



**Re:**  
**Telenor Pakistan (Private) Limited**

**Enforcement Order under Section 23 of the Pakistan Telecommunication  
(Re-organization) Act, 1996 readwith sub-rule (4) of the Pakistan  
Telecommunication Rules, 2000**

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:**

1.2. M/s Telenor Pakistan (Private) Limited (the “licensee”) which is maintaining telecommunication systems and providing telecommunication services in the country under licence No.MCT-01/RBS/PTA/2004 dated May 26, 2004 (the “licence”) issued to it by Pakistan Telecommunication Authority (the “Authority”) was, on 17<sup>th</sup> December, 2009 issued a show cause notice (the “notice”) under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 (the “Act”) for contravening the terms and conditions of the licence.

1.2. Powers of the Authority to issue Show Cause Notice: Under section 23 of the Act, whenever provisions of the Act, the rules framed thereunder or the terms and conditions of licence are contravened by a licensee, the Authority may proceed against it with the issuance of a show cause notice. For ready reference, the said section is reproduced as under;

1) *Where a licensee contravenes any provision of this Act or the rules made thereunder or any term or condition of the licence, the Authority [ or any of its officers not below the rank of director] may by a written notice require the licensee to show cause within thirty days as to why an enforcement order may not be issued.*

(2) *The notice referred to in sub-section (1) shall specify the nature of the contravention and the steps to be taken by the licensee to remedy the contravention.*

- (3) *Where a licensee fails to—*
- (a) *respond to the notice referred to in sub-section (1); or*
  - (b) *satisfy the Authority about the alleged contravention; or*
- (a) *remedy the contravention within the time allowed by the Authority, [or any of its officers not below the rank of director], the Authority[ or any of its officers not below the rank of director], may, by an order in writing and giving reasons—*
- (i) *levy fine which may extend to three hundred and fifty million rupees; or*
  - (ii) *suspend or terminate the licence, impose additional conditions or appoint an Administrator to manage the affairs of the licensee, but only if the contravention is grave or persistent.*
- (4) *Without prejudice to the provisions of sub-section (1) and sub-section (3), the Authority [or any of its officers not below the rank of director] may, by an order in writing, suspend or terminate a licence or appoint an Administrator, if the licensee—*
- (a) *becomes insolvent or a receiver is appointed in respect of a substantial part of the assets;*
  - (b) *being an individual, become insane or dies.*

*Explanation—For the purpose of this section, the Administrator shall be appointed from amongst the persons having professional knowledge and experience of telecommunication.*

1.3. the licensee is obliged to comply with the provisions of prevailing regulatory laws comprising the Act, the Pakistan Telecommunication Rules, 2000 (the “Rules”) the Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006 (the “Regulations”) and the terms and conditions of the license.

1.4. vide clause 8.1 of Appendix-B of the Rules and clause 3.1.3 of the license, the licensee is required to comply with all orders, determinations, directions and decisions of the Authority made or issued by the Authority in accordance with its powers under the Act, the Rules and the Regulations.

1.5. vide clause (b) of sub-section (2) of Section 5 of the Act the Authority is empowered to monitor and enforce licenses and vide 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.

1.6. vide Para 23.7 of Part 6 of the Rules and regulation 10 of the Regulations empower the Authority to conduct, with or without notice, its own surveys and tests or make surprise checks through its designated officers or conduct performance audit of the quality of service of the licensee from time to time to ensure that users of telecommunication services get such quality of service as laid down in the license, regulations, and/or KPIs.

1.7. vide regulation 9 of the Regulations the licensee is obliged to provide good quality of services to its customers.

1.8. vide clause 6.5.1 of the license obliged 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.

1.9. vide Appendix 3 of the license prescribed 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.

1.10. vide clause 23.3 read with clause 23.5 of part 6 of Schedule 2 of the Rules empower the Authority to call for special quality tests and surveys and reports thereon, as it may deem appropriate, and the licensee shall comply with the Authority's directives in this behalf.

