



PAKISTAN TELECOMMUNICATION AUTHORITY
HEAD QUARTERS, F-5/1, ISLAMABAD

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www.pta.gov.pk

Enforcement Order under Sub-section 3 of Section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996

Re: M/s Brain Telecommunication Limited

File No.PTA/Enforcement/Vigilance Cell/CDR Analysis/2-14(Vig)/2010/40/2010

Date of Issuance of Show Cause Notice:	5 th May, 2010
Date of Hearing:	30 th September, 2010
Venue of Hearing:	PTA HQs, Islamabad

The Authority Present:

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

The Issue:

“Establishing VoIP platform and SIP based telecom switch and providing IP Telephony services contrary to license”

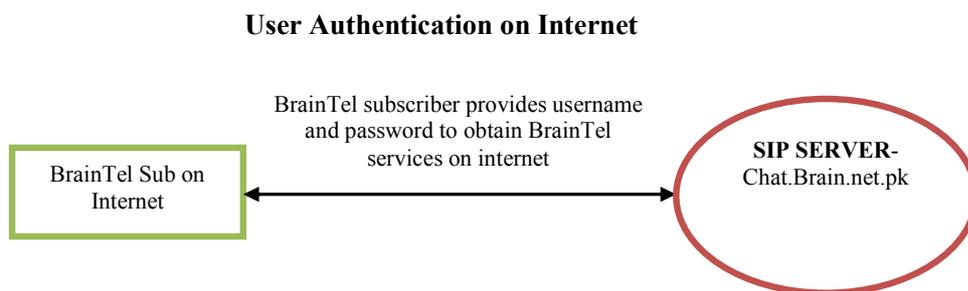
Decision of the Authority

1. Brief Facts:

1.1. M/s. Brain Telecommunication Limited (the “licensee”) is engaged in the business of telecommunication services pursuant to the non-exclusive Local Loop License No.LL-13-2004 dated 19th July, 2004 (the “license”) awarded by the Pakistan Telecommunication Authority (the “Authority”) to establish, maintain and operate Telecommunication System and to provide Telecommunication Services in the Licenced Region of LTR (N/S), subject to the terms and conditions contained in the licence. The licensee is required to comply with the prevailing regulatory laws comprising of the Pakistan Telecommunication (Re-organization) Act, 1996 (the “Act”), the Pakistan Telecommunication Rules, 2000 (the "Rules") the Number Allocation and Administration Regulations, 2005 (the "Regulations") and the terms and conditions of the licence.

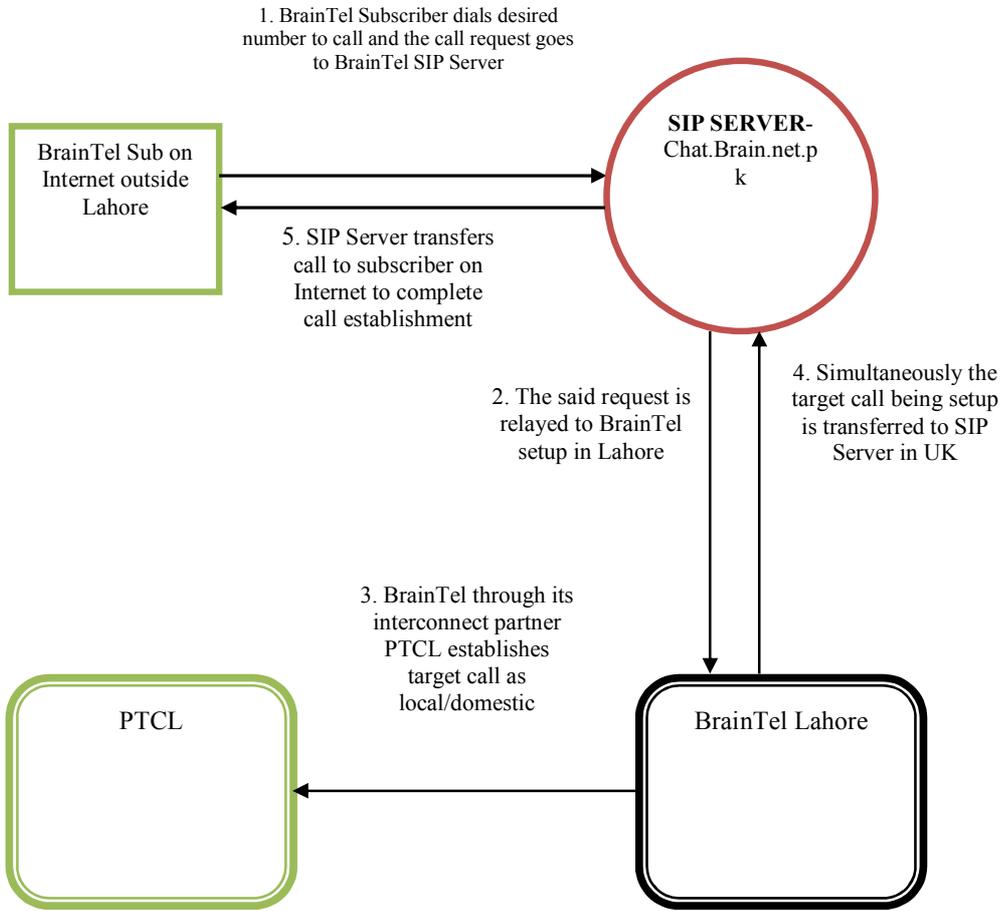
1.2. the licensee has (i) designed its VOIP platform and provided Network Access and switching services contrary to the requirements contained in Para 2, 5 and 7 of “the Clarification on use of IP Telephony Services” and as a result allowed its customers to have access to its local loop service outside geographical boundaries of its licensed region, i.e., Lahore, contrary to the rules/regulations and license conditions, (ii) its SIP based telecom Switch located in United Kingdom at URL chat.brain.net.pk which is beyond its licensed geographical boundaries and is being used to provide Network Access and call switching to its customers using public IP address in contravention of the rules/regulations, clarification and license condition, (iii) inward/outward calls of its customers residing outside the licensed region, due to the provisions provided by the aforesaid VOIP platform, are being terminated/switched by the licensee itself on its own local trunk groups as local/domestic calls.

1.3. Licensee’s Methodology of Providing Services on Internet is given below:

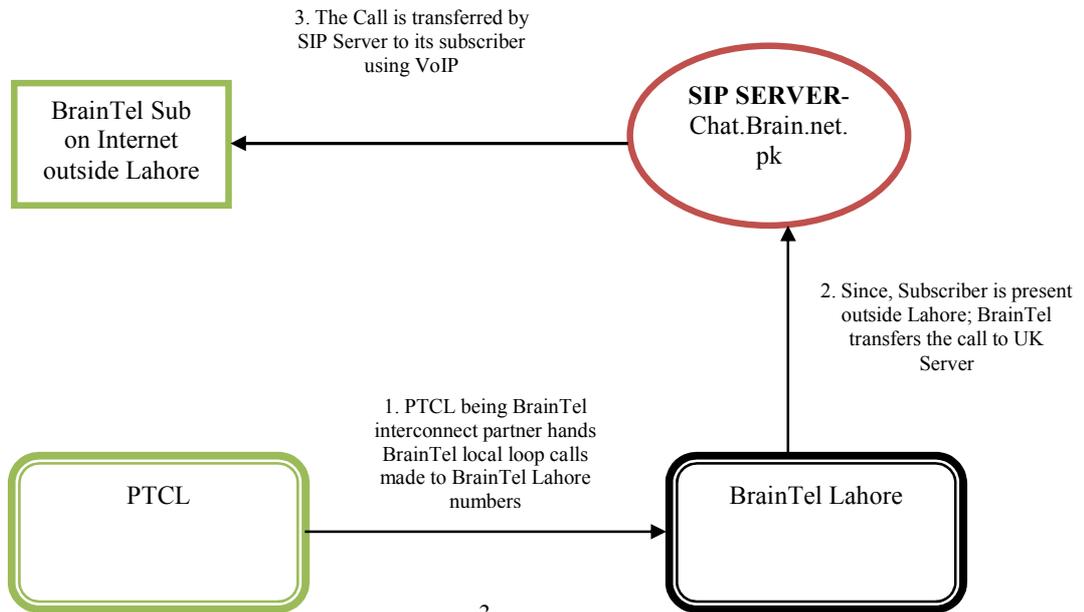


- To obtain licensee’s VoIP services on Internet, the subscriber connects to Internet and uses softphone software like “EyeBeam” etc.
- BrainTel Website contains a webpage which provides its subscribers instructions on how to configure and use “EyeBeam”.
- Licensee instructs its users to use domain “Chat.Brain.Net.Pk”
- Chat.Brain.Net.PK is mapped to a UK IP **83.138.185.146** which shows that the Equipment assigned the said IP is located in UK.
- The Web Page located at Chat.Brain.Net.Pk (83.138.185.146) also shows that the Equipment hosting the URL and assigned the said IP is the property of BrainTel.
- It may be noted that Chat.Brain.Net.Pk is a sub-domain of Brain.Net.Pk which has been registered by the licensee. Thus, the licensee has the authority to host Chat.Brain.Net.Pk which includes mapping of an IP to the said URL (83.138.185.146 in present scenario)
- Calls made by the licensee’s Subscriber are being routed by the licensee as under:

Outgoing Call :



Incoming Call:



The licensee/BrainTel is involved in providing services to customers outside its licensed region through VoIP. Calls made/received by aforementioned customers are originated/terminated by BrainTel as local/domestic calls. Hence, BrainTel is violating its license conditions by providing services outside its region. Furthermore, switching/routing of calls made outside Lahore as local calls and offering customers to use its services beyond Pakistan, it is causing loss to LDI Operators as well as the Exchequer in terms of APC for USF.

1.3. Hence, the licensee was issued Show Cause Notice dated 5th May, 2010 against the aforesaid violations. The Licensee submitted its preliminary reply vide letter dated 7th May, 2010 and denied the allegations.

