out of question to be alleged on network which is fully complaint with the requirements set by PTA or the Applicable Laws. Such poor results would have necessarily outraged the public impression of the License's operations and goodwill, resulting into substantial decline in number of customers. The letter dated 26 November 2009 from Mr. Muhammad Irfan (Chief Technical Officer, Warid Telecom) to Mr. Yawar Yaseen, (DG Enforcement, PTA) in this regard is vigorously relied upon.*

8. In addition to the foregoing paragraphs, the Licensee makes specific reference to the Chapter 2 of the annual report of PTA Focus Area for the year 2008-09 (the "PTA Annual Report"). The PTA Annual Report at page 18 shows that the Licensee amongst all CMTOS had the least consumer complaint rate i.e. 13% of the total complaints. At the same page the report suggests the QoS complaints regarding PTCL and not the CMTOS.
9. At page 27 of the PTA Annual Report, the Authority concedes that upon QoS surveys it conducted the performance of CMTOS in certain parameters was found as improved, while in other parameters it remained unchanged. Without prejudice to the independent denial of the Licensee of the contents of the Show Cause Notice, this is manifest from the PTA Annual Report that the QoS results did not derogate from previous values but has improved in certain parameters. At same page No. 27 of the PTA Annual Report, the Authority represented that it shall make available a final report containing recommendations after discussion with the CMTOS in the last quarter of 2009. The Authority not only did as represented but issued the Show Cause Notice instead.
10. In addition an analysis of the QoS complaints through PTA reveals that during the whole year of 2009 only 87 complaints were received by the Licensee. 12 of which were regarding SMS; 32 of which were not verified and almost all of verified complaints were effectively resolved by the Licensee.

For the submissions made herein, the Licensee denies the Show Cause Notice and considers it to be discriminatory, non-transparent and unlawful.

**"Arguments related alleged contraventions on SMS"**

11. Without prejudice to the Licensee's denial about the alleged contraventions, the Licensee asserts that QoS for SMS are not part of the Licensee's obligation under the License Apendiex-3). However, the Licensee has reasons and records that may be produced if required, that the figures alleged in the Notice are incorrect and does not reflect the factual position. The testing logs available with the Licensee show the QoS having been met in a manner much better than the alleged in the Notice however the Authority is put to strict proof for the allegation leveled.
12. The contents of the Notice are denied and the Licensee has not committed any contraventions for which it could lawfully be expressed to any liability or penalty.
13. If above variables factors are discussed with the CMTOS, the benefit shall be three-fold viz; (i) helping the CMTOS know precisely what aspects of service they are supposed to rectify or improve; (ii) enabling PTA to keep better control and perform more specific supervision of the CMTOS and (Hi) helping CMTOS in providing best quality services to their customers. The Notice served in oblivion of such necessary facts is notional mechanical, inequitable, non-transparent, unsubstantiated and lack reasons for the conclusions it draws and therefore liable to be withdrawn.

14. *The Notice is barred by time as it relates to and includes the results of the surveys conducted as back as in March, April and June etc.*
15. *Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 provided that Licensee a safeguard to be dealt with in accordance with law, whereas the PTA has not issued the subject Show Cause Notice in accordance with law. It is humbly submitted that the Licensee reiterates its commitment to continue to meet the exceed quality of service in accordance with law.*

**NOW THEREFORE**, in view of the above, it is most respectfully prayed that:

*The Notice being illegal, void ab initio, served in a manner contrary to the prescribed procedure, law and principles of natural justice, Constitutional guarantees and in oblivion of the statutory responsibilities of the Authority, may very graciously be withdrawn further proceedings. In case the Authority desires to proceed with the inspection it can inspect as required by law.*

*As per rule 10 of the Rules of 2000 and section 22 of the Act meeting (s) of the Licensee, along with all CMTOs, may kindly be convened by PTA in order to rationalize QoS in view of the changing circumstances and environment.*

**Case Law in support of above submission:**

**Legitimate Expectation:**

1. PLD 2007 Lahore 61
2. 2007 YLR 28[KHi]

**Exercise of discretion by Public functionary:**

**Refusal to issue NOC by public functionary must contain reasons:**

1. 2008 CLC 1462 [KhiJ]
2. PLD 2001 SCI

**Vague Show Cause Notice**

**When something required by law to be done in certain manner must be done in the same manner as prescribed by law or not at all**

1. 2001 SCMR 838
2. 2007 YLR 1407

**Act of court of public functionary on the action of whom a citizen has no control, should not be allowed to prejudice any one**

1. PLD 2007 SC 582 [at para 8] [Land Revenue Case] [Full Bench]

**Principals of natural justice**

**If there is conflict between a basic natural right born out of natural justice and provisions of law, general or special, it is settled that the former should prevail**

1. 2008 CLC 697 [Karachi]
2. PLD 1992 SC 531

## **6. Findings of the Authority**

6.1 The survey was conducted in accordance with the standards set out in condition 1.3 of the Appendix 3 of the license, KPIs and the methodology of surveys already provided to the licensee. The license provides short term and long term targets. Under the license and the regulations, the licensee is obliged to meet or exceed the quality of service standards provided in the license and KPIs, which it failed to maintain, hence, show cause is not contrary to license conditions.

6.2 The matter is scrutinized in all aspects and reached the conclusion that the survey was conducted in accordance with the standards set in condition 1.3 of the Appendix 3 of the license, KPIs and the methodology of surveys already provided to the licensee and the results were subsequently shared as well. It is in light of these findings, that the Authority finds the licensee has failed to provide the required grade of telecommunications services to its customers which amounts to grave violation of the prevailing regulatory laws, directions of the Authority and the terms and conditions of the licence.

## **7. Order of the Authority**

7.1 The licensee has failed to satisfy the Authority on the aforementioned contraventions made by it regarding the mandatory level and standard of Quality of Service, the licensee is, therefore, directed to remedy the aforementioned contravention by ringing and maintaining the required standards of quality of service within twenty nine (29) days of the issuance of this order.

7.2 Next survey shall be conducted by the Authority after the aforementioned period of twenty nine (29) days and if the licensee is found again in violation of para 7.1, above, final determination shall be issued under sub-rule (5) and (6) of rule 9 of the Regulations otherwise the notice shall be favourably disposed of.

S.Nasrul Karim A. Ghazanvi  
Member (Finance)

Dr. Mohammed Yaseen  
Member (Technical)

Dr. Mohammed Yaseen  
Chairman

This order comprises of 27 pages and is signed on 25<sup>th</sup> of May, 2010.