1.11. While enforcing the aforesaid license conditions and performing its regulatory/statutory obligation to ensure that the consumers of Pakistan get the quality of services at the standards given in the license and KPIs determined by the Authority, the Authority had conducted surveys through its Zonal offices at Rawalpindi, Peshawar, Lahore, Karachi and Quetta 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] for checking the quality of service being provided by the licensee to its customers against the benchmarks mentioned in the license, but the results were not upto the mark.

1.12. The detail of the average results of surveys is as under:

**Voice:**

<b>Network Down Time &lt; 1 %</b>	<b>Grade of Service ≤ 2 %</b>	<b>Call Completion Ratio &gt; 98 %</b>	<b>Call Connection Time ≤ 5 Sec</b>	<b>Call Quality (MOS) &gt;3</b>
0	2.73	97.21	8.37	2.17

**SMS:**

<b>Service Accessibility ≥ 99%</b>	<b>Access Delay ≤ 2 Sec</b>	<b>End to End Delivery Time ≤ 5 Sec</b>
96.66	4.03	9.85

1.13. Through the results of aforesaid surveys it revealed that the licensee has failed to provide the required level of telecommunications services to its customers as mandated under the provisions of the Act, the rules, the regulations and the license conditions/KPIs, which constrained the Authority to invoke the provisions of section 23 of the Act, therefore, the

Authority issued show cause notice dated 17<sup>th</sup> December, 2009 pursuant to sub-section (1) of section 23 of the Act requiring it to remedy the aforementioned contravention by bringing and maintaining the required standards of quality of service at par with clause 1.3 of appendix 3 of the license/KPIs within twenty five days of the issuance of this Show Cause Notice and also to explain in writing, within thirty (30) days of the issuance of this notice, as to why the license should not be suspended, terminated or any other enforcement order as referred to above, may not be passed against the licensee under section 23 of the Act. The licensee made request vide letter dated 21<sup>st</sup> December, 2009 and 24<sup>th</sup> December, 2009 for provision of details and results of survey conducted by the Authority during 2009 for responding the aforesaid show cause notice which was duly provided vide PTA's letter dated 29<sup>th</sup> December, 2009 and 7<sup>th</sup> January, 2010.

2.1. Licensee's response to the notice: The licensee's written response dated 15<sup>th</sup> January, 2010 to the aforesaid notice is reproduced in *verbatim* as under:

*“Subject: **Reply to Show Cause Notice under section 23- Telenor**”*

*Under instruction of our Client, Telenor Pakistan (Pvt.) Ltd we submit this preliminary para wise reply to your show cause notice No. 14-587/L&A/PTA/09/145 (the “**Show Cause Notice**”) , which is in continuation of our letter dated 21 December 2009.*

*At the outset, we are constrained to highlight that our Client has not been provided despite repeated requests the complete data, information and materials forming the basis of the Show Cause Notice. Therefore, it is not in a position to reply comprehensively to the various alleged in the Show Cause Notice, particularly with reference to Quality of Service issues, if any. As soon as our Client is made the required documentation available, we will, without prejudice to our Client rights and the remedies available under law, respond to the same.*

*Under the circumstances, our initial para wise reply to the Show cause Notice is as under:*

- 1. Please note that our Client is **not** a public limited company incorporated under the Companies Ordinance, 1984. It is a private company as is evident from its name. You are requested to please correct your record accordingly. The remaining contents or paragraph I need no comment in the present context.*
- 2. Our Client is a responsible corporate citizen of Pakistan, which represent one of the largest foreign investments in the country and is fully conscious of its legal rights and duties. Our Client conducts its business according to the highest professional standards in accordance with applicable law. We may note further that it is not only our Client but also PTA which is under a statutory' obligation to comply with the provisions of prevailing regulatory laws stated in paragraph 2 and to act within their ambit. The applicable law does not permit PTA to rely on isolated provisions to achieve results with a pre-determined mind.*
- 3. Our Client is mindful of the functions of PTA. including those, set out in Section 4(d) of the Act. Our Client has always given due regard to PTA's authority in due discharge of its statutory functions. However, we take this opportunity to emphasis that initiation of the subject proceedings does not*