1.4. However, without hearing any response from the Authority and without letting the Authority to adjudicate the matter by convening a formal hearing to led the matter to logical conclusion, it hastily filed a writ petition No.2002/2010 titled: Brain Telecommunication Limited vs. PTA before Lahore High Court at Rawalpindi Bench against the aforesaid show cause notice and alleged more or less the same arguments as were taken in its preliminary reply to the Authority. The Authority defended the said writ petition and argued that the writ petition is not maintainable as it is not only pre-mature but also the grievance raised therein involves an inquiry into facts which are also of a technical nature and further stated *“that pursuant to show cause notice dated 5.5.2010 no adverse action or order shall be taken or passed by PTA against the petitioner-company without thoroughly and carefully considering the view point of the petitioner company who will be provided full opportunity of hearing to explain its viewpoint.”*

1.5. The High Court vide its order dated 8th July, 2010 disposed of the aforesaid writ petition in the following terms: *“In view thereof, this writ petition is disposed of in terms of the aforesaid statement made on behalf of the PTA who is also directed to let the petitioner-company file its detailed reply to the show cause notice dated 5.5.2010 within a fortnight and to take a decision in the matter in accordance with law by mean of a speaking order.”*

1.6. The licensee submitted its detailed reply to the notice on 22nd July, 2010 in the light of aforesaid orders of the Lahore High court and denied the allegations in the following terms:

“Reply to Show Cause Notice bearing Reference no. PTA/Enforcement/Vigilance Cell/CDR Analysis/2-14 (Vig)/2010/40/2010/304 dated 05-05-2010 issued under section 23 of the Pakistan Telecommunication (Re-Organization) Act 1996.

*This is in response to the Show Cause Notice bearing Reference no. PTA/Enforcement/Vigilance Cell/CDR Analysis/2-14 (Vig)/2010/40/2010/304 dated 05-05-2010 hereinafter, 'the Show Cause Notice' issued by the Pakistan Telecommunication Authority, hereinafter 'the Authority' to Brain Telecommunication Limited, hereinafter 'the Licensee' under section 23 of the Pakistan Telecommunication (Re-Organization) Act 1996 hereinafter 'the Act'. A copy of the Show Cause Notice is being attached herewith as **Annex - 'A'**.*

Preliminary Submissions:

- 1. That the Licensee had very promptly submitted a Preliminary Response dated 07-05-2010 hereinafter 'the Preliminary Response' wherein the Authority had been informed that the Show Cause Notice is factually incorrect, baseless and therefore of no legal effect whatsoever. The Licensee had also attached documentary proof with the Preliminary Response to substantiate its contention. A copy of the Preliminary Response is being attached herewith as **Annex - 'B'**.*
- 2. That over and above this, the Licensee had categorically mentioned/stated therein that in case the Authority desires any further information/verification in this context, it shall find the Licensee cooperative to the best of its abilities. The*

Licensee had also called upon the Authority to withdraw and recall the Show Cause Notice and inform the Licensee in writing. However, the Authority did not respond in any way whatsoever. Therefore, constrained by the circumstances created by the acts and omissions of the Authority, the Licensee filed **Writ Petition no. 2002/2010 titled Brain Telecommunication Limited vs. Pakistan Telecommunication Authority** which was fixed for hearing before His Lordship Mr. Justice Asad Munir at the Lahore High Court Rawalpindi Bench. A copy of the Writ Petition is being attached herewith as **Annex - 'C'**.

3. That even during pendency of Writ Petition no. 2002/2010, the Licensee wrote **Letter dated 03-06-2010** to the Authority *inter alia* putting on record that despite the Preliminary Response the Authority had till that date not made any contact with the Licensee; the Authority had neither admitted the version put forward by the Licensee through the Preliminary Response nor had it denied the same. The Authority had even not considered it appropriate to seek any further information/verification from the Licensee pertaining to the subject matter of the Show Cause Notice. A copy of Letter dated 03-06-2010 is being attached herewith as **Annex - 'D'**.
4. That the only response received in black and white from the Authority in the matter of the Show Cause Notice was Letter bearing Reference no. **PTA/Enforcement/Vigilance Cell/CDR Analysis/2-14 (Vig)/2010/40/2010/1027 dated 30-06-2010** hereinafter '**the Authority's Response**' wherein the Authority had acknowledged receipt of the Preliminary Response as well as Letter dated 03-06-2010. however none of the points raised by the Licensee had been addressed. The Authority's Response had clearly been issued in a mechanical manner without any application of judicial mind merely stating that the Reply of the Licensee to the Show Cause Notice was not satisfactory. No reason whatsoever was given for asserting the same. This constitutes a blatant violation of section 24-A of the General Clauses Act. A copy of the Authority's Response is being attached herewith as **Annex - 'E'**.
5. That Writ Petition no. 2002/2010 was disposed of by His Lordship Mr. Justice Asad Munir at the Lahore High Court Rawalpindi Bench vide **order dated 08-07-2010** with an observation that the Authority shall not take any adverse action or pass an adverse order against the Licensee without thoroughly and carefully considering the viewpoint of the Licensee after giving it a full opportunity of hearing to explain its view point. The Court had also granted a time of 14 days to the Licensee to file a detailed reply to the Show Cause Notice. Lastly, the Court had directed the Authority to take a decision in the matter in accordance with law by means of a speaking order. A copy of order dated 08-07-2010 is being attached herewith as **Annex - 'F'**.

Preliminary Objections:

1. That the Show Cause Notice issued to the Licensee as a matter of fact addresses activities/business which is not being carried out by the Licensee but by another Company/legal entity hence the same is ill found, misconceived and of no legal effect whatsoever as against the Licensee.
2. That the failure of the Authority to admit or refuse the stance/position of the Licensee as conveyed through the Preliminary Response dated 07-05-2010 (Annex - 'B') is a blatant breach of its duties as a regulatory body.
3. That the Authority's Response dated 30-06-2010 (Annex - 'E') which came after almost four weeks from the Letter dated 03-06-2010 (Annex - 'D'), reiterating the concerns/request of the Licensee already conveyed through the Preliminary Response dated 07-05-2010. The Authority's Response had clearly been issued in a mechanical manner without any application of judicial mind merely stating that the Reply of the Licensee to the Show Cause Notice was not satisfactory. No reason whatsoever was given for asserting the same. **This constitutes a blatant violation of section 24-A of the General Clauses Act.**

4. *There is no provision in the Act, Rules, Regulations, directions/clarifications and/or terms of the license which imposes any restriction, whether absolute or conditional, upon:*
 - a. *Any person who is a director/shareholder in a company which is the licensee of the Authority, on being a shareholder/director in a Company incorporated abroad.*
 - b. *The Company incorporated abroad from procuring an IP address and VOIP Platform physically located in yet another jurisdiction.*
 - c. *The Company incorporated abroad from conducting business/providing telecom services internationally to its customers using UK/US based land line numbers.*

Since, through the Show Cause Notice, the Authority is trying to do things which have been mentioned above therefore the Show Cause Notice is without any merit and qualifies being set aside/withdrawn.

5. *That the Show Cause Notice under reply has been issued by the Authority in blatant excess of jurisdiction conferred upon it vide section 23 of the Act, which only allows the Authority to issue Show Cause Notices to its licensees for any breach/violation of the terms and conditions of the license and/or any rules, regulations or provisions of the Act. In so far as the alleged breach/violation attributed to the Licensee in the Show Cause Notice is that the Licensee owns a Session Initiation Protocol (SIP) based Telecom Switch located in the United Kingdom, the said allegation being factually incorrect and irrefutably rebutted by the Licensee through detailed submissions made in paragraphs no. 7 - 11 of the para wise Reply on merits below on the basis of documents mentioned therein, i.e. Annex - 'G' to Annex - 'L'.*
6. *That the Authority has violated a basic principle of law that **all evidence to be used against an Accused is to be provided to him in order to enable him to defend himself fairly.** As is evident from a bare perusal of the Show Cause Notice, not a shred/ounce of evidence has been provided to the Licensee which is sufficient to cast doubt on the validity and legality of the same, as such the same merits dismissal and qualifies being set aside. Needless to mention that repeated requests made to the Authority seeking the same are also on record.*
7. *That the Hon'ble Authority is overstepping its mandate and the very objective(s) of its creation under the Pakistan Telecommunication and Re-Organization Act, 1996 by issuing such Show Cause Notice.*

Para wise Reply on Merit:

1. *That the contents of paragraph no. 1 relate to award of LL License to the Licensee and are admitted.*
2. *That the contents of paragraph no. 2 relate to the obligation of all licensees to comply with applicable laws, rules and regulations and therefore need no reply.*
3. *That the contents of paragraph no. 3 relate to the mandate of the Authority to be able to issue orders, determinations, directions and decisions and the obligation of the licensees to comply with the same which is admitted, subject to the clarification that licensees are only bound to comply with the orders, determinations, directions and decisions which are legal and within the jurisdiction of the Authority.*
4. *That the contents of paragraph no. 4 relate to scope of services authorized under the LL License and therefore need no reply.*
5. *That the contents of paragraph no. 5 further elaborate on permissible activities under the LL License and therefore need no reply.*
6. *That the contents of paragraph no. 6 are a reproduction of paragraphs no. 2, 5 and of Clarification Letter dated 31-10-2008 and therefore need no reply.*

