



Government of Pakistan
PAKISTAN TELECOMMUNICATION AUTHORITY
HEADQUARTERS, F-5/1, ISLAMABAD

Enforcement order under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 against Telenor Pakistan (Pvt). Limited

Date of Show Cause Notice: 27th April, 2022
Venue of Hearing: PTA HQs, Islamabad
Date of Hearing: 6th July, 2022

PTA/Enforcement/Enforcement Wireless/Mobile QoS/3-50(Comp-61)/132/2022/207.

The Issue:

“Failure to meet or exceed QoS standards as laid down in the license and KPIs”

“Decision of the Authority”

1. Facts of the case:

1.1 Telenor Pakistan (Pvt.) Limited (the “**licensee**”) is engaged in the business of cellular mobile services in Pakistan pursuant to non-exclusive license No. MCT-01/RBS/PTA/2004 dated 10th December, 2021, license No. NGMS-02/WLL&M/PTA/2014 dated 21st May, 2014 and license No. NGMS-05/WLL&M/PTA/2016 dated 14th July, 2016 (the “**license**”) issued by the Pakistan Telecommunication Authority (the “**Authority**”) to establish, maintain and operate licensed system and to provide licensed cellular mobile services in Pakistan on the terms & conditions contained in the license.

1.2 The licensee is required to comply with the provisions of the prevailing regulatory laws comprising the Pakistan Telecommunication (Re-organization) Act, 1996 (the “**Act**”), the Pakistan Telecommunication Rules, 2000 (the “**Rules**”) the Pakistan Telecommunication Authority (Function & Powers) Regulations, 2006 (the “**Regulations**”), the Cellular Mobile Network Quality of Service (QoS) Regulations, 2021 (the “**QoS Regulations**”) and the terms and conditions of the license.

1.3 The Authority under section 4(d) of the Act is mandated to promote the availability of wide range of high quality, efficient, cost effective and competitive telecommunication services throughout Pakistan. In addition, pursuant to section 6 (f) of the Act, the Authority is required to ensure that the interest of users of telecommunication services are duly safeguarded and protected.

1.4 In accordance with the provisions of clause (a) of sub-section (4) of section 21 of the Act, clause 8.1 of the Appendix B of the Rules and conditions 3.1 of the license, the licensee is required to observe the provisions of the Act, the Rules, the Regulations, orders, determinations, directions and decisions of the Authority.

1.5 As per clause 23.7 of Part 6 of the Rules read with regulation 10 of the Regulations and sub-regulation (1) of regulation 6 of the QoS Regulations, the Authority is empowered 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 as to ensure that users of telecommunication services get such quality of service as laid down in the license and regulations.

1.6 License condition No. 6.5.1 of the license obliges the licensee at all times to meet or exceed the quality of service standards described in Appendix-3 and such other quality or service standards as the Authority may by regulations, require. In addition, Appendix 3 of the license prescribes the quality of service standards and requires the licensee to take all reasonable and prudent measures to ensure that the Licensed System and Licensed Services are available as per the network roll out obligations and operate as QoS Key Performance Indicators (KPIs). It is also relevant to point out that as per license condition No.6.5.1 of the license renewed in 2021 provide that with the QoS the licensee shall be subject to the penalties determined by the Authority in accordance with the Act, Rules or Regulations. Further the licensee is also required to maintain records of its performance in meeting the quality of service standards, and shall submit them to the Authority on quarterly basis in such format as the Authority may require. The licensee shall maintain supporting records for inspection and technical audit as and when required by the Authority. The licensee shall maintain such records for a period of three years.

1.7 In order to measure the QoS performance of the licensee, an independent QoS survey was carried out from 6th to 9th December, 2021 at Costal Highway, Gwadar City and Surbandar Port Area. Survey results revealed degraded QoS KPIs. Accordingly, the survey results were shared with the licensee with the instructions for taking remedial measures including optimization as well as expansion of the network in the surveyed areas. Resultantly, the licensee intimated that network has been optimized to improve the services. In light of response received from the licensee, PTA carried out a re-verification survey during 7th to 10th March, 2022 in the said areas. After survey, it has been found that the claim of the licensee with regard to optimization of the network was not in accordance with the required QoS standards.