*support or further the stated function of PTA. In fact, given the prevailing circumstances, particularly those relating to the events transpiring in the issuance of the Show Cause Notice, it is counter productive to the promotion of availability of telecommunication services throughout the country. Notwithstanding the aforesaid, Section 4(d) is not to be read in isolation but in conjunction with the overall scheme of the Act, the Rules and the Regulations and responsibilities entrusted upon the PTA thereunder, including in particular Sections 5 and 6 of the Act. Therefore, application of Section 4(d) of the Act for purposes of the threatened action against our Client in terms of the Show Cause Notice is wholly misconceived and not in accordance with the spirit of the Act. Without conceding any allegation whatsoever, we must point out that the threatened action is even' otherwise unreasonable and disproportionate to the alleged contraventions by our Client.*

- 4. The obligation contained in Section 21(4) (g) of the I Act refers to "minimum" standards for quality and grade of service requirements. It is manifest that the purported standards, which PTA seeks to implement, are unreasonable and inadequate in the prevailing circumstances, and even outside the statutory prescribed scope.*
- 5. It has been an established and consistent practice of PTA to require due and full participation of mobile operators while conducting Quality of Service surveys. It is longstanding practice adopted and abided by PTA that such surveys were done in the presence of representatives of the mobile operators, and that representatives of both, PTA and the mobile operators, would sign off the results. The sudden departure from this consistent practice and reliance on paragraph 23.7 of Part 6 of Schedule 2 to the Rules and Regulation 10 is clearly to the detriment of our Client and cannot be upheld on the touchstone of constitutional indemnities available to our Client, and the consistent law laid down by the superior courts, which is binding on the PTA. Furthermore and without prejudice to the above, PTA is in clear breach of Regulation 10(3). Despite requests by our Client, PTA has refused to provide the required report. On the contrary, PTA's letter of 7 January 2010 has unfairly and unduly sought to reprimand our Client for asserting its legal rights. Moreover, this conduct is in blatant disregard of the responsibilities of PTA while discharging its functions, as mandated under Section 6 (a) of the Act. It is also reflective of the pre-determined mindset, which per se is to penalize our Client on flimsy, and whimsical grounds.*
- 6. Without prejudice to the constitutional vires of Regulation 9, which, our Client reserves the right to pursue, it is submitted that PTA is in breach of Regulation 9(2). As despite repeated submissions by our Client, including through industry platform, PTA has refused to heed to best global practices on point and in fixing criteria for maintaining quality of service.*
- 7. Our Client regularly measures and monitors various applicable standards. The results derived from such comprehensive tests with, the aid of statistical and other tools available to our Client involve millions of samples across the network infrastructure. Although PTA has refused to provide the relevant information, data and methodology, it is nevertheless manifest from the Show Cause Notice that results unilaterally achieved by PTA are a result of snapshot at a particular time, hence wholly unreliable and non-representative of the status and quality of Client's network. That PTA's approach to Quality*

*of Service testing is inadequate and wanting in technical authenticity is evident from the fact that while the alleged 'methodology' adopted by PTA was notified in June 2009, reliance on tests prior to the date form basis of Show Cause Notice.*