7. That the allegations contained in paragraph no. 7. of the Show Cause Notice regarding the Licensee designing its VOIP platform and providing Network Access and Switching Services contrary to the requirements of paragraphs no. 2, 5 and 7 of Clarification Letter dated 31-10-2008 and therefore allowing its customers to have access to its Local Loop services outside geographical boundaries of its licensed region, i.e. Lahore in contravention of the Rules, Regulations, Clarification/directions and license conditions are incorrect and vehemently denied. The Authority has not provided any material/information/data/evidence to the Licensee either with the Show Cause Notice or upon express request to that effect conveyed through the Preliminary Response. The Licensee is unable to further submit anything in its defence without having been provided with copies of the material/information/data/evidence on which the allegations have been based. Failure to provide such material/information/data/evidence despite specific request is a blatant abuse of the regulatory powers conferred on the Authority. Needless to mention that any proceedings conducted against the Licensee without providing him the material/information/data/evidence relied upon against him are in violation of basic principles of law, justice, fairness and equity.
8. That the allegations contained in paragraph no. 8 that the Licensee's Session Initiation Protocol (SIP) based Telecom Switch is located in United Kingdom at URL chat.brain.net.pk which is beyond its licensed geographical boundary and is being used to provide Network Access and calls switching to its customers using public IP addresses in contravention of the Rules, Regulations, license conditions and clarifications are incorrect, contrary to facts and misconceived hence vehemently denied. **The Licensee does not own and/or possess any Session Initiation Protocol (SIP) based Telecom Switch which is located in the United Kingdom.** The information relied upon by the Authority is completely incorrect.
- a. The Authority had been appraised of this fact through the Preliminary Response as well as the contents of Writ Petition no. 2002/2010. However, the Authority is hereby once again informed that the Session Initiation Protocol (SIP) based Telecom Switch located in the United Kingdom is owned by **Brain Computers Pte Ltd**, hereinafter '**Brain Singapore**' which is a limited liability company duly incorporated in Singapore since 08-12-1995. A copy of the certificate of incorporation of Brain Singapore is being attached herewith as **Annex-'G'**.
- b. It is correct that some of the shareholders and/or directors of Brain Telecommunication Limited are the shareholders and/or directors of Brain Computers Pte Ltd (Brain Singapore) as well; however, **it is a separate legal entity as per basic principles of Company Law** which are firmly entrenched in domestic laws across the globe.
- c. In order to substantiate this assertion, copy of **Certificate of Production of Statement by Computer** along with **Business Profile** of Brain Computers Pte Ltd (Brain Singapore) issued by the **Singapore Accounting and Corporate Regulatory Authority (ACRA)**, which is the equivalent of the SECP in Pakistan, is being attached herewith as **Annex - 'H'**.
- d. That the Session Initiation Protocol (SIP) based Telecom Switch located in the United Kingdom being referred to by the Authority in the Show Cause Notice along with other facilities have been leased/procured by Brain Computers Pte Ltd (Brain Singapore) from a company called **Rackspace Hosting** hereinafter '**Rackspace**' having its registered office at 4 - the Sqaure, Stockley Park Uxbridge, UB11 1ET, United Kingdom, bearing registration number 3897010. Rackspace has issued a certificate confirming that it has been providing managed hosting services to Brain Singapore on Rackspace devices located in Rackspace's Lon3 data center since 01-08-2008 which services are continuing till date. A copy of a **Certificate from Rackspace Hosting** confirming that it is providing hosting services to Brain Computers Pte Ltd (Brain Singapore) is being attached herewith as **Annex - 'I'**.

- e. Further, Rackspace issues invoices to Brain Computers Pte Ltd (Brain Singapore) for the services provided on a monthly basis. Keeping in view the nature of the business and distances involved, the invoices issued are in soft form. However, copies of the invoices issued by Rackspace to Brain Computers Pte Ltd (Brain Singapore) from a period of August 2009 to May 2010 are being attached herewith as **Annex - 'J'**.
- f. It is further clarified that the telecom services being provided by Brain Computers Pte Ltd (Brain Singapore) to its customers worldwide are on the same model as those provided by Vonage etc. **The numbers allotted to its customers are UK and US based land line numbers which have been procured/leased by Brain Computers Pte Ltd (Brain Singapore) from a company called Super Technologies, INC** with its principal place of business at 6005 Keating Road, Pensacola, FL 32504 United States of America. A copy of the **Standard DIDXCHANGE Terms of Service Agreement** between Super Technologies, INC and Brain Computers Pte Ltd (Brain Singapore) is being attached herewith as **Annex - 'K'**.
- g. That the Authority also makes reference to the **URL chat.brain.net.pk** in paragraph no. 8 of the Show Cause Notice. It is further interesting to observe that the said URL chat.brain.net.pk in real technical terms is an alias for the **IP address (83.138.185.146)**. **It is further interesting to observe that the above referred IP is also owned by Brain Computers Pte Ltd (Brain Singapore)**. In order to substantiate the assertions made a copy of **Traceroute Output for chat.brain.net.pk** along with the details of ownership pertaining to the **IP address (83.138.185.146)** is being attached herewith as **Annex - 'L'**.
- h. That foreign companies like Vonage and Skype etc. are providing services even within Pakistan but the Authority has not taken any action against them whatsoever. On the contrary, the services in question being provided/offered by Brain Computers Pte Ltd (Brain Singapore), which are of a similar kind are not even being provided in Pakistan but the Authority still has reservations/problems with the service. There is no explanation for this double standard being applied by the Authority which leads to clear discrimination against the Licensee.
9. That the allegations contained in paragraph no. 9 of the Show Cause Notice that inward/outward calls of the Licensee's customers residing outside the licensed region, due to the provisions provided by the aforesaid VoIP Platform, are being terminated/switched by the Licensee itself on its own local trunk groups as local/domestic calls, is clearly baseless, ill found and contrary to facts inter alia on following grounds:
- a. As explained in the preceding paragraph, the Session Initiation Protocol (SIP) based Telecom Switch (VoIP Platform) located in the United Kingdom has been procured/leased by Brain Computers Pte Ltd (Brain Singapore). In this factual background, any and all allegations pertaining to and/or connected with use of the Session Initiation Protocol (SIP) based Telecom Switch (VoIP Platform) located in the United Kingdom is baseless and ill found as against the Licensee.
- b. Further, as explained in the preceding paragraph, the concerned IP address (83.138.185.146) also belongs to Brain Computers Pte Ltd (Brain Singapore) and the Authority has the ability and technology to ensure that nobody from within Pakistan is able to access the same. **In case the Authority considers appropriate, it may block access to the said IP address (83.138.185.146) from within Pakistan, the Licensee has already given a statement to this affect before His Lordship Mr. Justice Asad Mumin at the Lahore High Court Rawalpindi Bench in WP 2002/2010 which has specifically been mentioned in the order dated 08-07-2010 (Annex - 'F')**.
- c. The business being referred to in the Show Cause Notice, including the Session Initiation Protocol (SIP) based Telecom Switch (VoIP Platform) located in the United Kingdom, the IP address (83.138.185.146), the service being provided, the numbers being allocated to the users/customers and the users/customers are that of Brain Computers Pte Ltd (Brain Singapore) which is a separate legal entity from the Licensee.

10. *That the allegations contained in paragraph no. 10 of the Show Cause Notice that the Licensee has provided IP Telephony services without complying with the Authority's directions/clarifications which amount to serious violation and contravention of the prevailing regulatory laws, directions of the Authority and the terms and conditions of the license are vehemently denied being factually incorrect, baseless, ill found and of no legal effect whatsoever in the light of detailed submissions made in paragraphs no. 7 - 9 above.*
11. *That the contents of paragraph no. 11 are incorrect hence vehemently denied. The Licensee has not violated any regulatory law and/or terms of its license, there is nothing on the facts that attracts the application of section 23 and the Notice issued to the Licensee is ill found and contrary to facts and record. The Authority is merely trying to twist the arm of the Licensee in an effort to coerce and blackmail it to ensure that business of Brain Computers Pte Ltd (Brain Singapore), a separate legal entity from the Licensee, incorporated in Singapore, providing services to its customers/users internationally, through equipment located in the United Kingdom, using UK and US based land line numbers, could be shut down. Without prejudice to the above, the Authority has issued the Show Cause Notice wherein the Licensee has been provided a time period of thirty 30 days to explain its position in writing whereas in the same paragraph, the Licensee has been asked to immediately stop/cease the IP Telephony Services allegedly being provided by it beyond its licensed region to its customers which clearly amounts to condemning the Licensee unheard.*
12. *That the contents of paragraph no. 12 need no reply.*
13. *That the contents of paragraph no. 13 need no reply.*

It is therefore most respectfully prayed that the instant Show Cause Notice may very kindly be set aside/withdrawn being unfounded and untenable under law.

It is further prayed that an appropriate speaking order as directed by the Honourable High Court vide order dated 08-07-2010 duly recording all contentions of the Licensee and addressing the same may kindly be passed.

In case further proceedings are required the Respondent Company prays for personal hearing which may very kindly be scheduled for a date after the month of August being summer vacations for the lawyers and courts in Pakistan.

Any other relief considered appropriate in the circumstances may also very kindly be granted to the Licensee.

1.7. Since the reply was not satisfactory, therefore, before passing an enforcement order a Hearing Notice dated 9th September, 2010 was issued and served on the licensee whereby informed the licensee to attend the hearing dated 17th September, 2010.

1.8. Ch. Muhammad Attiq, Advocate, Barrister Ch. Muhammad Umar, Advocate, and Ms. Anum Abbasi, Advocate, representatives of the licensee, appeared before the Authority on the said date. At the outset of the hearing the licensee filed an application for correction of record/for placing letter dated 30-06-2010 in the reply to the notice, which was accepted. During the hearing the licensee reiterated the same facts as mentioned in Para 1.6, above, and denied the allegations on the ground that it has no ownership of the SIP based telecom Switch and the URL/IP address and is not involved in illegal and unauthorised activities and the Authority may block the said link. In addition, the licensee also demanded the data/evidences establishing the aforesaid facts and constituting the basis for the show cause notice, therefore, the Authority instructed to the Vigilance Cell to provide the requested data/evidences to the licensee with direction to the licensee to submit its reply within ten days and the matter will be further analyzed in the light of comments/reply of the licensee and determination will be issued accordingly, however, if required, another hearing may be convened.

