



Enforcement order under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 against Pakistan Mobile Communication Limited

Date of Issuance of Show Cause Notice: 17th January, 2022
Venue of Hearing: PTA HQs, Islamabad
Date of Hearing: 21st April, 2022

PTA/Enf-Wireless/Mobile QoS/Warsak & Charsadda Road/ 109/2021//68.

The Issue:

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

Decision of The Authority

1. Brief facts of the case:

1.1 Pakistan Mobile Communication Limited (the "licensee") is engaged in the business of cellular mobile services in Pakistan pursuant to non-exclusive license No. MCT-05/WLL&M/PTA/2007 dated 6th July 2007, license No. NGMS-04/WLL&M/PTA/2014 dated 21st May, 2014, license No. NGMS-06/WLL&M/PTA/2017 dated 29th June 2017 and license No. MCT/02/Wireless/PTA/2021 dated 18th October 2021 (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 Pakistan Telecommunication (Re-organization) Act, 1996 (the "Act"), the Pakistan Telecommunication Rules, 2000 (the "Rules") the Pakistan Telecommunication Authority (the "Function & Powers") Regulations, 2006 (the "Regulations"), the Cellular Mobile Networks Quality of Service Regulations, 2021 (the "QoS Regulations") and the terms and conditions of the license.

1.3 Under clause (d) of section 4 of the Act, one of the functions of the Authority is to promote the availability of wide range of high quality, efficient, cost effective and competitive telecommunication services throughout Pakistan. In accordance with clause (g) of sub-section (4) of section 21 of the Act, the licensee is also under an obligation to provide telecommunication services to particular persons or areas to meet the minimum standards for quality and grade of service requirements.

1.4 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.

1.5 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 under obligation to observe the provisions of the Act, the Rules, the Regulations, orders, determinations, directions and decisions of the Authority.

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 at all the times. It is also relevant to point out that as per license condition No.6.5.1 of the license issued in 2014 and another license renewed in 2021, it has been also been provided that failing to comply with the QoS, the licensee shall be subject to the penalties determined by the Authority in accordance with the Act, Rules or Regulations. Furthermore, 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 addition, as per clause A1.3 of the Appendix-3 of the license (2014 and 2021) provides that PTA's Regulation on QoS and 3GPP latest Version/ Release of Cellular Mobile (3G/4G/LTE) shall be followed. The Authority may carry out test on the quality of the licensed services and licensed system and the licensee shall extend full co-operation and assistance for the purpose of including provision of test instruments and equipment. Clause A 1.5 of Appendix-3 of the license provides that during each calendar month, license shall meet or exceed the quality of service standards.

1.8 In order to measure the QoS performance of the licensee, a joint survey was carried out from 26th October, 2020 to 27th October 2020 at Warsak & Charsadda Roads, Peshawar. During the survey, it was revealed that 4G/LTE Signal Strength, Service Accessibility and Call Completion Ratio were not meeting the licensed standards. Accordingly, the survey results were shared with the licensee vide letter dated 29th October, 2020 with direction to improve the services up to the licensed standards and include the area in 4G/LTE future rollout plan. The licensee was required to submit compliance report by 20th November, 2020. In response thereof, the licensee vide email dated 29th November, 2020 provided the reasons for the shortfalls/degradation in QoS stating that approx. 6 km patch is not covered due to non-availability of LTE Layer on two sites and the same are planned to be upgraded in Year 2021. In light of response received from the licensee, a re-survey was carried out independently, from 4th October to 27th October, 2021 at the said areas where it was observed that, contrary to the claim of the licensee, some of the QoS KPIs are persistently below the standards stipulated in the license.

1.8 Since, the above said QoS results were not within the parameters of the license conditions and QoS Regulations, therefore, a Show Cause Notice (SCN) under section 23 of the Act on 17th January, 2022 was issued whereby the licensee was required to remedy the contravention by bringing and maintaining the required standards of quality of service at with clause 1.3 of

Appendix-3 of the license and the QoS Regulations within fifteen (15) days and also to explain in writing within thirty (30) days of the issuance of SCN.

1.9 The license vide letter dated 16th Feb., 2022 submitted reply to the SCN. Crux of the submission of the licensee in reply to the SCN are as under:

- i. The licensee is fully committed to serve its customers with high quality services and is continuously striving hard to ensure Quality of Service ('QoS') standards in the claimed coverage area would be at par or above the defined thresholds in the license. Furthermore, it regularly evaluates and formulates its expansion plans as per its commercial and business requirements with the objective to further enhance the coverage and availability of services in commercially viable areas.
- ii. The licensee had already submitted detailed explanation along with Re-drive results vide letter dated 20th November, 2020 in response to PTA's letter dated 29th October, 2020 and also taken remedial measures for improving RSRP by upgrading the mentioned BTS sites (i.e., RUR3903 & RUR 3153) for LTE in Q1 2021 within the given timeline as communicated vide Letter dated 20th November, 2020, resultantly, the service has been improved in the highlighted area and is meeting the QoS KPIs in the claimed coverage area as per License.
- iii. Earlier during survey between 26th October, 2020 to 27th October, 2020, the issue of Signal Strength RSRP (4G) was identified which was because of the fact that there was no 4G/LTE claimed coverage on the survey route (i.e., parts of the Warsak Road and Charsadda Road), however, the same issue has been resolved/improved by upgrading the given sites with LTE to honour the requirement of the Authority to make it in line with our response dated 20th November, 2020.
- iv. With respect to Charsadda Road, the issues were identified about shortfall of CSSR and Call Completion, etc., the licensee submitted detailed reasons of such alleged shortfall as well as remedied the same and submitted its response vide letter dated 20th November, 2020 along with fresh DT results in terms "*At Charsadda Road, only 33 calls were made during the PTA survey and only Single Blocked Call was observed due to overshooting cell which caused shortfall in QoS KPIs namely Grade of Service, Service Accessibility and Call Completion Ratio. It was temporary issue and resolved later-on. Fresh DT was conducted at the same route and no Blocked call was observed*". The issue was resolved accordingly. Even the fresh Drive Test results of January 2022 establish that services are at par with licensed KPIs. Hence, the stated issues are resolved/remedied accordingly.
- v. That upon receipt of SCN, the licensee again conducted Drive Tests of the given area on 18th January, 2022 and found no anomaly or shortfall in this regard on the survey route. Instead, the CSSR, MOS and RSRP 4G were found at par with License conditions. Survey results clearly indicate that there is no shortfall or breach of any KPIs as alleged in the aforesaid Notice

- vi. The Authority is also well conversant with various aspects which may impact the service experience, such as peculiar circumstances in any given area, potential external interferences in frequencies, internal and external factors at the sites, electricity or fueling delays, power outages, weather issues, etc. or technical or operational difficulties being faced by the operators while running & maintaining the Network, etc. which sometimes might cause or lead to temporary outages on any particular site or a hub site affecting overall service in any particular area or time, and can also be resolved in timely manner by identifying the causes through proper coordination in this regard. If surveys are conducted in such like situations, the result would also be bit different. Keeping in view the aforesaid aspects, the licensee always requests the Authority to conduct joint surveys with agreed methodology instead of secret surveys so that such issues in the Network can be identified and resolved in timely manner in the better interest of customers.
- vii. Moreover, in case the Tool and methodology of survey are also agreed to then differences in the measurement results will also be minimized. With reference to SCN, it is submitted that the licensee is a guest at Telenor site IPW052, which is being owned and maintained by Telenor for power infrastructure/fueling etc., and in case there is any issue chances are there that a temporary dip in service might happen/cannot be ruled out, therefore, advance notice or joint survey would be a useful strategy to monitor and validate the level of services in the given areas.
- viii. That the SCN is premature as the worthy Authority, while issuing the aforesaid SCN, has not completed the requirements provided in applicable Regulations: In accordance with the regulation 10(3) of Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006 and regulation 6(7) of the Cellular Mobile Network Quality of Service Regulations, 2021 (the QoS Regulations 2021), 30 days along with inspection report are to be provided to the Licensee in order to take remedial measures and submit compliance report.
- ix. The licensee had already taken remedial measures in respectful compliance of PTA's earlier letter dated 29th October, 2020 and submitted compliance report vide letter dated 20th November, 2020, and the subject issues had already been resolved/remedied within the given time span. Furthermore, new QoS Regulations 2021 have been promulgated on 9th September, 2021 repealing the 2011 QoS Regulations without retaining the "**Saving Clause**", therefore, for any new survey the requirement of Regulation 6(7) of 2021 QoS Regulations must have to be complied with. As the aforesaid requirement is not completed, therefore, the subject Notice is illegal on this score alone, hence, needs to be withdrawn.
- x. The treatment of all four licenses in the SCN is an aberration of the law. Each license has distinct QoS parameters, service and roll-out obligations. The QoS obligations under each license have to be dealt with separately; the obligations under one license cannot be carried over to the other licenses. The licenses are not interchangeable instruments. For example: Two licenses (2G & 3G) do not contain the requirement of RSRP 4 G, whereas the third License was signed on 18th