- 8. Our Client continues to take all reasonable and prudent measures to ensure the best quality of service and to ensure that its Telecommunication System and Licensed Services are available and operate properly at all times. Our Client, or; the basis of reports and data available with it has consistently met the required quality standards, subject of course to just exceptions and reasons beyond its control. Moreover, the Show Cause Notice provides no basis whatsoever for alleging non-compliance of Licence terms by our Client in respect of SMS quality and grade of service standards, hence, is liable to be withdrawn on this score alone.*
- 9. Our Client contests the manner, the criteria, the basis and the methodology unilaterally adopted by PTA in respect of the said surveys and the results derived therefrom. The contents of this paragraph are on the face of it facetious contradictory and baseless. Moreover, the equipment purportedly employed by the PTA to acquire the data, which forms the underlying basis of the Show Cause Notice, is inadequate as it renders the findings inaccurate and unworthy. Our Client reiterates that it be provided the complete report of the said surveys fully and duly containing the basis, materials and information on the basis of which the PTA feels compelled to issue the Show Cause Notice so that our Client may avail due opportunity of hearing and in the process is able to point out the discrepancies, inconsistencies and shortfalls in the methodology adopted by the PTA and the results derived by PTA. Moreover, we urge the PTA to provide our Client with the detailed information about mitigating factor if any considered by the PTA before arriving at the conclusion purportedly arrived at in terms of the Show Cause Notice. Particularly, it has not been disclosed to our Client as to what criteria has been adopted by PTA to exclude disruptions caused by security arrangements increasingly been put into place and occurrence of other similar disruptive incidents/events at the time the alleged results were procured.*
- 10. The conclusions drawn in this paragraph vis-à-vis our Client having contravened the provisions of the Act, the Rules and/or the Regulations and the terms of the License are based on data and methodology, which cannot be substantiated in accordance with recognized global best practices on point. Moreover, it is pointed out that our Client has not intentionally or deliberately contravened any of the aforesaid provisions, if any, or as may be perceived by PTA.*
- 11. It is denied that the PTA gave our Client any instructions, let alone 'repeated instructions' as alleged in this paragraph. In fact, the impugned survey results were brought to the notice of our Client for the first time when the Show Cause Notice was received on 18 December 2009, which is clearly distinguishable from the results published in the newspapers on the same date. Furthermore, publication of the impugned findings of the PTA without affording our Client the opportunity to defend the same has not only violated constitutional protections ensured to our Client, but also given cause of action against disrepute brought about by publication of unverified and defective findings.*

12. PTA has failed to comply with the requirements of the very section it has issued the Show Cause Notice under in that it has not complied with the requirements set out by Section 23 (2) of the Act.

*In view of the aforesaid, it is clear that the Show Cause Notice is issued without lawful authority, under a severe misconception of the application of applicable provisions of the Act, Rules, Regulations and the License, is based on data and information which cannot meet the test of best industry practices, and is even otherwise uncalled for and unwarranted. It is vague and fails to specify the precise contravention. The threatened action is unreasonable, arbitrary and disproportionate. In essence, the threatened action would not only be detrimental to our Client but also the consumers, for whose purported interest the PTA has embarked upon the present proceedings. Instead of creating an environment conducive to the availability and continuity of the desired quality of service and the availability of our Clients network to consumers, the PTA has chosen to embark upon an exercise that is inimical to the provision of telecommunication services.*

*It is stated for the record that our Client is committed to providing quality service to its customer's .and shall continue to do so, except where technical and commercial considerations beyond its control impede the same. Under the circumstances, the PTA is urged to withdraw the Show Cause Notice and facilitate our Client in providing the telecommunication services throughout the country by enabling oilier service providers and related infrastructure providers to create an environment conducive to provision of service by our Client.*

*In the event the PTA considers proceeding further in the matter, we reiterate the request for provision of the required information, particularly that mentioned in our Client's letter of 24 December 2009 be provided at the earliest, and roost certainly before the date the PTA may fix for hearing in the matter. We also reserve our right to raise additional grounds and submit relevant documentation contesting the basis of the Show Cause Notice at or before the time of any scheduled hearing”.*

3.1. The Hearing: Since the reply was not satisfactory, therefore, prior to passing an enforcement order the licensee was required vide letter dated 5<sup>th</sup> March, 2010 to appear before the Authority on 11<sup>th</sup> March, 2010 for hearing in the matter, which was adjourned on the request of the licensee dated 8<sup>th</sup> March, 2010 for 6<sup>th</sup> April, 2010. On the said date the licensee appeared before the Authority through its representatives namely Mr. Aamir Ibrahim (Vice president), Mr. Khalid Shehzad (Chief Technical Officer), Mr. Ahmed Jawad (Director Legal), Mr. Asadullah Niazi (Regional Manager RF), Mr. Salman Malik (Director R+J) and Mr. Ahmed Hassan, Advocate, who reiterated the same grounds as already mentioned in its reply to the notice. It stated that it has made a lot of investments and has about twenty three (23) million customers, hence, is committed to improve the QoS. It further alleged that no doubt, there is need for improvement. It further alleged that it has made request to the Authority for provision of the exact report but the Authority has provided only the results. PTA like other bodies has to follow the procedure provided in the regulations and the principles of natural justice. It argued that in the results PTA has identified the locations with survey for two days, five days and twenty days, but not provided the data/information on the basis of which these results were compiled and show cause notice was issued. It also quoted few case law: YLR 2005 page 3305; 1989 SC 353 and PLD 1970 SC 453- licensee when not confronted with reasons -- action is void ab initio, in support of its contention Furthermore, it stated that Section 23 of the Act

provides the nature of contravention and the steps to remedy the contravention, which in this case were not fulfilled. Assuming by cancelling the license or to impose fine, will it improve the QoS? it made point before the Authority.