1.9. Pursuant the instructions of the Authority the requested information/evidences were provided to the licensee vide letter dated 21st September, 2010 which were responded to by the licensee on 1st October, 2010 in the following terms:

“Subject: Response to the evidence / material provided to Brain Telecommunication Limited by the Pakistan Telecommunication Authority vide Letter bearing Reference no. PTA / Enforcement / Vigilance Cell / CDR Analysis/2-14 (Vig) / 2010 / 40201/ 1096 dated 21-09-2010

With reference to the Show Cause Notice bearing Reference no. PT A/Enforcement/Vigilance Cell/CDR Analysis/2-14 (Vig)/2010/40/2010/304 dated 05-05-2010 hereinafter, 'the Show Cause Notice' issued by the Pakistan Telecommunication Authority, hereinafter 'the Authority' to Brain Telecommunication Limited, hereinafter 'the Licensee' under section 23 of the Pakistan Telecommunication (Re-Organization) Act 1996 hereinafter 'the Act'.

The Licensee hereby acknowledges receipt of the evidence/material provided to it by the Authority vide Letter bearing Reference no. PTA / Enforcement / Vigilance Cell / CDR Analysis/2-14 (Vig) /2010 / 40201/ 1096 dated 21-09-2010 comprising of a total number of eight (8) pages hereinafter 'the Evidence'. A copy of the Evidence is being attached herewith as Annex - 'A'.

Preliminary Submissions:

1. ***That the Licensee very humbly and without prejudice submits that it had requested the Authority to seek information/verification from the Licensee in this context vide its Preliminary Response dated 07-05-2010. The Licensee had subsequently raised this contention that the Evidence being used against it has not been provided to it in Ground xvi of Writ Petition no. 2002/2010. The Licensee further put on record its concerns regarding the failure of the Authority to make any contact with the Licensee in this context vide Letter dated 03-06-2010.***
2. ***That the only communication the Licensee received from the Authority was Letter bearing Reference no. PTA/Enforcement/Vigilance Cell/CDR Analysis/2-14 (Vig)/2010/40/2010/1027 dated 30-06-2010 hereinafter 'the Authority's Response' therein the Authority had acknowledged receipt of the Preliminary Response as well as Letter dated 03-U&-2010. however, none of the points raised by the Licensee had been addressed.***
3. ***That the Licensee had finally also raised this issue in its Reply to the Show Cause Notice but to no avail, no information and/or material was provided to it.***
4. ***That it was finally on the occasion of the hearing in this matter which took place on 17-09-2010 that Counsel appearing on behalf of the Licensee requested the Honourable Chairman of the Authority that the Licensee be provided the Evidence which the technical department/team is purportedly relying upon against Licensee. The Honourable Chairman was kind enough to direct those concerned to provide the Licensee with the Evidence.***
5. ***That had the Evidence been provided to the Licensee on any of its earlier requests, it would have saved the precious time and resources of the Authority as well as enabled it to reach a fair and just decision quite some time ago.***

Reply on Merit:

That the contents of Page no. 3 to 6 of the Evidence attempt to establish that the Licensee had instructed its customers to use chat.brain.net.pk for accessing its SIP services and that the Licensee owns the equipment linked to chat.brain.net.pk which is the conclusion derived at the bottom of Page 6.

1. ***Page 3 contains a snapshot of <http://braintel.net.pk/eycb-cnfn.htm>.***
 - a. ***It is specifically denied that the contents of the above referred static web page indicate in any way or manner that Brain Tel is instructing its customers to use chat.brain.net.pk for accessing its SIP services on the internet.***
 - b. ***The contents of the above referred static web page were merely an example to indicate and communicate how the requisite forms are to be filled.***
2. ***Page 4 contains information regarding ownership of chat.brain.net.pk but the***

only connection that it seeks to establish is that it is a sub domain of primary domain brain.net.pk hence it can only be setup by the registrant of brain.net.pk.

- a. *All the subsequent details provided on the page are regarding establishing the ownership of brain.net.pk and not chat.brain.net.pk. It is respectfully submitted that sub domains and e-mail addresses can be leased out to other entities and users. The mention of this sub domain on the web site of the Licensee does not in any way or manner establish and/or constitute involvement of the Licensee in the activities and/or application of such internet resource by the lessee which in this case is Brain Singapore Pte Ltd.*
 - b. *Elaborating further on this argument, as an example reference is made to the whole .pk top level domain which is leased from a US based Company by all .pk domain users. Does this mean that the US based Company that leases out .pk domains becomes the owner of all .pk domains or responsible for them? Indeed the person and/or entity who has leased a particular domain and/or sub domain is in fact the one responsible for the same.*
 - c. *It is further submitted that a variety of alias can be defined for an IP address. In case of any problem and/or misuse it is in fact an IP address and its ownership that is material and not the alias being used.*
 - d. *The Licensee has already informed the Authority on numerous occasions that the chat.brain.net.pk is in real technical terms merely an alias for the IP address (83.138.185.146). The above referred IP is owned by Brain Computers Pte Ltd (Brain Singapore). The Licensee had put this fact on record in paragraph no. 11 and Ground no. iv of Writ Petition 2002/2010. The Licensee had also attached a copy of Traceroute Output for chat.brain.net.pk along with details of ownership pertaining to the IP address (83.138.185.146) as Annex - 'G' with the above referred Writ Petition.*
 - e. *The Licensee also repeated the same in paragraph 8 (g) of its Reply to the Show Cause Notice and once again attached a copy of Traceroute Output for chat.brain.net.pk along with details of ownership pertaining to the IP address (83.138.185.146) as Annex- 'L' with the above referred Reply.*
 - f. *The Authority has at no stage during the proceedings produced any material / document to refute the contention of the Licensee that the IP address (83.138.185.146) is in fact the ownership of Brain Singapore Pte Ltd. In the present circumstances the argument of the Licensee that chat.brain.net.pk in real technical terms an alias for the IP address (83.138.185.146) and that this IP address is the ownership of Brain Singapore Pte Ltd. stands and remains un-rebutted.*
 - g. *Thai further, the Authority concedes that chat.brain.net.pk in fact represents IP address fS.U3S.iS5.1461 al Pauc 7 bullet point number 4 and Point I of the Evidence.*
 - h. *That the Licensee has repeatedly pointed out that the Authority has the ability and technology to ensure that nobody from within Pakistan is able to access the same. In case the Authority considers appropriate, it may block access to the said IP address fS3.138.185.146) From within Pakistan, the Licensee has already given a statement to this effect before His Lordship Mr. Justice Asad Munir at the Lahore High Court Rawalpindi Ik-rich In WP 2002/2010 which has specifically been mentioned in the order dated 08-07-2010.*
3. *Page 5 contains a snapshot of hUp://brain.net.pk/aboutus.php which has been relied upon to establish that this in fact is the web site of the Licensee which is a fact and a matter of record. However, in view of the submissions made in the paragraphs above, this information is being used out of context.*
 4. *Page 6 contains a snapshot of <http://chat.brain.net.pk> on the basis of which the Authority has jumped to the conclusion that the Licensee is admitting that it owns the equipment linked to chat.brain.net.pk*
 - a. *The entire argument regarding chat.brain.net.pk in real technical terms being an alias for the IP address (83.138.185.146) and that this IP address being the ownership of Brain Singapore Pte Ltd. is reiterated.*
 - b. *It is further submitted that as for the equipment in question, i.e. Session Initiation Protocol (SIP) based Telecom Switch is located in United Kingdom, the Licensee had informed the Authority in paragraph no. 1 and 2 of page 2 of*

- the Preliminary Response dated 07-05-2010 that the same is owned by Brain Computers Pte Ltd.*
- c. *The Licensee further elaborated upon this argument by submitting in paragraphs no. 7 and 8 of Writ Petition 2002/2010 that the equipment in question has been leased by Brain Computers Pte Ltd from a company called Rackspace Hosting and attached copies of Invoices issued by Rackspace to Brain Computers Pte Ltd from August 2009 to May 2010 as Annex - 'E' with the above referred Writ Petition.*
 - d. *That after repeating its contentions and attaching copies of the Invoices in its Reply to the Show Cause Notice, as Annex - 'J' thereto, the Licensee also attached a Certificate which had been obtained from Rackspace confirming that it is providing hosting services to Brain computers Pte Ltd as Annex - 'I' in its Reply to the Show Cause Notice. The Authority has not provided any evidence/material to rebut or refute that contention which is therefore established beyond doubt by any stretch of imagination.*
 - e. *The Licensee has already admitted that the URL chat.brain.net.pk was indeed mentioned on its website but it has also explained that the mention was merely to be used as an example and nothing else. As for the content of the page, in all fairness the Licensee hereby informs the Authority that the same was left on that web page as a technical/clerical error when some assets were transferred by some of the directors of the Licensee, i.e. Brain Telecommunication Limited to Brain Computers Pte Ltd during the investment phase. However, this does not constitute violation of any law / rule / regulation and/or license condition.*
 - f. *That further, the Authority concedes that chaLbrain.net.pk in (act represents IP address (S3.133.185.14b> at Page 7 bullet point number 4 und Point 1 of the Evidence.*
5. *Pages 7 and 8 contain the evidence from IP Data purportedly showing calls made/received by customers of the Licensee Lahore.*
 - a. *The incoming call example as contained on Page 7 the first row of the table shows that the a Warid number 3212433286 calls the Licensee's number 4232102996 and the Authority rightly goes on to explain in the second bullet point that PTCL hands over this call to the Licensee since they have an interconnect Agreement. The understanding of the Licensee is that the Authority has no problem since there is no breach and/or violation of any law / rule / regulation and license condition.*
 - b. *The problem starts with bullet point number three since the same is based completely on assumptions and is incorrect.*
 - c. *It is an incorrect assumption that 10012996 is the user name for the Licensee's number 2102996 when it is being used on the internet. 10012996 is in fact user name for Brain Computers Pte Ltd. telephone number 441785802996 which is a valid international number and has been leased by Brain Computers Pte Ltd from Super Technologies Inc. A certificate to this effect provided by Super Technologies Inc. is being attached herewith as Annex - 'B'. The Authority has not provided any information/material to demonstrate how and why it has gone on to assume that 10012996 is the user name for the Licensee's number 2102996. iii. In the second row of the table under the number called, instead of the actual number which had been called, i.e. 441785802996, the user name for that Brain Computers Pte Ltd number i.e. 10012996 has been mentioned. No reason for opting to use a user name instead of the actual telephone number is available on record. iv, IP address 125.209.66.226 does not belong to the Licensee. The same is owned by Multinet.*
 - c. *Further, in bullet point number four the Authority concedes that IP for chat.brain.net.pk is in fact 83.138.185.146 and it has been stressed a number of times that the IP address 83.138.185.146 is not the ownership of the Licensee but belongs to Brain Computers Pte Ltd.*
 - d. *In bullet point number five the Authority states that a customer of the Licensee receives the call outside Lahore as a Local call without the involvement of an LD1 which is incorrect and vehemently denied.*
 - i. *The Licensee requested its interconnect partner Multinet to provide it with its CDR for this specific call. The e-mail containing the relevant CDR along with the request sent to Multinet on behalf of the Licensee is being attached herewith as Annex - 'C'*

