



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

File No. PTA/Enforcement Wireless/Mobile QoS/Quarterly QoS Survey/18/2020/496

Show Cause Notice:	7 <sup>th</sup> July, 2020
Venue of Hearing:	PTA HQs, Islamabad
Date of Hearing:	1 <sup>st</sup> December, 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 Telenor Pakistan (Pvt.) Limited ( the "licensee") is a private limited company incorporated under the Companies Ordinance, 1984 and is engaged in the business of cellular mobile services in Pakistan pursuant to non-exclusive license No. MCT-01/RBS/PTA/2004 dated 26<sup>th</sup> May, 2004, (license renewal under process), license No. NGMS-02/WLL&M/PTA/2014 dated 21<sup>st</sup> May, 2014, license No. NGMS-05/WLL&M/PTA/2016 dated 14<sup>th</sup> 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 i.e., Telenor Pakistan (Pvt.) Ltd. is required to comply with the provisions of the prevailing regulatory laws comprising of 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 Networks Quality of Service Regulations, 2011 (the "QoS Regulations") and the terms and conditions of the license.

1.3 Under clause (d) of section 4 of the Act, to promote the availability of wide range of high quality, efficient, cost effective and competitive telecommunication services throughout Pakistan is one of the functions of the Authority. In accordance with clause (g) of sub-section (4) of section 21 of the Act, the licensee is under 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 regulation 8 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, regulations, and/or KPIs.

1.5 Clause 6.5.1 of the license oblige 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 prescribed the quality of service standards in detail manner and requires the licensee to take all reasonable and prudent measures to ensure that its Telecommunication and the 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.

1.6 Sub-section (f) of section 6 of the Act provides that the Authority shall ensure that the interest of users of telecommunication services are duly protected. 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 obliged the licensee to observe the provisions of the Act, the Rules, the Regulations, orders, determinations, directions and decisions of the Authority.

1.7 The Authority in order to ensure that users of telecommunication services get QoS standards as laid down in the license, conducted a joint survey alongwith licensee, in 1<sup>st</sup> quarter of 2020 at Sheikhpura, Gujar Khan and Mansehra.

1.8 Since, QoS results were not within the parameters of the license conditions and QoS Regulations and due to non-provision of the licensed services and non-maintaining the required standards of quality of service KPIs tantamount to serious violation and contravention of the prevailing regulatory laws and directions of the Authority. As consequence thereof, a Show Cause Notice (the "SCN") under section 23 of the Act on 7<sup>th</sup> July, 2020 was issued whereby the licensee was required to remedy the contraventions by bringing and maintaining the required standards of quality of service at par with clause 1.3 of the Appendix-3 of the license within fifteen (15) days.

2. The licensee replied to the SCN vide letter dated 05.08.2020 and denied allegations as mentioned in the SCN. Relevant contentions of the licensee as made in the SCN are as under:

*“2.1 The licensee has always cooperated with and support the Authority in bringing and Maintaining and maintaining the KPIs as per required standards and is surprised to see sudden shift in regulatory strategy from cooperative compliance to coercive Compliance*

*2.2 The SCN is void-ab-initio to the extend of any survey are based on an insufficient Sample size of calls as acknowledged in the Authority SOPs dated 13.2.2017 and 4.4.2019 which expressed that sample size should be sufficient large as small Number of failure event cannot cause non-conformance of QoS KPIs*

*2.3 Aspects of instruments which were overlooked by PTA in issuing SCN, as shown in the list (non-exhaustive) below:*