3.2. However, without hearing the decision of the Authority pursuant to the aforesaid proceedings it filed writ petition No.1533/2010 before Lahore High Court, Rawalpindi Bench, and challenged the show cause notice date 17<sup>th</sup> December, 2010. The court vide order dated 15<sup>th</sup> October, 2010 dispose of the aforesaid writ petition in the following terms:

*“7. In view of the above circumstances when matter is still pending before the respondent authority as the written reply of the impugned show cause notice has already been submitted by the petitioner company and it requires the required data on the basis of which the performance of the petitioner company has been evaluated, therefore, this writ petition is disposed of with a direction to respondent- PTA to provide complete data/basis whereby the impugned show cause notice was issued to the petitioner company and then further proceed in accordance with law.”*

3.3. In respectful compliance of aforesaid orders of the Lahore High Court, the licensee was given vide letter dated 5<sup>th</sup> November, 2010 the copy of the complete data on the basis of which the impugned show cause notice dated 17<sup>th</sup> December, 2010 was issued. In response the licensee vide its letter dated 23<sup>rd</sup> November, 2010 asked for Drive Test log files by interpreting the aforesaid court orders, which was not required as per the aforesaid court orders. The contents of the said letter reproduced as under:

*“Subject: Order of the Honourable Lahore High Court, Rawalpindi Bench dated 15 October 2010 in Writ Petition No.1533 of 2010 (the "Order")*

*Dear Sir,*

*Our Client, Telenor Pakistan (Private) Limited, has forwarded to us your letter numbered 14-624/L&A/PT A/10/778 dated 5 November 2010, and under instructions we reply thereto as under:*

- 1. Please note that pursuant to the Order, the Learned Authority is required to provide our Client with "complete data/basis whereby the impugned show cause notice was issued". We regret to note that the information attached to the letter under reference is not different from the data, which, among others, caused our Client to avail recourse from the Honourable Lahore High Court in the matter.*
- 2. You are therefore urged to request the Learned Authority to please direct its officers concerned to provide a complete report contemplated under the applicable regulations, and as required by law.*
- 3. For your kind assistance, we may specify that the requested information would contain, among others, detailed' data including the Drive Tests log files (as earlier requested in letter of 12 September 2009). You will appreciate that these log files would specify the exact time on which the Drive Tests were conducted on a specific location, These would also assist in correlating the then on ground situation as per our Clients data for that location at that relevant time. The timings presently deemed appropriate by the Learned Authority to be provided to our Client are general timings:. The overall Drive Route when disclosed to our Client (which is expected to be available if log files arc provided) will provide credible information in determining any*



*problems that may have been identified in the required reports, including the numbers on which the test calls were made. Furthermore, that the provision of the above information and data with Drive Routes for specific cities is the minimum information required to be provided to our Client to duly discharge the onus of compliance with the Order of the Honourable Lahore High Court.*

4. *We are hopeful that the Learned Authority will proceed to expeditiously comply with the said Orders in letter and spirit.*
5. *Rest assured, our Client remains available and amenable to proceeding further in this matter in accordance with applicable law, particularly in light of the Order of the Honourable Lahore High Court.*

6. *This communication is without prejudice to the defenses available to our Client in accordance with and under applicable laws.”*

- 3.4. Hearing in the matter has already been concluded on 6<sup>th</sup> April, 2010 and the licensee has been afforded full opportunity of hearing, which it fully availed and defended the aforesaid show cause notice through its representatives. Since it has the same stance as earlier for which the Authority has fully heard it on 6<sup>th</sup> April, 2010, therefore, no further hearing is required in this regard.