- ii. *The CDR provided by Multinet (Annex - 'C') inter alia substantiates the contention of the Licensee that the user name being referred to i.e. 10012996 in fact represents the telephone number 441785802996 as this is the number shown as being the called number in the CDR.*
- iii. *Further, when Multinet the interconnect partner of the Licensee has admitted and provided proof of the fact that the Licensee had in fact handed over to it, the allegation that the call was made without any involvement of LDI stands completely refuted and rebutted.*
- iv. *Further, the contention of the Licensee which is further substantiated by the CDR provided by Multinet (Annex - 'C') is that the call in question is an outgoing call made by the Licensee's number 4232102996 to Brain Computers Pte Ltd's UK number 441785802996.*
- v. *The Licensee is unable to understand that if the Authority was able to determine and state in the second bullet point that there exists an Interconnect Agreement between the Licensee and PTCL and the call in question made by a Warid number was handed over to the Licensee by PTCL, how could the information that the call made by the Licensee's number 4232102996 to Brain Computers Pte Ltd's UK number 441785802996 which was handed over to another interconnect partner Multinet have been omitted?*
- vi. *It is further respectfully submitted that the CDR provided by Multinet (Annex - 'C') also establishes that the IP address being used by the Licensee's number 4232102996 was in fact 10.88.88.5 which was within the geographical limits of Lahore; hence the Licensee has not committed any violation at all.*
- vii. *The Licensee also submits that routing of a call from an international IP to the Pakistan IP is the act of the user/customer of Brain Singapore Pte Ltd using their number 441785802996 for which the Licensee is not responsible in any way whatsoever. Brain Singapore Pte Ltd is running a legitimate international VOIP services business on the basis of valid and legitimate UK and US numbers.*
- viii. *Without prejudice to the above, it is submitted that it does not make any commercial or business sense to route calls from Pakistan to overseas and then from overseas back to a destination in Pakistan while this can be done on unlimited basis using PTCL from PSTN to PSTN for only Rs. 600 per month while for internet communication it is free by using programs like Skype.*
- ix. *In the given log, the leg to interconnect the call from the Licensee's switch in Pakistan to the overseas IP is altogether missing. The responsibility of the Licensee is to demonstrate how the call went from its switch in Pakistan to the IP overseas. The CDR provided by Multinet (Annex - 'C') establishes that it admits that the Licensee had in fact handed over the call to Multinet and Multinet carried the call to the overseas IP,*
6. *The second log provided at the lower end of Page 7, the explanation for which continues onto Page 8 provides an Outgoing Call example.*
 - i. *It is submitted that the Caller number shown in the log is again the user name which reflects Brain Computers Pte Ltd's UK number 441785802996. When the call in question never originated from any number of the Licensee how could the Licensee be responsible for any such call? Point number 1 below the call log is therefore, completely incorrect and based on assumptions hence vehemently and specifically denied. That the contents of paragraph no. 4 relate to scope of services authorized under the LL License and therefore need no reply.*
 - ii. *Further, the Licensee has obtained information of the SIP session which is mentioned as (Sno 1) in the log provided which further clarifies and establishes beyond doubt that since the number being called was invalid, therefore, no destination channel was assigned and SIP session was dropped. The reason for stating that the number in question was invalid since a UK number was being used to call a Cell Phone (Mobilink) 03006335668 in Pakistan without dialing the international dialing code, i.e. 00 and the country code for Pakistan, i.e. 92. A certificate obtained from Brain Singapore Pte Ltd. showing the information of the relevant SIP session is being attached herewith as Annex - 'D'.*
 - iii. *Sno 2 in the log again mentions that a call is made by the Licensee's number 4232102996 to the user name which as explained previously is in fact Brain Computers Pte Ltd's UK number 441785802996. The Licensee hands over this call to its interconnect partner Multinet who subsequently carries and delivers the same. This aspect is again missing in the log provided as well as the explanation contained in Point 2 (b) below for reasons beyond the comprehension of the Licensee but can be verified from the CDR provided by Multinet (Annex-'C').*
 - iv. *Interestingly, Sno 3 in the log clearly indicates that a call was made from a number of the Licensee to a Mobilink 03006335668 which was handed over by the Licensee to PTCL and was carried by PTCL to Mobilink; the corresponding Point 2 (a) also clearly mentions the same.*

The Licensee is unable to understand as to why selective information has been mentioned in the log and some of the information omitted.

- v. ***It is submitted that in view of the submissions and arguments contained hereinabove, the conclusion drawn in Point 3 that the Licensee is providing provision to its customers to make calls from outside Lahore and these calls are then terminated by the Licensee as local domestic calls is clearly ill found, contrary to facts and record and baseless.***

After analyzing and thoroughly assessing the Evidence provided by the Authority and submitting its response on merit, the Licensee very humbly and without any prejudice wishes to put on record that it feels that;

- a. ***Either, the concerned people in the technical wing are confused about the issue and do not have an appropriate understanding and/or full access to information and as such have created a situation of a grave nature which has resulted in creating a very embarrassing situation between the Authority and the Licensee due to their lack of information, defective and/or deficient information / understanding.***
- b. ***Or, in the alternative, the Licensee with a very heavy heart, submits that it could be nothing, but, a malicious and malafide intent on part of the concerned persons who have carried out the task at hand to create a rift between the Licensee and the Authority for reasons best known to them.***

In view of the above, it is therefore most respectfully prayed that the instant Show Cause Notice may very kindly be set aside/withdrawn being unfounded and untenable under law.

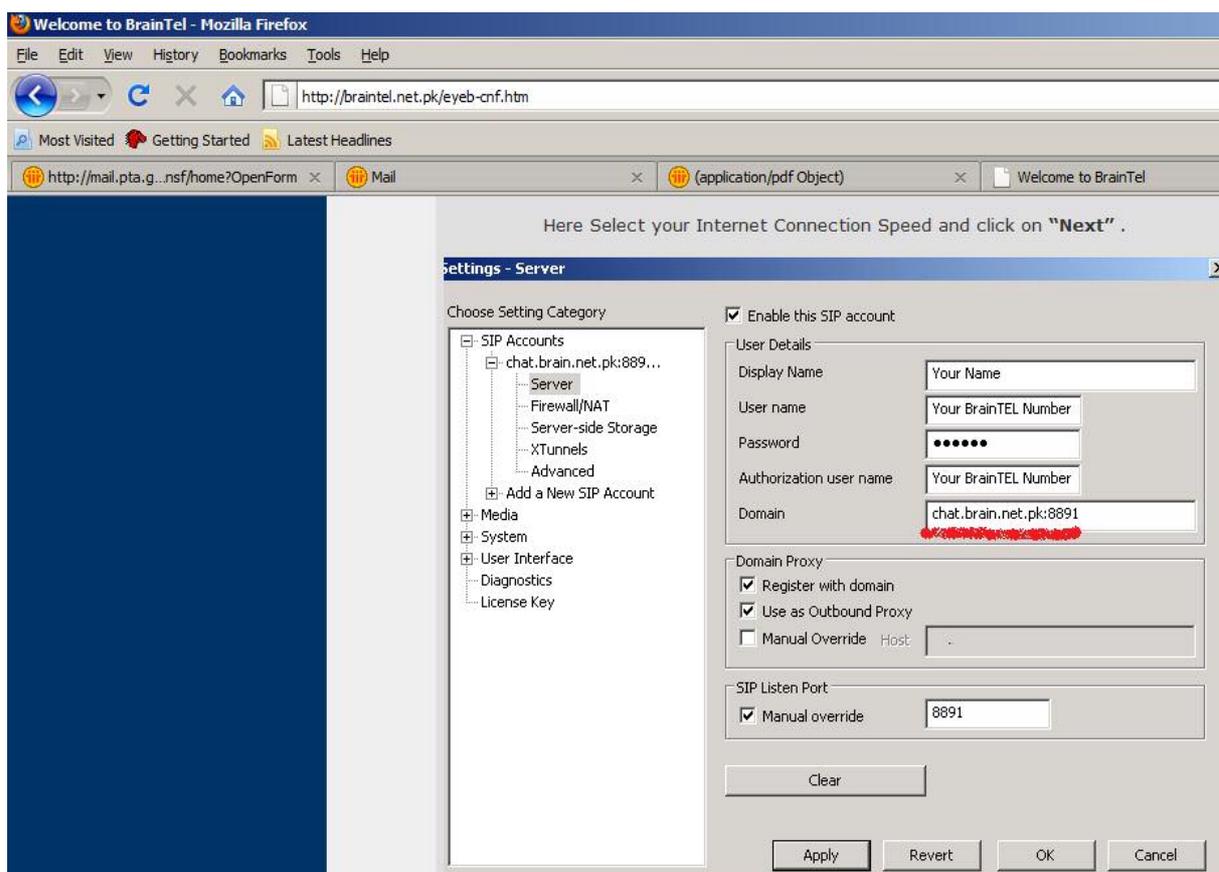
It is further prayed that an appropriate speaking order as directed by the Honourable High Court vide order dated 08- 07-2010 duly recording all contentions of the Licensee and addressing the same may kindly be passed.

