



Enforcement Order under section 23 of the Azad Jammu and Kashmir Council Adaptation of Pakistan Telecommunication (Re-organization) Act, 2005 and Northern Areas Telecommunication (Re-organization) (Adaption and Enforcement) Order, 2006 (as amended from time to time) against CMPak (Pvt.) Limited

File No. PTA/Enf-Wireless/Mobile/Independent QoS Survey Plan/6/2020/491

Show Cause Notice: 26th June, 2020
Venue of Hearing: PTA HQs, Islamabad
Date of Hearing: 22nd September, 2020

Panel of Hearing:

Maj. Gen. Amir Azeem Bajwa (R): Chairman
Dr. Khawar Siddique Khokhar: Member (Compliance & Enforcement)
Muhammad Naveed: Member (Finance)

The Issue:

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

DECISION OF THE AUTHORITY

1. BRIEF FACTS:

1.1 Brief facts of the case are that China Mobile Pakistan Limited "CMPAK" (the "licensee") is a public Limited Company incorporated under the Companies Ordinance, 1984 and is engaged in the business of cellular mobile services in Azad Jammu and Kashmir pursuant to the non-exclusive license No. MCT(AJK&NAs)-05/WLL&M/PTA/2007 dated 22nd August 2007 (the "license") issued by the Pakistan Telecommunication Authority (the "Authority") to establish, maintain and operate telecommunication system and to provide licensed cellular mobile services in Azad Jammu and Kashmir on the terms & conditions contained in the license.

1.2 Being a license holder, the licensee in accordance with the Azad Jammu and Kashmir Council Adaptation of Pakistan Telecommunication (Re-organization) Act, 2005 and Northern Areas Telecommunication (Re-organization) (Adaption and Enforcement) Order, 2006 (hereinafter both these statutes will called as the "Act") including amendment / modification made thereon in under an obligation to comply with the provisions of the prevailing regulatory laws comprising of the Act, the Pakistan Telecommunication Rules, 2000 (the "Rules"), the Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006 and the terms and conditions of the license.

1.3 Due to non-compliance of the obligation with regard to observing the KPIs of Quality of Services, the Authority in exercise of its powers conferred under section 23 of the Act, issued Show

Cause Notices (SCN) on 26th June, 2020. As per SCN, the licensee was required to remedy the contravention by bringing and maintaining the required standards of the quality of services at par with license clause 1.3 of the Appendix -3 of the license within fifteen days. More so the licensee was also required to explain in writing, within thirty (30) days of the issuance of the notice, as to why the license should not be suspended, terminated or any other enforcement order should not be passed against the licensee under section 23 of the Act.

1.4 In response, the licensee, vide letter dated 26th June, 2020 submitted its reply. At the very outset the licensee denied all allegations leveled in the SCN. However, for a matter of record crux of SCN reply with regard to factual and legal issues as contended by the licensee is given below:

- i. *“PTA/Authority conducted a survey in the 4th quarter of 2019 (the “Survey”) to assess the standard and quality of service (the “QoS parameters”) being provided by the CMOs at Muzaffarabad, Azad Jammu & Kashmir. Said Survey was conducted without intimation to the Company. That the results of the said Survey were not provided to the Company by the PTA and the Company only became aware of the results through a press release issued by of PTA on 25.03.2020.*
- ii. *The direction issued by the Issuing Authority regarding remedying the contravention mentioned in the Notice, amounts to passing of an enforcement order within the meaning of Section 23 of the Act without adverting to the procedure laid down in the **Pakistan Telecommunication (Re-organization) Act, 1996 (the “Act”)** read with **The Azad Jammu and Kashmir Council Adaption of Pakistan Telecommunication (Re- Organization) Act, 2005**, the **Telecommunication Rules, 2000 (the “Telecom Rules”)** the **Cellular Mobile Network Quality of Service (QoS) Regulations, 2011 (the “QoS Regulations”)** and the terms of license. The Notice under reply, being without jurisdiction, erroneous and illegal, is liable to be withdrawn.*
- iii. *While issuing SCN, the procedure as laid down in the rule 9 of the Rules has not be complied with.*
- iv. *Survey, as mentioned in the SCN, has not been carried out in accordance with **Quality of Services Regulations, 2011** in terms of time lines, methodology, format, publishing of inspection report, non-provision of log files etc., and the licensee has also not been provided time to take remedial steps as provided in the said regulations.*
- v. *The inspection reports published on the website were not in the format specified under **Clause 8(6) of the QoS Regulations**.*
- vi. *The direction issued by the issuing Authority regarding remedying the contravention mentioned in the Notice, amounts to passing an adverse*

finding/order against the licensee without adverting to due process of law. Article 10A of the Constitution guarantees a fair trial and due process in the determination of any civil rights and obligation.