- October, 2021 which grants certain concessions/relaxations in this regard, hence, those licenses cannot be attracted for the subject survey, etc.
- xi. The licensee further submitted that while citing section 4(d) of the Act it appears that the Authority chose to focus on the words “*high quality, efficient*”, while conveniently ignoring the expressions “*cost-effective and competitive*”. The aforesaid function of the Authority is subject to the countervailing restraint on the Authority’s powers under section 6(a) of the Act that the rights of the licensee are *duly protected*. A significant right of the Licensee is that it is not to be subjected to obligations or measures or judged on criteria not set out in its licenses.
- xii. The SCN ignores the qualification set out in the very first paragraph of Appendix III of the licenses for the “*prudence and reasonableness*” test in the application of the KPIs. The *prudence and reasonableness* test links to the expression “*cost-effective*” in section 4(d) of the Act. The *prudence and reasonableness* test negate a strict liability obligation, does not dictate inflexible standards, methods or acts to the exclusion of all others, but admits of a spectrum of possible practices, methods and acts which could be expected to accomplish the desired result *at a prudent and reasonable cost*. That is to say, the KPIs are not an absolute obligation, but their application is subject to the aforesaid test. It is common knowledge that all cellular networks have pockets of low coverage, and it is disproportionately expensive, and therefore imprudent and unreasonable, to ensure KPIs on each and every inch of the covered area.
- xiii. Without prejudice to the foregoing, the right reserved by the Authority to itself to conduct surprise checks does not mean secret surveys. The words “*without notice to*” or “*without representative of the Authority* in the cited provisions are coupled with and immediately followed by the Licensee’s obligations to cooperate with the Authority, and impart knowledge of the Licensee for the intended surveys. The element of “*surprise*” only means “*sudden or unexpected*”, and does not mean “*secret*”; a “*surprise*” occurs only when the target acquires knowledge thereof. The Licensee’s knowledge of the survey, irrespective of the element of surprise, is to ensure the *impartiality, transparency, fairness and authenticity* of the survey results, which have been severely compromised in relation to the said ‘*independent*’ survey, as is shown by the re-drive test report appended
- xiv. That the obligation to meet and exceed the quality of service standards is *conditioned* by and premised on a timeframe of *each calendar month*, that is, the survey is to be based on readings taken over an entire month and not a lesser period (in October 2020 survey as short as 1 or 2 days), and that the *test of prudence and reasonableness* applies in judging the Licensee’s compliance with the QoS KPIs. The survey results accompanying with the SCN do not meet the condition of an entire-month measurement and make no allowance for the *prudence and reasonable test* per Appendix III to the licenses, are therefore invalid, and resultantly the SCN is also invalid and must therefore be discharged/withdrawn.

1.10 In order to proceed further, the matter was fixed for hearing on 21st April, 2022 before the Authority. Mr. Zulqurnain Bhatti (HoD litigation), Mr. Mansoor Qadir (HoD Regulations), Mr. Uzair Shafi (Managing Associate), Mr. Zulfikar Ali (Stream Head Regulatory Operations), Mr. Ahmed Jawad (Expert QoS) and Mr. Basharat Mehboob (RAN Expert) attended the hearing on the behalf of the licensee. The learned counsels of the licensee reiterated that 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 With regard to licensee’s contention of carrying out unilateral survey, it is clarified that in the instant matter, a joint survey was carried out and as per survey report shortfalls were shared with the licensee. The licensee was required to improve the services up to the license standard and include the areas in 4G /LTE future roll out plan. The licensee replied that it has improved and observing QoS standards as per required KPIs. In order to verify the claim of the licensee the Authority carried an independent survey. As a result of independent survey report, it has been found that QoS standards were below the required KPIs. For the purpose record and clarity, it also relevant to point out that as per license condition No. 6.5.1, the licensee is required at all time to meet or exceed the Quality of Service standards described in Appendix-3 of the license and QoS Regulations.

2.1.4 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.

2.1.5 In the instant matter, after carrying out joint 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 an independent 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 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 It is also relevant to point out that as per license condition No.6.5.1 of the license issued in 2014 and another license renewed in 2021, it has been also been provided that failing to comply with the QoS, the licensee shall be subject to the penalties determined by the Authority in accordance with the Act, Rules or Regulations. Furthermore, 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 In addition, as per clause A1.3 of the Appendix-3 of the license (2014 and 2021) provides that PTA's Regulation on QoS and 3GPP latest Version/ Release of Cellular Mobile (3G/4G/LTE) shall be followed. The Authority may carry out test on the quality of the licensed services and licensed system and the licensee shall extend full co-operation and assistance for the purpose of including provision of test instruments and equipment. Clause A 1.5 of Appendix-3 of the license

provides that during each calendar month, license shall meet or exceed the quality of service standards. The said license conditions expressly provide that the licensee at all the time is required to meet the quality of service standards.

2.1.9 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 survey which is likely to get skewed to the licensee's detriment, it is clarified that the licensee is erred in understanding to meet the requirement of QoS 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 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.

2.10 Pursuant to hearing held on 21st April, 2022 and in order to verify the claim of the licensee with regard to compliance of the required KPIs in the surveyed area, an independent re-verification QoS survey has been carried out at Warsak and Charasadda Roads, Peshawar on 26th April, 2022. During the survey, it was found that voice and data services of the licensed service were satisfactory at Charsadda and Warsak Road, Peshawar except Call Setup Success Rate at Charsadda Road.

3. Order

3.1 Keeping in view the above-mentioned facts coupled with the available record, it is concluded that though the licensee has upgraded QoS KPIs at Charsadda and Warsak Roads however, KPI, i.e., Call Setup Success Rate still required improvement at Charsadda Road, Peshawar. Considering the progress in observing the QoS standards, the Authority hereby issues warning to the licensee with the direction to comply with the QoS requirements in accordance with applicable regulatory framework.

3.2 In case of failure to comply with the regulatory compliance with regard to Quality of Services Standards, legal proceedings will be initiated against the licensee as per applicable laws.

Maj. Gen. Amir Azeem Bajwa (R)
Chairman

Dr. Khawar Siddique Khokhar
Member (Compliance & Enforcement)

Signed on 13th day of June, 2022 and comprises of (08) pages only.