#### 4. **Findings of the Authority:**

- 4.1. Since the licensee has failed to satisfy the Authority and also not remedied the contravention by bringing and maintaining the QoS standards as specifically directed through the aforesaid notice, hence, failed to respond to the specific allegations leveled against it in the show cause notice for not providing the required level of quality of services to its customers, through its reply and arguments, as ordained in the license condition, hence, contravened condition 1.3 of the Schedule 3 of the license, regulation 9 and 10 of the PTA (Functions & Powers) Regulation and Para 23.7 of part 6 of Telecom Rules. Moreover, it also has shown disregard to the Authority's orders/instructions on the subject issue. This being the case, the notice is rightly issued and there is no reason for withdrawing it as requested.
- 4.2. The legal objections raised by the licensee are based on incorrect information, hence, are misconceived. Regarding its arguments that: (i). *The applicable law does not permit PTA to rely on isolated provisions to achieve results with pre-determined mind;* (ii). *Initiation of subject proceedings does not support or further the stated functions of PTA;* (iii). *The application of section 4(d) in isolation without construing the scheme of the Act, the Rules and Regulations* (iv). It is stated that It is mandatory on the Authority under section 4(d) of the Act, Para 23.7 of the Rules, regulation 10 and 9 and conditions 6.5.1 and 1.3 of Appendix -3 of the license to ensure that the licensee shall provide such quality of service to its customers as are laid down in the license, regulations and the KPIs. The Authority is also mandated to enforce the terms and conditions of the license vide section 5(2)(b) of the Act and in case of contravention of the provisions of the Act, the rules and license conditions/KPIs, action under section 23 of the Act can be initiated. Since the licensee has failed to provide the required level of QoS to its customers, therefore, the Authority has initiated action under the provisions of the Act, which is very much in the scheme and spirit of the legislation, hence, the argument of the licensee that application of section 4(d) of the Act in isolation and for threatened action against the licensee is based on incorrect information and is misconstrued.

- 4.3. Section 21 (4)(g) talks about particular persons and areas and section 4 (d) for high quality services. Keeping in view the above provisions of the Act and Para 6.3 of the Mobile Cellular Policy, 2004 standards for QoS were incorporated in the license which was agreed to by the licensee, hence, in case of failure to meet the said standards action under section 23 of the Act can rightly be initiated.
- 4.4. Regarding its argument that *departure from previous settled practice of joint surveys and reliance on Paragraph 23.7 of part 6 of Schedule 2 of the rules and regulation 10 is clearly detriment to the licensee and cannot be upheld* . It is stated that the Rules and Regulations provides flexibility and option to the Authority whether to go for joint survey or conduct its own survey without notice to the licensee to ensure that users shall get such QoS as laid down in the license, regulations/KPIs, hence, exercise to such option or mode is not barred by law, hence, the argument is misconceived.
- 4.5. Regarding the argument that *PTA in clear breach of section 6(a) of the Act and regulation 10 (3) refused to provide the required reports of survey results and is reflective of pre-determined mind set to penalize on flimsy grounds*, is misconceived. The licensee was provided results of two locations vide letter dated 6<sup>th</sup> May, 2009 and 3<sup>rd</sup> July, 2009 with directions to improve the same, which were later on verified and found not improved. The licensee was provided the methodology which is notified and is being followed since 2003. The average results were provided in the show cause notice and also published in the newspapers. The detail of survey results alongwith methodology was provided on request of the licensee vide letters dated 29-12-2009 and 07-01-2010, hence, the requirements of section 6(d) of the Act and regulations have been fulfilled, hence, the aforesaid argument is misconstrued. Moreover, the said information was also provided vide letter dated 5<sup>th</sup> November, 2010 pursuant to court orders dated 15<sup>th</sup> October, 2010, hence, also complied with the court orders.
- 4.6. The licensee's further request of providing Drive Test log files by interpreting the court orders is misconceived. The court vide its order dated 15<sup>th</sup> October, 2010 has specifically directed the Authority to provide complete data/basis whereby the impugned show cause notice was issued. The aforesaid orders of Hon'ble high Court do not require the Authority to share or provide the details of Drive Tests log files in this regard. Secondly, it will not make any difference on the findings of the Authority as average results were prepared from the Drive Tests log files. Thirdly, these Drive Tests log files had never been shared with any of the licensees as per the policy of the Authority, hence, the same could not be shared/provided in the instant case.
- 4.7. Regarding its argument that *PTA in breach of regulation 9(2), as despite repeated submission of the licensee, refused to heed to best global practice in fixing criteria for maintaining quality of service*. PTA has already considered best global practice while preparing the standards in the light of Para 6.3 of the Mobile Policy, 2004 at the time of grant of license and incorporated the same in the license which the licensee duly agreed and signed and it has to comply with the conditions of the license, hence, at this stage when already standards have been set in the license/KPIs, there is no need or justification for reviewing the same.

