



Government of Pakistan
PAKISTAN TELECOMMUNICATION AUTHORITY
HEADQUARTERS, F-5/1 ISLAMABAD
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Enforcement Order under section 23 of Pakistan Telecommunication (Re-organization) Act, 1996 against Pakistan Mobile Communications Limited (Pakistan)

No: PTA/Enf-Wireless/Mobile/Independent QoS Survey Plan/6/2020/493

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 Precisely stated that Pakistan Mobile Communications Limited (PMCL-Jazz) (the "licensee") is engaged in the business of cellular mobile services in Pakistan pursuant to non-exclusive licenses No. MCT-05/WLL&M/PTA/2007 dated 06th July, 2007, license No. NGMS-04/WLL&M/PTA/2014 dated 21st May, 2014 and License No. NGMS-06/WLL&M/PTA/2017 dated 29th June 2017 (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 under prevailing regulatory laws comprising the Pakistan Telecommunication (Re-organization) Act, 1996 (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 is under a continuing obligation to comply with the same.

1.3 Due to failure on the part of the licensee for maintaining the required standards of quality of service as per clause 1.3 of the Appendix-3 of the license, a Show Cause Notice (the "SCN") under section 23 of the Act was issued to the licensee wherein the licensee was required to remedy the contravention by bringing and maintaining the required standards of quality of service within

fifteen (15) days of the issuance of this show cause notice and also 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 should not be passed against the licensee under Section 23 of the Act.

2. The licensee replied to the Notice and denied all allegations level in the SCN. However, for ready reference relevant para of reply are reproduced below:

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- a. *In order to provide better quality services to its valued customers, the Licensee has invested billions of dollars during the last two and a half decade in Pakistan for establishing state of the ait network/infrastructure, and providing excellent experience to its valued customers in all its claimed coverage areas. The Licensee is fully committed to serve its customers with high quality services and is continuously striving hard to ensure QoS standards in the claimed coverage area would be at or above the defined thresholds in the license. Furthermore, the Licensee regularly evaluate and formulate its expansion plans as per its commercial and business requirements with objective to further enhance the coverage and availability of services in commercial viable areas.*
- b. *The Licensee is shocked to receive this show cause notice in times when it is making earnest efforts to provide better services to its valued customers during these testing time of Covid-19 situations, when a lot of difficulties arc being faced by the relevant teams in accessing the network and other external factors impacting the network coverage, such as un-announced load shedding, illegal jammers and amplifiers, etc*
- c. *The Licensee respectfully disagree with the alleged survey results and vehemently deny the allegations levelled in the subject show cause notice (SCN), being based on incorrect information of facts and law on the subject, and submits its reply to the SCN in the following terms:*
- d. *The Licensee appreciates (he Authority's desire for superior quality of services across the country. The Licensee has always cooperated with and supported the Authority in pursuit of this objective. The established practice consistent with the regulatory framework has been for the Authority to notify the Licensee of the areas requiring attention, and the Licensee has always responded positively with corrective measures even in instances where the specific areas were not at the relevant time within its roll-out and coverage targets.*
- e. *The Licensee is therefore surprised to see a sudden shift in the regulatory strategy from cooperative-compliance towards coercive-compliance, and is unable to understand the cause for this precipitate shift. It is universally acknowledged the world over that cooperative strategies yield better overall outcomes than coercive*

ones, especially in markets that are sufficiently competitive and where there is competitive pressure to prevent chum. There are no material instances of the Licensee's non-compliance with the Authority's instructions to address QoS shortfalls found in any surveys for the Authority to resort to the coercive strategy of a show-cause notice threatening penal consequences.