<b>Legal Provision</b>	<b>Violation</b>
<b>Cellular Mobile Network Quality of Service (QoS) Regulations, 2011 (the QoS Regulations)</b>	
8(7)	<ol style="list-style-type: none"> <li>1. 30 days along with inspection report not given to take remedial measures and submit compliance report; instead the SCN issued prematurely, by passing regulation 8(7)</li> <li>2. 15 days given for remedy instead of 30 days</li> </ol>
8(6) and 8(8) Annexes A & B	<ol style="list-style-type: none"> <li>3. urban/ rural disaggregation of survey results adopted, which is not warranted by the Annexes</li> <li>4. survey methodology in Annex-A not followed, in particular, the coverage area ignored by making test calls beyond the claimed coverage area.</li> <li>5. Results not tabulated in accordance with Annex-B</li> <li>6. Distinction not drawn between Tier-1, Tier-2 and Tier-3 cities for survey methodology, with urban/rural distinction not applicable thereto</li> </ol>
<b>PTA (Functions &amp; powers) Regulations, 2006 (the F&amp;P Regulations)</b>	
10(3)	<ol style="list-style-type: none"> <li>7. The inspection report not shared with the licensee and 30 days timeframe not given to take remedial measure and submit compliance report; instead SCN issued prematurely, by passing regulation 10(3)</li> </ol>
<b>The Pakistan Telecommunication Rules, 2000 (the Rules)</b>	
8.2(c) Appendix B	<ol style="list-style-type: none"> <li>8. 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 on each and every</li> </ol>

	<i>inch of the coverage areas and/on where was affected by natural and physical causes</i>
<i>The licenses</i>	
6.5	<i>9. 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</i>
Appendix III	<i>10 the city/urban/rural basis for enforcement of QoS is Not stipulated in appendix III and therefore invalid</i>
<i>The Pakistan Telecommunication (Re-organization) Act, 1996 ( the Act)</i>	
6, 21,22	<i>11. by purporting to prescribe standards for quality of service and/or imposing obligations or reserving powers for the Authority vis-a-vis the measurement, recording, survey, enforcement and other matters pertaining to the QoS not set out in the licenses 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-compliance with the licensee and the regulatory framework                  12. audit-alteram-parterm failure causing prejudice to the licensee; the Authority's proposed methodology vide 14.2.2020 applied without ruling on the Industry's application thereon vide 20.2.2020</i>

2.4 *The citation of section 4(d) of the Act seems to be with an eye on the words "high quality, Efficient, while ignoring the expression" cost-effective and competitive" and as per section 6(a) of the Act, the Authority is under obligation to ensure the right of licensee are duly protected*

2.5 *The SCN applies a " city-urban-rural" divide for the KPIs measurements, when this distinction is alien to each license and the delegated legislation administered by the Authority. The urban-rural disaggregation of QoS data imposes higher QoS obligation then those set out in the license*

2.6. *The SCN ignores the qualification set out in the very first paragraph of Appendix III of the license for the "prudence and reasonableness" test in the application of KPIs. The prudence and reasonableness test links to the expression " cost-effective" in section 4(d) of the Act. The KPIs are not absolute obligation, but their application is subject to the aforesaid test.*

2.7 *It is a right of licensee that technical constrains on and the limitations of cellular networks be recognized and a licensee not be expected to operate above and beyond such constrains. In demanding absolute coverage beyond the coverage areas, or where coverage is adversely affected by physical causes such as shadowing*

*effect, hilly terrain etc. the SCN fails to extend the exception to liability stipulated under clause 8.2(c) of Appendix B to the Rules.*

*2.8 The SCN violates the condition in Appendix III to the licenses regarding the application of international practices and recommendations such as specific documents of ITU, 3GPP, ETSI or the like expressly excluding exceptions to coverage and quality.*

*2.9 The reference to section 21(4)(g) of the Act is misplaced as the said section enables inclusion of QoS standards for “particular persons or areas”. Whereas in the license, no particular persons or areas are identified in the licenses for meeting minimum standards for quality and grade of service.*

*2.10 The Para 23.7 of part 6 of the Rules and regulation 10 of the Regulation are ultra vires the Act to the extent they fasten obligations on the licensee over and above set out in the licenses. The licensee reserves the right to challenge the same before the Constitutional Courts.*

*2.11 The clause 6.5.1 of the license reserving an unrestricted power to the Authority to prescribe quality of standards over and above set out in the license without the consent of the licensee are ultra vires Act, are not binding on the licensee, and the reserves its right to challenge the same before a constitutional court.*

*2.12 The doctrine of substantial compliance applies to the survey results and the licensee cannot be penalized on the basis of marginal variations on some only of the KPIs. Further, the Authority has not allowed 30 days remedy timeframe as required under regulation 8(7), 9(2) of the QoS Regulations and regulation 10(3) of the F&P Regulations.”*

### **3. HEARING BEFORE THE AUTHORITY:**

3.1 In order to proceed further the instant matter was fixed for hearing on 1<sup>st</sup> December, 2020 before the Authority. Mr. Haider Latif (Head of Legal), Mr. MNA Rehan (Counsel), Sardar Ijaz Ishaq Khan (Counsel), Jahanzaib Ali Chaudry (Manager Legal), Mr. Aly Aamer (Manager Regulatory) 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.