In case further proceedings are required the Licensee prays for personal hearing which may very kindly be scheduled for a convenient date.

Any other relief considered appropriate in the circumstances may also very kindly be granted to the Licensee.”

1.9. The aforesaid reply was carefully analysed and examined by the Authority and found it unsatisfactory on the following grounds:

- (a). the licensee was provided snapshot of the following webpage:



Snap shot of <http://braintel.net.pk/eyeb-cnf.htm>

(i). Through the said webpage present on licensee's website, it is instructing its Customers on how to use BrainTel's services on the internet through VoIP software eyebeam. The webpage shows that in the 'Settings' form of eyebeam software, 'Chat.Brain.Net.Pk' is to be filled in the domain field. Thus the software will be communicating with Chat.Brain.Net.PK for VoIP purposes. The licensee vide **(Para 1-Page 3) of its response** denied that it was instructing its customers to use chat.Brain.net.pk for accessing its SIP services on the internet and alleged that it was merely an example to indicate and communicate how the requisite forms are to be filled.

(ii). The licensee has neither denied the ownership of the webpage nor its contents rather it admitted that the webpage serves as an example for its customers as to how to fill the requisite forms for obtaining VoIP services. When it is not providing the said services or facility outside its licensed territory then there is no need to place such instructions or forms on its website. The presence of such forms and procedure of filling the forms for obtaining such services on its website clearly establish the fact that the licensee is involved in providing the said VoIP services and said instructions are for its customers. It is important to note that the 'forms' in question relates to a popular VoIP software eyebeam. The example contained in the webpage instructs customers that in order to use Brain VoIP services on the internet, **chat.Brain.net.pk** is to be contacted for making and receiving calls, hence, through its reply it failed to rebut the evidence provided in this regard, which beyond any shadow of doubt, lead to the conclusion that it is involved in providing the said VoIP services.

(iii). The licensee is telling its customers to use 'Chat.Brain.Net.Pk' instead of '83.138.185.146' (its alias IP address) with the reason that the IP address mapped against the URL *Chat.Brain.Net.Pk* may be changed due to technical or policy reasons.

(b). the licensee was provided following proofs of ownership of chat.brain.net.pk:

Ownership of Chat.Brain.Net.Pk

*Chat.Brain.Net.Pk is a sub domain of primary domain **Brain.net.pk**; hence it can only be setup by the registrant of Brain.net.pk*

Registration details for brain.net.pk

Domain Name:

brain.net.pk

Registrant Name:

Brain Ltd.

Contact Person:

Basit Farooq Alvi

Address:

Lahore-57540

Pakistan

Create Date:

1996-02-18

Technical Contact

Brain Computer Services

Basit Alvi

Lahore,

Nameservers

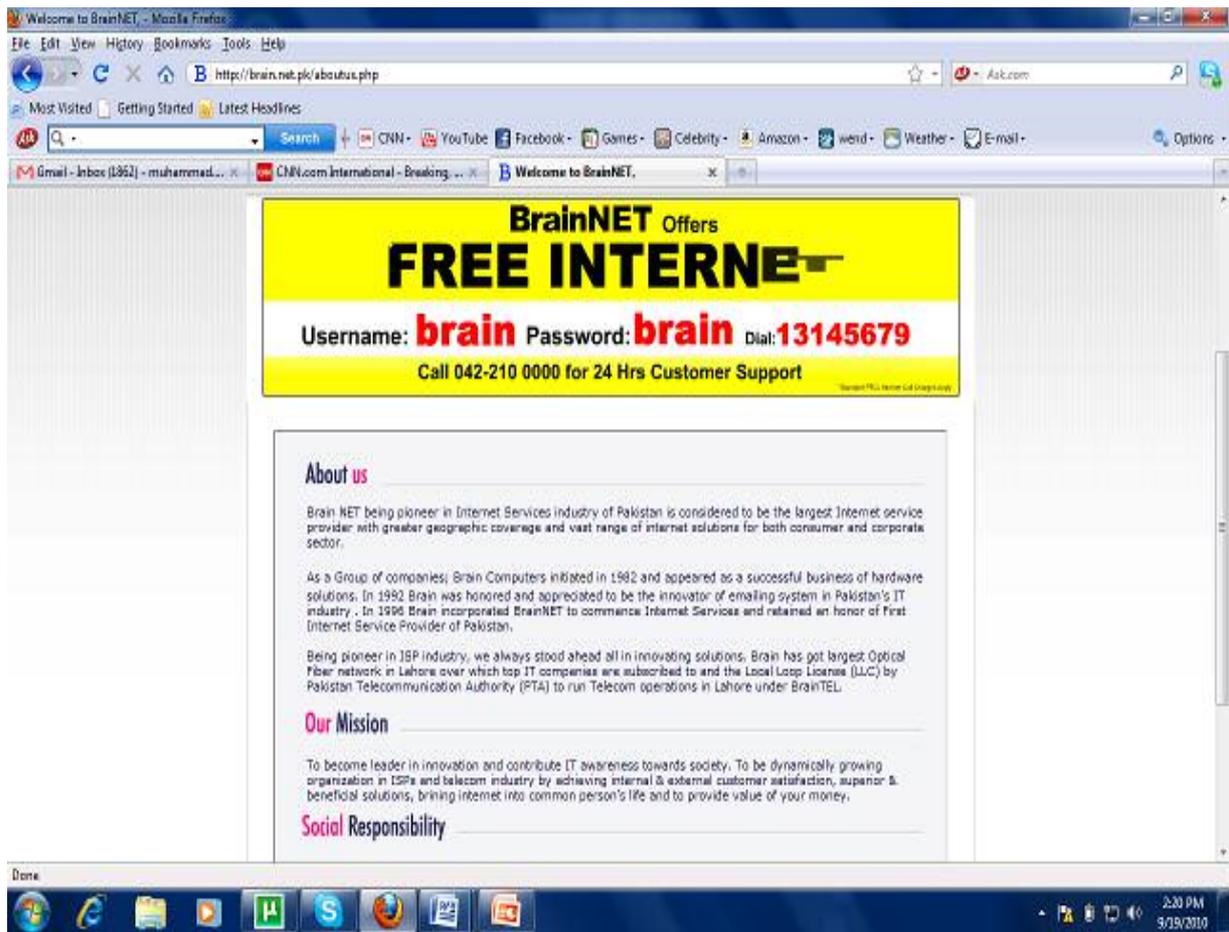
brain.brain.net.pk

spine.brain.net.pk

webs01.brains.net

webs03.brains.net

Snapshot of webpage located at internet address: <http://brain.net.pk/aboutus.php>



(i). Foregoing details clearly establish that the primary domain, i.e., brain.net.pk is duly registered by the licensee. The main argument of the licensee in its reply to the show cause notice and in the court was that ‘Chat.Brain.Net.Pk’ is an alias for IP 83.138.185.146 which is owned by Brain Computers Pte Ltd (Brain Singapore), therefore, the licensee cannot be held responsible for SIP server located at chat.brain.net.pk since they don’t own the IP 83.138.185.146. The aforesaid evidence establishes the fact that chat.brain.net.pk is a sub- domain of primary domain brain.net.pk which is owned and operated by the licensee, thus, chat.Brain.Net.Pk also becomes the property of the licensee. Infact, the mapping of 83.138.185.146 against Chat.Brain.Net.Pk can only be made by the licensee itself since it controls the primary domain and the associated NameServers. Therefore, the said service cannot be setup without the involvement of the licensee.

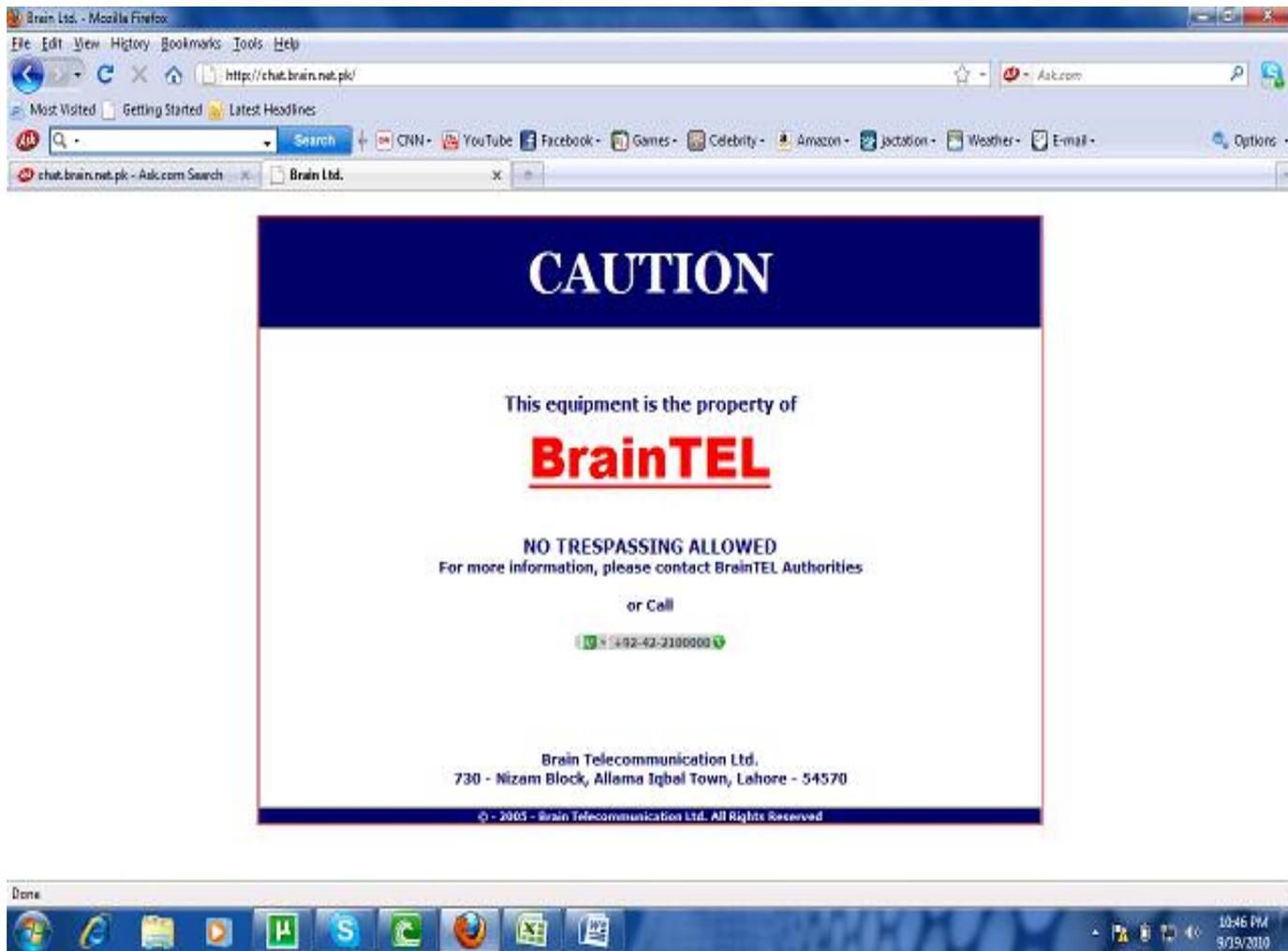
(ii). Secondly, the licensee **vide Para 2a:** acknowledges the validity of the evidence by confessing for the first time that it has control over Chat.Brain.Net.Pk by stating that it has leased it to Brain Singapore pte Ltd. Whereas the same fact was earlier hid by it and never mentioned in its writ petition, reply to the show cause notice or during the hearing.