- f. The Licensee assures the Authority that it will continue to cooperate with the Authority in its pursuit for QoS maintenance within the parameters of its license and the regulatory framework. In reply to the Notice the licensee list down the following discrepancy of applicable procedure laid down in applicable regulations:

Legal Provisions	Violation	
<i>Cellular Mobile Network Quality of Service (QoS) Regulations, 2011 (the QoS Regulations)</i>		
<u>8(7)</u>	<u>1.</u>	<u>30 days along with inspection report not given to take remedial measures and submit compliance report; instead the SCN issued prematurely, bypassing regulation 8(7)</u>
	<u>2.</u>	<u>15 days given for remedy instead of 30 days, that too without the logs to identify the cause and specific locations of the alleged shortfalls</u>
	<u>3.</u>	<u>logs shared with inordinate delay of over 6-9 months after the QoS survey, despite Licensee's request for the logs in April 2020</u>
	<u>4.</u>	<u>frustrating the 15 day time limit in the SCN to remedy the shortfalls by sharing logs 14 days after issuing the SCN, leaving nil days for remedy</u>
<u>8(6) and 8(8)</u>	<u>5.</u>	<u>survey methodology in Annex-A not followed</u>
<u>Annexes A & B</u>	<u>6.</u>	<u>results not tabulated in accordance with Annex-B</u>
	<u>7.</u>	<u>distinction not drawn between Tier-1, Tier-2 and Tier-3 cities for survey methodology</u>
<u>9(2)(c)</u>	<u>8.</u>	<u>failure to call for the Licensee's comments before publication of the survey results, causing reputational loss to the Licensee</u>

PTA (Functions & Power) Regulations, 2006 (the F&P Regulations)

<u>10(3)</u>	9. The inspection report not shared with the Licensee and 30 day timeframe not given to take remedial measures and submit compliance report; instead the SCN issued prematurely, bypassing regulation 10(3)
<u>The Pakistan Telecommunication Rules, 2000 (the Rules)</u>	
<u>8.2(c)</u> <u>Appendix B</u>	10. <u>failed to apply the exception to liability where "...compliance is prevented or substantially hindered by any act of Nature..." and in "circumstances beyond the control of the Licensee", in demanding absolute coverage beyond the claimed coverage areas and/or where coverage was affected by natural causes such as shadowing effect, hilly terrain, or attributing interconnecting operator network failures to the Licensee, etc.</u>
<u>23.7, Part 6</u> <u>Appendix B</u>	11. <u>misinterpreted to mean a "secret" survey</u>
<u>The license</u>	
<u>6.5</u>	12. <u>misinterpreted to mean that regulations, directions and decisions of the Authority are binding even if ultra vires or in violation of the applicable legal and license framework</u>
<u>Appendix III</u>	13. <u>per Appendix III, the QoS are to be measured on a system wide/coverage area basis only, while making allowance for low/no coverage area due to natural tractors that must be excluded to compute the final survey results</u>
<u>The Pakistan Telecommunication (Re-organization) Act, 1996 (the Act)</u>	
<u>§§6,21,22</u>	14. <u>By purporting to prescribe standards for quality of service and/or imposing obligations or reserving powers for the Authority vis-i- vis the measurement, recording, survey, enforcement and other matters pertaining to the QoS not set out in the license originally or by an amendment consented to by the Licensee, and purporting to bind the Licensee to ultra vires provisions of the Rules, the QoS Regulations, the Rules, and to results of a survey that is materially non-compliant with the license and the regulatory framework.</u>

- g. The SCN was received on 29 June 2020, without the test logs. The Authority is well aware that it is not possible to identify any alleged shortfalls, let alone remedy the same, until the logs are provided. The Authority provided the logs

on 14 July, that is, on the day of expiry of the remedy period stated in the SCN. The survey was conducted in Q3-Q4 of 2019. The results were published by the Authority on its web-site on or about March, 2020, by a delay of about 3 months. The Licensee wrote to the Authority- on 7 April 2020 asking for the log-files. The Authority did not respond.