1.8 Since, the QoS results were not within the parameters as laid down in the license conditions and QoS Regulations, therefore, a Show Cause Notice (SCN) under section 23 of the Act on 27th April, 2022 was issued whereby the licensee was required to remedy the contravention by bringing and maintaining the required standards of quality of service at par with clause 1.3 of Appendix 3 of the license within fifteen (15) days and also to explain in writing within thirty (30) days of the SCN.

1.9 The licensee through letter dated 26th May, 2022 submitted reply to SCN. The main contentions are as under:

- i. Under clause 1.1 of the Appendix-3 of the first license and clause A 1.1 of Appendix-3 of the second license, it only requires to take reasonable and prudent measures to ensure that the licensed services are available as QoS provided therein, therefore, the Authority can only issue SCN if it finds that the licensee has failed to take such reasonable and prudent measures.
- ii. After the first survey, as directed, it has taken remedial measures for optimization and expansion of network which is also evident from the result of the second survey. The licensee also contented that further improvement needed additional transmission bandwidth from PTCL which is under process.
- iii. The licensee has planned a new site in Gwadar round about area which would cater for coverage issues in the vicinity. In this regard, the licensee updated that the new site which will be ready by December, 2022.
- iv. SCN has required for the improvement of KPIs within the 15 days which is not possible without additional site as mentioned as above.

- v. Clause 5 (1) (g) of the QoS regulations provides that period for measurement of quality service shall be one calendar month and the SCN is issued on the basis of 3-days data test.
- vi. KPIs of QoS are agreed and provided in the license, which under section 22 of the Act can only be modified with the consent of the licensee or by High Court, therefore, the Authority cannot amend such KPIs of QoS through QoS regulations.
- vii. QoS KPIs on a very narrow basis (drive test route), whereas each license contemplates the measurements, for the purpose of QoS enforcement, on a system-wide basis. When viewed on a system wide-basis, the licensee is fully compliant with its licensed QoS.
- viii. The licenses do not contain conditions corresponding to clause (g) of sub-section 21 of the Act regarding obligations to provide telecommunication services to particular persons or areas. No particular persons or areas are identified in the licenses for meeting minimum standards for quality and grade of service.
- ix. SCN is not warranted for very minor short cummings i.e. 0.1 % in relation to SMS Success Rate and 0.2% in relation to Signal Strength RSRP (4G).

1.11 In order to proceed further, the matter was fixed for hearing on 6th July, 2022 before the Authority. Mr. Rashid Ayub (Sr. Manager Regulatory), Mr. Rizwan Ahmed (Manager RAN), Mr. Syed Yasir Ali Rizvi (Sr. Manager legal), Mr. Muhammad Irshad (Legal Counsel) and Mr. Ali Aamer (Head of Regulatory) attended the hearing on the behalf of the licensee. The learned counsel of the licensee reiterated the same as submitted in reply to the SCN.

2. Findings of the Authority:

2.1 Matter heard and record perused. After careful examination of record followings are the findings of the Authority:

2.1.1. The Authority under the Act is mandated to regulate the establishment, maintenance and operation of telecommunication system and provision of telecommunication services in Pakistan. In addition, the Authority under section 5(2)(b) of the Act is also empowered to enforce and monitor the licenses. Pursuant to the license granted by the Authority, the licensee is required to meet the requirement of quality of service standards as provided in the license and regulations.

2.1.2 For the purpose of enforcing and monitoring the license, the Authority is empowered to carry out QoS survey so as to ascertain the compliance of KPIs for QoS standard as provided in the license and applicable regulation. In accordance with clause 23.7 of part 6 of the Rules, regulation 10 of the regulation and sub-regulation (1) of regulation 6 of the QoS Regulations, the Authority with or without notice conduct its own surveys and test or makes surprise checks through its designated officers or conducts performance audit of quality of service of the licensee from time to time as to ensure that the user(s) of telecommunication services get such quality of services as laid down in the license, regulations and/or KPIs. For ready reference regulation 6(1) of the QoS Regulation is reproduced below:

“The Authority shall conduct inspection, surveys, test or carry out surprise check as specified in Annex A through its designated officers or conduct performance audit for Quality of Service of the Licensee from time to time to ensure that users of

telecommunication service get such Quality of Service Standards as laid down in these Regulations and the license.”