(iii). Vide **Para 2b-2g, 4:** the licensee again reiterates the fact that IP 83.138.185.146 is mapped against Chat.Brain.Net.Pk, and the said IP is owned by Brain Computers Pte Ltd, therefore Brain Computers is responsible for its Operations and **vide Para 2h:** it asks the Authority that if any wrong doing is being done on the said IP, it may be blocked from **within Pakistan**. From the aforesaid it becomes an admitted fact that it has control over Chat.Brain.Net.Pk., but it has denied its responsibility for the operations of the said URL by claiming that it has leased it to Brain Computers Pte Ltd and to prove this fact it relied upon the ownership of IP mapped against the said URL. Since the primary domain is the ownership of the licensee, hence, the sub-domain which is leased is also under the

control of the licensee, hence, it cannot be operated or changed without involvement of the licensee, therefore, it cannot take the plea that it is not responsible for any operation. Since it has admitted control over the said URL Chat.Brain.Net.Pk, therefore, can rightly be held responsible for operations being carried out on the said URL. Moreover, the issue in the said proceedings is not for proving ownership of the URL rather the unauthorized activities on the said URL.

(iv). The licensee's demand for blocking the said IP address will not solve the problem of provisions of services. The reason being that the Authority can block the said IP in Pakistan only and even after blocking it would remain operational for its customers using its services outside the country being provided on the internet cloud. Whereas these services can only be provided in the licensed region of Lahore in accordance and fulfilling the requirements mentioned in the "the Clarification on use of IP Telephony Services" which provides measures for ensuring that IP telephony services cannot be accessed/provided beyond the licensed region.

(c). Snapshot of Webpage hosted at <http://Chat.brain.net.pk>:



(i). The contents of above snapshot available on webpage of the licensee's website clearly establishes the ownership of the equipment linked to chat.brain.net.pk as the property of the licensee, when it has not involvement with the unauthorised operation then why such information and details relating to the equipment is available on the website. This is unrefutable proof of its its involvement in the operations through the said URL.

(ii). Vide Para 4 (e) of its response it clarified that the contents of Chat.Brain.Net.Pk provided in the evidence were left there due to a Technical/Clerical error when some assets were transferred from Brain Telecommunication Limited to Brain Computer Pte Ltd. This clarification is not satisfactory rather it establishes the licensee's involvement with unauthorized operations of Chat.Brain.Net.Pk. due to the following (a) When Brain Tel has no control over the SIP server machine having IP 83.138.185.146 then how can by Clerical/Technical mistake the machine is displaying the WebPage provided in the evidence in question, (b) On the Internet each IP address is assigned to a specific Network hardware machine e.g. a router or a computer server etc. Using the IP, one can access the actual Network hardware to which the IP has been assigned. For example when we type Chat.Brain.Net.Pk in the browser, it accesses the Server assigned the IP 83.138.185.146 and displays the webpage stored on that Server, (c) It is BrainTel's own stance that the SIP server in question has been leased by Brain Computers pte Ltd from Rack Space and not shipped by BrainTel from Lahore to UK, then how could licensee's mistake cause the above webpage to be displayed. The aforesaid unequivocally and unambiguously lead to the conclusion of its involvement to the unauthorized operations run through the said URL, proving that Brain Computers Pte Ltd is merely a distraction, and BrainTel/licensee itself is using it to offer services beyond its licensed region.

(iv). Evidence from IP Data showing calls made/received by BrainTel customers outside Lahore.

(i). Incoming Call Example:

Desc	Caller	Called	Date/Time	Sec	a leg	b leg
PTCL-Brain IC	3212433286	4232102996	4/5/2010 19:22	18	JMWDR	BRAIN
IP Data	4232102996	10012996*	4/5/2010 19:21:35	19	83.138.185.146	125.209.66.226

- The above sample call shows that Warid Number 03212433286 calls BrainTel number 4232102996.
- PTCL receives this call from Warid and hands over this call to BrainTel in result of an interconnect agreement. PTCL treats the said call as domestic call to a Brain Tel subscriber in Lahore.
- Now Brain Tel's customer having the said number 2102996 is using BrainTel services on the internet from outside Lahore having username 10012996 through IP 125.209.66.226. The customers IP 125.209.66.226 is a public IP whereas as per VoIP Clarification only private IPs can be used.
- BrainTel in turn transfers the call to its customer's IP 125.209.66.226 through the IP 83.138.185.146 which is the IP for chat.Brain.Net.Pk
- BrainTel customer receives the call outside Lahore as a local call without the involvement of an LDI

(ii). BrainTel's Response:

BrainTel denies that '10012996' is the username for BrainTel number '2102996'. However, it states that '10012996' is the username for Brain Computers UK number '441785802996'.

- (iii). This aforesaid reply is based on incorrect information, hence, is not accepted on the following:
- (a) Since the Authority conducts regular exercises to ensure that PTA Licensees are offering services to their customer in line with the quality of service standards and by not violating any license conditions. During such exercise the Authority purchased BrainTel number. Purchase Confirmation as well as bills received from BrainTel clearly shows that 10012996 is the username for BrainTel number 2102996.

- (b) Having established that 10012996 is indeed the username for 2102996, it is automatically established that 'IP Data' call is an extension of 'Brain-PTCL IC' call to BrainTel customer using its services outside Lahore.
- (iv). BrainTel provides evidence from Multinet which confirms that the call in the said evidence was actually made with the only difference being that the called number in Multinet CDR is '441785802996' instead of 10012996 which in BrainTel words is the username for '441785802996. Furthermore, BrainTel asserts that the CDR for the said call provided by Multinet contains the IP 10.88.99.5 which is within the geographical boundaries of Lahore.
- (v). the aforesaid argument is not accepted as well. BrainTel do not provide any arguments which contradicts the evidence that the 'IP Data' call was an extension of 'PTCL-Brain IC' call related to its customer using BrainTel services beyond Lahore
- Infect it validates the call with CDRs from Multinet with the only difference being the called number i.e.' 441785802996' instead of 10012996.
 - The reason that there exists called number disparity between the call in the evidence and the Multinet CDR is due to the fact that both have been recorded at different points.
 - The Multinet CDRs provided by BrainTel has been recorded on Multinet or BrainTel switches and not on the public internet.
 - This is proved from the presence of IP address 10.88.99.5 in the Multinet CDRs as the said IP is a private IP which cannot be used on the Internet.
 - The Authority on the other hand has recorded its evidence on the public internet as it has not installed any monitoring devices on the local network of BrainTel or Multinet.
 - Notice the relation between 441785802996, 10012996 and 2102996. All of them are post fixed with 2996. Thus it is a trivial task for BrainTel to map these numbers into each other.
 - Thus they mapped 2102996 to 441785802996 and handed it to Multinet
 - Reason of mapping to UK number 441785802996 being that BrainTel has a transit agreement with Multinet for carrying **BrainTel customers calls made to UK numbers**. Multinet was therefore provided UK number by BrainTel.
 - After receiving the call in UK, 441785802996 was than easily mapped back again to 10012996 and delivered to the customer as shown in the evidence.
 - It is very important to note that when Multinet carries the call to UK it doesn't terminate the call but infact it is providing BrainTel with transit services and hand over this call to BrainTel Soft Switch in UK. This information is clearly provided in BrainTel and Multinet agreement signed on 30th April 2009.
 - **This vital information again proves that BrainTel indeed have a voice soft switch in UK**
- (vi). Regarding its argument that it doesn't make commercial or business sense to route calls from Pakistan to overseas and then again back to Pakistan. As earlier identified, the number was being used by the Authority to ascertain the legitimacy of BrainTel services. Therefore, it was being used in Pakistan. Otherwise as identified by BrainTel itself, from a commercial and business sense their service is aimed at Ex-Pats using these numbers outside Pakistan
- (vii). Regarding its points that (i) since Multinet was involved, therefore, the Licensee involved an LDI for the said call. (ii) Routing of the call from an international IP (83.138.185.146) to Pakistan IP (125.209.66.226) as shown in evidence is the act of Brain Computer pte Ltd and not BrainTel. It is stated that 'IP Data' call is the extension of 'PTCL-Brain IC' call. Therefore, BrainTel itself is responsible for routing of this call on the internet to the end user via IP 83.138.185.146 to 125.209.66.226. Multinet was only involved for one leg i.e. taking the call outside Pakistan; afterwards they have resorted themselves in terminating the call from UK to Pakistan as shown in the evidence.