- vii. *The right of hearing is further bolstered by a reading of section 6(1)(d) of the Act. Section 6(1)(d) of the Act obliged the Authority to ensure that those affected by its decisions are given a due notice thereof and provided an opportunity of being heard. In the instant matter, a bare perusal of the contents of Notice, make it abundantly clear that the licensee has already been judge to be guilty of a contravention prior to being given any Notice.”*

1.5 In order to proceed further, the matter was fixed for hearing on 22nd September 2020 before the Authority. Barrister Shahyar Riaz Advocate High Court, Ms. Nida Aftab Advocate High Court, Mr. Mian Ahmed Ibrahim Director (Legal), Mr. Ahmed Faisal (Dy Director Reg), M. Amer Majeed Technical Engg. Mr. Asad Javed Technical and Mr. Waqas Raja G.M Reg attended hearing on the said date. Legal counsel reiterated the same as submitted in reply to the SCN and pointed out that the licensee is always complying the regulatory laws and license terms and condition in true letter and spirit. It was further highlighted that the licensee assure that all possible remedial steps to remedy the short falls if any and compliance report will be submitted to the Authority.

2. FINDINGS OF THE AUTHORITY:

Matter heard and record pursued. After careful examination of record and hearing the arguments advanced by the licensee, following are the findings of the Authority:

2.1 Admittedly, there is no dispute with regard to provision of telecommunication services in accordance with licensee terms and condition. The licensee is under obligation to meet all requirements of QoS as provided in the license. By virtue of provision of the Act, the Authority in accordance with section clause (f) of section 6 of the Act provides that the Authority shall ensure that the interest of users of telecommunication services are duly safeguarded and protected. In this regard it is the responsibility of the Authority to ensure the licensee are meeting the requirements of QoS. „

2.2 In accordance with clause (a) of sub-section (4) of section 21 of the Act, clause 8.1 of the Appendix B of the Rules and condition 3.1 of the license is under obligation to observe the provisions of the Act, the Rules, the Regulations, orders, determinations, directions and decisions of the Authority. By virtue of clause (d) of section 4 of the Act, the Authority is under obligation to promote the availability of a wide range of high quality, efficient, cost effective and competitive telecommunication services throughout Pakistan.

2.3 The license granted by the Authority under the Act contains clause (g) of sub-section (4) of section 21 of the Act regarding obligations to provide telecommunication service to

particular persons or areas to meet minimum standards for quality and grade of services requirements.

2.4 As far as carrying out independent survey is concerned, it pointed out that as per para 23.7 of Part 6 of the Rules and regulation 10 of the Regulations empowers 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. The license condition 6.5.1 of the license obliged the licensee at all times to meet or exceed the Quality of Service (QoS) standards described in Appendix-3 and such other quality of service standards as the Authority may by regulation, require. The term "all the time" required the licensee to ensure that its network and provision of telecommunication services must be met with the KPIs irrespective of any methodology applied or time at which the survey was conducted to check the parameters or threshold prescribed in Appendix 3 of the license.

2.5 The licensee also expressed that the survey methodology in Annex-A has not been followed, in particular, the coverage area ignored by making test calls beyond the claimed coverage area. The licensee also objected on Urban/rural disaggregation of the survey results adopted as not warranted by Annexes. It is relevant to mention here that the main aspect of Annex-A is Voice Calls, SMS, Percentage of ON-Net, Off-Net Calls/SMS, B-Party (terminating number) moving, Call Window including pause between Calls, conduct of survey within coverage boundaries and the same has been followed.

2.6 Furthermore, the licensee has also not provided any detail of corrective measures and subsequent technical steps undertaken i.e. installation/up-gradation of sites, enhancement in transmission media, changes in network planning etc., which may results in improvement of services in the surveyed city.

3. ORDER:

3.1 Keeping in view the above-mentioned facts coupled with the available record, the Authority has reached to the conclusion that the licensee i.e. CMPak (Zong) the license has failed to meet the requirements of KPIs as provided in the license. As a consequence of non-observing KPIs for Quality of Services, consumers are suffering with low grade telecommunication services. It is the responsibility of the licensee to ensure provision of licensed services should be in accordance with parameters as laid down in the license conditions, applicable regulations, Standing Operating Procedure and directions issued by the Authority from time to time. Having gone through the survey report and perusal of record, it is found that despite providing opportunity to remedy the contravention within certain time the licensee has failed to remedy the contravention with regard to maintaining the quality of licensed services in the manner as provided in the license.

3.2 Considering the nature of contravention and violation on the part of licensee, a fine to the tune of Rs.100,000/- (Rupees one hundred thousand only) is hereby imposed

with the direction to pay the same within thirty (30) days from the date of receipt of this order and submit a compliance report.

3.3 In case of failure to comply with the same further legal proceeding as per applicable law will be initiated without any further notice.

Maj. Gen. Amir Azeem Bajwa (R)
Chairman

Muhammad Naveed
Member (Finance)

Dr. Khawar Siddique Khokhar
Member (Compliance & Enforcement)

Signed on 29th day of June, 2021 and comprises of (5) pages only.