2.1.3 In accordance with applicable regulatory framework, the Authority is empowered to carry out survey for QoS for the purpose of verification of compliance of quality of service standards as provided in the license and applicable regulations. For ready reference regulations 6(5) and 6(6) of the QoS Regulations are reproduced below:

“6(5) The inspecting officer shall prepare an inspection report of the quality of service inspection, also comprising the shortfalls, observed during such inspection”.

6(6) This report shall be provided to the licensee in the format as specified in these regulations as Annex B”.

2.1.4 In the instant matter, after carrying out survey, results were shared with the licensee with the direction to take all remedial measure to remove the shortfalls identified in the inspection report. More so, after carrying out reverification survey by the Authority, the results were also shared with the licensee through SCN.

2.1.6 As far as licensee’s assertion with regard to applicability of regulations is concerned, it is clarified that after carrying out consultation with all stake-holders including the licensee amendments were made in the regulations. The said regulations are not inconsistent with applicable legal regulatory framework. It would not be out of context to mention here that as per license terms and condition, the licensee is under an obligation to abide the regulations pertaining the QoS. The license condition No. 6.5.1 of the license expressly provides that the licensee is bound to comply with regulation. The license condition states as under:

“6.5.1 The license requires that the licensee at all times to meet or exceed the quality of service standards described in Appendix-3 and such other quality or service standards as the Authority may by regulations, require. The license shall maintain records of its performance in meeting these quality of service standards, and shall submit them to the Authority on a quarterly basis in such format as the Authority may require. The license shall maintain supporting records for inspection and technical audit as and when required by the Authority. The licensee shall maintain all such records for a period of three years.”

2.1.7 The said license condition clearly states that the licensee at all the time is required to meet the quality of service standards described in Appendix-3 and such other quality or services standard as the Authority may by regulations require. For a matter of record, it is also relevant to point out that license condition No.6.5.1 of the licensee renewed in 2021 provides that the licensee at all times to meet or exceed the quality of service standards described in Appendix-3 and such other quality or service standards as the Authority may by regulations, require. The license shall maintain records of its performance in meeting these quality of service standards, and shall submit them to the Authority on a quarterly basis in such format as the Authority may require, failing which, the licensee shall be subject to the penalties determined by the Authority in accordance with the Act, Rules or Regulations. The licensee is also required to maintain records of its performance in meeting the quality of service standards and shall submit them to the Authority on quarterly basis in such format as the Authority may require. The licensee shall maintain supporting records for inspection and technical audit as and when required by the Authority. The licensee shall maintain such records for a period of three years.

2.1.8 With regard to observation of the licensee on selection of areas of survey and quantum / sample of calls/ SMSs / Data used / made to determine the QoS were narrow or smaller, it is clarified that the licensee is erred in understanding on the premise that as per terms and condition

of the licensee, where the license is providing the licensed services, it is an obligation upon the licensee to meet the standard of QoS at all the times. Since the licensee is providing the licensed service in the survey areas and also charging consumer against services therefore, the license has to meet the QoS for provision of licensed service. The licensee acknowledged that its network is available in the survey areas therefore, the licensee's contention pertaining to selection of areas as well as sample size to ascertain the KPI's for QoS requirement is untenable. The licensee in accordance with terms and condition of licensee is required to meet at all the time QoS standard as provided in the license and applicable regulations.

3. Order

3.1 Forgoing in view of the above legal and factual position of the case, the Authority is of the view that as per applicable regime the licensee is under an obligation to meet the requirement of Quality of Services parameters as laid down in the license conditions and other enabling statutory provisions. Since, the licensee has planned a new site in Gwadar city, therefore, the Authority taking a lenient view hereby allows six (06) month(s) time, commencing from the date of receipt of this order for improving and maintaining quality of service standards as per KPIs. After expiry of the said time, an on-ground survey to measure services quality will be carried out against licensed KPIs and in case of non-compliant further action will be taken accordingly.

Maj. Gen. Amir Azeem Bajwa (R)
Chairman

Dr. Khawar Siddique Khokhar
Member (Compliance & Enforcement)

Signed on 16th day of August, 2022 and comprises of (05) pages only.