(ii). Outgoing call Example:

Sno	Src	Caller	Called	Date/Time	Sec	a leg	b leg
1	IP Data	10012996*	3006335668	4/1/2010 20:32:24	4	125.209.66.226	83.138.185.146
2		4232102996	10012996	4/1/2010 20:32:28	19	83.138.185.146	125.209.66.226
3	PTCL-Brain IC	4232102996	3006335668	4/1/2010 20:33:15	20	BRAIN	MLNA

- a. **(Sno 1)** User using Brain number 2102996 on internet outside Lahore through IP 125.209.66.226 and username 10012996, makes a call to Mobilink number 03006335668 via IP 83.138.185.146 (chat.brain.net.pk)
- b. On receiving the call request, BrainTel does the following:
 - a. **(Sno 3)** establishes this call with Mobilink through its interconnect with PTCL as a domestic call.
 - b. **(Sno 2)** Connects the call with the user on internet which is physically present outside Lahore.
- c. Hence, BrainTel is providing provision to its customers to make calls from outside Lahore. These calls are than terminated by Brain as local/domestic calls.
*10012996 is the username for Brain number 2102996 when it is used on the internet

(ii). Brain Response

Call shown in Sno 1 is made by Brain Computers pte Ltd customer having username 10012996 and BrainTel holds no responsibility for the said call. Although the call was not made by Brain Customer but still BrainTel has obtained information for the said call. Since, 10012996 is the username for UK number the call failed since Pak code was not dialed before Mobilink number.

The aforesaid clarification is not satisfactory, the aforesaid evidence clearly shows 10012996 is the username for Brain number 2102996. Thus the CDR in sno 1 clearly shows that BrainTel customer having IP 125.209.66.226 outside Lahore is using BrainTel services by communicating with IP 83.138.185.146 (chat.Brain.Net.Pk) which establishes the fact that Brain is offering services beyond Lahore.

IP data shows that the call was not a failure but as explained in the evidence it was purposefully suppressed and setup as explained in point 2 of the evidence provided by the Authority. This is also in line with the methodology communicated by BrainTel to its customers for making a call.

- (iii). As for call in sno 2, it was made from BrainTel Customer to UK number 441785802996 and BrainTel handed it to Multinet. Proof of this is provided in Annex C of BrainTel original reply. BrainTel also acknowledges the call in Sno3.

The aforesaid clarification is also not satisfactory. The involvement of Multinet with BrainTel has already been explained in detail in the previous evidence. The sequence of events will become as under:

- a. The customer dials Mobilink number 03006335668 by using BrainTel number on the internet having username 10012996 (call in Sno1).
- b. The call request goes to Chat.Brain.Net.Pk (83.138.185.146) and on the basis of call request BrainTel local loop setup in Lahore is used to setup the call with Mobilink by handing it to its interconnect partner PTCL (Call in Sno3 and acknowledged by BrainTel).
- c. After setting up the call with Mobilink, Multinet Interconnect was used to transfer it to BrainTel softswitch in UK.

- d. Finally through chat.Brain.Net.Pk (83.138.185.146), the said call is established with the Brain customer using its services on the internet using IP 125.209.66.226.
- e. This is completely in line with the methodology communicated by BrainTel to its customers for making a call.
- f. In the end the call was terminated by BrainTel as a domestic/local call whereas its subscriber was present outside Lahore.

The aforesaid proves that BrainTel is provisioning its customers to make calls from outside its geographical region contrary to license conditions and clarification on VoIP telephony services.

Conclusion:

- BrainTel has not been able to rebut the evidence provided by the Authority, hence, failed to satisfy the Authority on the allegation leveled against it in the show cause notice.
- It is important to note that BrainTel was previously Show Caused for similar violations back in August 2008. At that time BrainTel admitted of offering services beyond the licensed region but attributed them to the confusion arising from the Guidelines for VoIP set down by the Authority in April 2008. Therefore, Authority took lenient stance in the Previous ShowCause, however, the current ShowCause proves that BrainTel is still offering these services.
- Their methodology of offering these services now revolves around leasing a SIP server located in UK outside Pakistan.
- To cover their tracks, they have used their sister concern Brain Computers Pte Ltd in Singapore and has attributed the said company of offering these services.
- Yet the evidence presented above proves that calls made by Customers through Chat.Brain.Net.Pk are originated/terminated on the Local Loop/Mobile Access Side through BrainTel itself using BrainTel interconnects with PTCL as local/domestic calls.
- Thus BrainTel is not only getting an unfair advantage over other local loop Operators but also causing breach of the rights of LDI Operators which are authorized for termination of international calls, hence, violating its license conditions and Access promotion Rules/regulations.
- BrainTel claims that they have involved Multinet an LDI Operator. However, Multinet is only providing BrainTel transit services by carrying BrainTel customer's calls from Lahore to BrainTel softswitch in UK. This again proves the fact that BrainTel indeed has a softswitch in UK.
- Therefore, when BrainTel customer outside the country calls a Pakistan number, BrainTel terminates it on its Local trunks as Local call and no APC or APC for USF is paid for the said call

2. Findings of the Authority:

(i). Since the aforesaid analysis and the evidences established that the licensee has (i) designed its VOIP platform and provided Network Access and switching services contrary to the requirements contained in Para 2, 5 and 7 of “the Clarification on use of IP Telephony Services” and as a result allowed its customers to have access to its local loop service outside geographical boundaries of its licensed region, i.e., Lahore, contrary to the rules/regulations and license conditions, (ii) its SIP based telecom Switch located in United Kingdom at URL chat.brain.net.pk which is beyond its licensed geographical boundaries and is being used to provide Network Access and call switching to its customers using public IP address in contravention of the rules/regulations, clarification and license condition, (iii) inward/outward calls of its customers residing outside the licensed region, due to the provisions provided by the aforesaid VOIP platform, are being terminated/switched by the licensee itself on its own local trunk groups as local/domestic calls, hence, contravened license conditions, and show

cause notice was rightly issued under section 23 of the Act.

(ii). Section 23 (1) of the Act empowers the Authority to issue show cause notice in case where a licensee contravenes any provision of the Act, the rules made thereunder or any term and condition of the license and in case it fails to satisfy the Authority or remedy the contravention, any of the punishments provided in sub-section (3) of section 23 of the Act may be imposed on it. Since, the licensee has contravened the license conditions, as stated above, hence, show cause notice was issued by exercising the jurisdiction granted under the Act.

(iii). Since the licensee had challenged the show cause notice before the Lahore High Court, therefore, no further information was shared with the licensee at that time on the ground that the case is being *sub-judice* before the court. However, the same data/evidences were shared with the licensee vide letter dated 21-09-2010, but its reply against the evidences is not satisfactory reasons for which are already provided in Para 1.9 above. Moreover, on licensee's specific request it was informed vide letter dated 30-06-2010 that its response is not satisfactory and will be decided in the light of court orders. The contents of this letter do not amount to violation of section 24-A of the General Clauses Act because *firstly* the reasons are provided at the time of passing an order whereas through the aforesaid letter no order was passed rather it was conveyed that it will be decided in the light of court orders, *secondly* In the circumstances when the court has already taken cognizance of the matter the propriety and law demands that the said forum/Authority should stop its proceedings and let wait for the court's ruling/ decision before proceeding further in the matter.

(iv). The Authority has a set procedure to accept or reject the stance of the licensee taken in response to show cause notice. In case the reply is found non-satisfactory the licensee is called for hearing and thereafter decision/determination is issued as per the procedure provided in the regulations. But in the instant case since the licensee has challenged the contents of the show cause notice before the court and let not the Authority to perform its statutory duties, hence, its arguments is ill founded and misconceived.

(v). The Authority has not initiated action due to unauthorized activities of any foreign company or involvement of any director in the said company who is also director in a company registered in Pakistan rather the Authority has taken action due to involvement of the licensee in such unauthorized activities mentioned above.

(vi). the licensee through its reply to the show cause notice and arguments in defence keep stressing on the ownership of resources in question, whereas missing the fact that it was not Show Caused for having ownership of 'chat.brain.net.pk' but for utilizing the said resource for offering services beyond its Licensed region, which it failed either to respond or to satisfy the Authority rather proved in the light of aforesaid evidences/material shared with the licensee vide letter dated 21st September, 2010.

(vii). It was also observed with serious note that the licensee was earlier show caused on same kind of violation in August 2008. In the hearing of the aforementioned show cause, the licensee did admit to offering services beyond licensed regions citing confusions arising out of some PTA issued instructions, hence, lenient view was taken at that time and mere fine was imposed to let the licensee to mend its ways. However, through another probe it reveals that the licensee is still offering such services with some change which amounts to persistent violation of the applicable rules, regulations, license conditions and instructions/directions/orders/clarifications of the Authority.

3. Order:

3.1 In light of the foregoing, the licensee's contraventions of the terms and conditions of the licence as alleged in the show cause notice dated 5th May, 2010 are established beyond any shadow of doubt, hence, its License No. LL-13-2004 dated 19th July, 2004 for Region of LTR (N/S) is hereby SUSPENDED with immediate effect under section 23 of the Act till further orders of the Authority.

3.2 All LDI, LL/WLL and Mobile operators are directed to henceforth suspend all the telecommunication facilities extended to the licensee under its aforesaid license till further orders of the Authority.

(S. Nasrul Karim Ghaznavi)
Member (Finance)

(Dr. Khawar Siddique Khokhar)
Member (Technical)

(Dr. Muhammad Yaseen)
Chairman

4. This order is passed today, i.e., 26-11-2010 and comprises 24 pages.