### **4. FINDINGS OF THE AUTHORITY:**

4.1 Matter heard and record perused. After careful examination of record and arguments advanced by the legal counsel as well as written reply of SCN filed by the licensee the Authority reaches at the following findings:

4.1 The Authority under the Act is mandated to regulate the establishment, maintenance and operation of telecommunication system and provision of telecommunication services in Pakistan. The Authority under section 5 read with section 21 of the Act, grants licenses for telecommunication system and services. 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 provide the licensed services in accordance with terms and condition of cellular mobile license, the provision(s) of the Act, rules, regulations and directions of the Authority issued by the Authority from time to time.

4.2 Section 21(4)(g) of the Act provides that the licensee is under obligation to provide telecommunication services to particular person or areas to meet minimum standards for quality and grade of services requirement. With regard to monitor and enforce the license condition, clause 23.7 of part 6 of the Rules, regulation 10 of the Regulations and regulation 8 of the QoS Regulations, the Authority may 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.

4.4 Upon taking notice of by the Authority that QoS results of the licensee were not within the parameters of the license conditions and QoS Regulation and due to non-provision of the licensed services and non-maintaining the required standards of quality of service KPIs amounts to serious violations and contravention of the prevailing regulatory laws and directions of the Authority. As consequence thereof, a Show Cause Notice (SCN) under section 23 of the Act on 7<sup>th</sup> July, 2020 was issued whereby the licensee was required to remedy the contraventions by bringing and maintaining the required standards of quality of service at par with clause 1.3 of the Appendix-3 of the license within fifteen (15) days.

4.5 The licensee instead of taking tangible measures, submitted the detailed reply vide letter dated 5.8.2020 and denied the allegation as levelled in the SCN. The licensee vide its reply objected on the sample size on which the survey was conducted. It is pertinent to mention here that QoS regulations does not define any sample size for any particular city. The main aspect of Annex-A are 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.

4.6 The licensee further claimed that the three licensees are mentioned in the SCN and each license has distinct QoS parameters, service and roll-out obligation and each license has to be dealt separately. The obligation under one license cannot be carried over the other licenses. The licensee's articulations are based on misconceptions on the fact that the licensee can easily trace from the log files the frequency band used during the survey.

4.7 The licensee also objected that the SCN has been issued prematurely, by passing regulation 8(7) of QoS Regulations, 2011 and clause 10(3) of PTA (function & Powers) Regulation, 2006 which allows 30 days for taking remedial measures and further asserted that survey log files specific to the SCN areas are not shared to date. As far as issuance of SCN prematurely and not sharing the survey log files specific to SCN is concerned, it is pointed out the survey has been carried out jointly with the licensee on their own provided tool and the log files are already available with licensee.

4.8 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. Furthermore, the Annex-A does not restrict from taking drive test sample in Urban and Rural/Suburb Areas of the particular city.

4.9 Further to hearing of the SCN, the licensee submitted another reply on 5.12.2020 to the queries raised during the hearing alongwith log files. The log files analysis revealed that only limited number of calls made at the same locations where calls drops were observed during 1<sup>st</sup> Quarter 2020 QoS Survey. However, the licensee neither followed the QoS methodology nor sample size referred in its earlier reply. Also the route of the re-survey carried out by the licensee is different from the joint survey of 1<sup>st</sup> Quarter 2020.

## **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. Telenor, the license 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 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 remedy the contraventions for 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, the Authority hereby imposes a fine to the tune of Rs. 250,000/- (Rupees two hundred fifty thousand only) with the direction to pay the same within thirty (30) days from the date of receipt of this order and submit a compliance report.

Dated: 29<sup>th</sup> June, 2021

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 29<sup>th</sup> day of June, 2021 and comprises of (8) pages only.