- 4.8. Regarding its stance that *results unilaterally achieved by PTA are result of a snapshot at a particular time, hence, are unreliable and non-representative of status and quality of licensee's network*. The methodology was being implemented since 2004 and subsequently in case of Telenor for checking QoS every year. Even the previous results shared with the licensees were based on the same methodology. It was again shared with the licensee on its request and in compliance of court orders. The Authority may specify the nature and procedure of quality tests and surveys and may issue directions from time to time which the licensee has to comply.
- 4.9. About its statements that *(i) PTA's approach to QoS testing is inadequate and wanting in technical authenticity is evident from the fact that while the alleged methodology adopted by PTA was notified in June, 2009 reliance on test prior to the said date was made basis for show cause notice, (ii) the equipment employed by PTA to acquire the data is inadequate as it renders the findings inaccurate and unworthy. Therefore the licensee requested for provision of complete reports of survey results so that the same to check the discrepancies, shortfalls and inconsistencies in the methodology adopted by PTA, are based on incorrect information*. Under regulation 11 (1) it is the prerogative of the Authority to lay down, monitor and check the quality of service and require the licensee to procure such test instruments and equipment for the tests/surveys, and the licensee has no right to question the mandate and authenticity of the results compiled by the equipment. The methodology and criteria which PTA has adopted was already shared with the licensee.
- 4.10. It stated that *Show cause notice donot provides basis for non-compliance of SMS standards, hence, show cause notice needs to be withdrawn*. The Authority has already set KPIs for SMS which was notified to all the licensees including Telenor Pakistan, hence, the aforesaid argument is misconceived.
- 4.11. *That it has not been disclosed what criteria has been adopted by PTA to exclude disruptions caused by security incidents/events at the time the alleged results were procured*. The methodology and criteria which PTA has adopted was shared with the licensee.
- 4.12. Regarding its argument that *the Survey results were brought to the notice of the licensee through the instant show cause notice which is clear distinguishable from the results published in the newspapers. Furthermore, publication of impugned findings of PTA without affording opportunity to defend not only violated constitutional protections but also given cause of action against PTA for disrepute for publication of unverified and defective findings*. The results of previous survey were conveyed vide letter dated 6<sup>th</sup> May, 2009 and 3<sup>rd</sup> July, 2009. The results of surveys conducted were also provided as per request of the licensee through PTA letters dated 29-12-2009 and 07-01-2010. These results were also mentioned in the notice (average results country wide) and also published in newspapers (average results city wise) for the purposes of regulation 12 of the Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006 for information of general public, hence, provided opportunity to defend the contravention. Regarding claim of disrepute, PTA is indemnified under section 33 of the Act.
- 4.13. It argument that *PTA has not complied with the requirements of section 23 (2) of the Act* is based on incorrect information. The licensee was informed that it failed to maintain the required standards prescribed in the license/KPIs and also directed to

remedy the contravention by bringing and maintaining the required standards at par with clause 1.3 of Appendix 3 of the license within 25 days. Hence, the show cause notice has covered the requirement of section 23 (2) of the Act.

4.14. The case law mentioned/relied by the licensee in its arguments is distinguishable in its circumstances, hence, is not applicable in the instant matter.

**5. Order of the Authority:**

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

5.2. 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 5.1, above, final determination shall be issued under sub-rule (5) and (6) of rule 9 of the Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006.

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

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(Dr. Khawar Siddique Khokhar)  
Member (Technical)

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(Dr. Mohammad Yaseen)  
Chairman

Signed on this 10<sup>th</sup> day of January, 2010