- h. It is not clear why the Authority took more than 6-9 months to share the test logs with the Licensee. This conduct is entirely inconsistent with the Authority's avowed objective to protect the consumer interest; if redressing the QoS shortfalls was the objective, the Authority' (consistent with its practice) would have shared the logs immediately after the survey, instead of waiting for over 6-9 months and then issuing an SCN after a lapse of 6-9 months giving only 15 days to remedy, and then too providing the logs with nil days remaining in the permitted remedy period. There is no rational explanation for this conduct. It is however patent that the Authority did not consider the shortfalls material enough at the time to merit a remedial dialogue with the Licensee and for unknown reasons chose to issue the SCN 6-9 months later:
- i) This paragraph of the SCN is therefore in patent violation of a combined reading of regulation 8(7) of the QoS Regulations and regulation 10(3) of the F&P Regulations, whereby the Licensee is to be given the inspection report, together with test logs to make any sense of the alleged shortfalls therein, with 30 days for remedy and then to submit a compliance report. It is only after the compliance report or non-satisfactory explanation is submitted and the Authority finds continuing non-compliance severe enough to merit coercive action that a show-cause notice is to be issued.
- ii) Such has been the consistent practice of the Authority for many years and is consonant with the regulatory framework. By way of recent examples:
- (1) PTA vide its letter dated 20th September 2019 directed to improve QoS KPI at Noshki-Balochistan which were found below license benchmarks during survey conducted in Q2-2019. PTA directed for compliance within 30 days.
- The Licensee responded that the issue was due to fluctuation of PTCL media which had been stabilized and KPIs stood improved, and fresh DT results were shared with PTA on 11th October 2019.
- (2) PTA vide its letter dated 23rd December 2019 directed to improve QoS KPIs of call connection time at Gilgit- Sakardu which were found below license benchmarks during survey conducted in Q3-2019. PTA directed for compliance within 30 days. The Licensee clarified that majority of sites deployed at Gilgit & Skardu were providing services

via VAST and due to VSAT limitations it took additional time for call connection setup. This was found a satisfactory explanation by the Authority and no further communication was received from PTA after this clarification.

- iii) The reasons for departure by way of the SCN from its own regulatory framework and consistent practice by the Authority is inexplicable.*
- iv) Without prejudice to the foregoing submissions, most of the alleged shortfalls either did not exist, or stand remedied. The Licensee is in full compliance with its licensed QoS thresholds when such nonexistent or remedied shortfalls are factored in the survey results, as shown in Annex-A hereto."*

3. HEARING BEFORE THE AUTHORITY:

3.1 In order to proceed further, the matter was fixed for hearing on 22nd September, 2020 before the Authority. Mr. Asif Hameed (Expert QoS), Mr. Mansoor Qadir (Manager legal), Mr. Mateen Durrani (Head of QoS), Ms. Fariha Khan (Legal Manager), Ms. Samina Kamila Khan (CLO) MNA Rehan (Counsel), Sardar Ejaz Ishaq Khan (Counsel), Mr. Mudassir Hussain (VP CRA) 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.

4. FINDINGS OF THE AUTHORITY:

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

4.1.1 Admittedly, there is no dispute with regard to provision of telecommunication services in accordance with licensee terms and conditions. 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.

4.1.2 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.

4.1.3 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.

4.1.4 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.

4.1.5 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.

4.1.6 The “Drive Test/Survey Measurement Methodology” i.e. Annex-A of Cellular Mobile Quality of Service (QoS) Regulations 2011 was followed. The drive test samples were collected both in Urban and Rural/Sub-urban areas, in order to assess the quality of service provided by the operator to its subscribers in surveyed cities.

4.1.7 The licensee has submitted incomplete compliance report relying only on “Overall QoS KPIs Results” without analyzing “Urban QoS KPIs Results” and “Rural QoS KPIs Results” separately.

4.1.8. Furthermore, the licensee has also not provided any detail of corrective measures / technical steps undertaken i.e. installation/up-gradation of sites, enhancement in transmission media, changes in network etc., which may result in improvement of services in the surveyed cities. However, the licensee has installed a New Site at Thatta.

5. ORDER:

5.1 Keeping in view the above-mentioned facts coupled with the available record, the Authority has reached to the conclusion that the licensee i.e. Pakistan Mobile Communication Limited (PMCL) has failed to meet the requirement 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 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 lines 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.

5.2 Considering the nature of contravention and violation on the part of licensee, a fine to ~~the tune of~~ the tune of Rs. 2,300,000/- (Rupees two million three 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.

5.3 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 (8) pages only.