



Government of Pakistan
PAKISTAN TELECOMMUNICATION AUTHORITY
HEADQUARTERS, F-5/1 ISLAMABAD
www.pta.gov.pk

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

File No: PTA/Enf-Wireless/Mobile/Independent QoS Survey Plan/6/2020/498

Show Cause Notice: 29th June, 2020
Venue of Hearing: PTA HQs, Islamabad
Date of Hearing: 24th 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 Telenor Pakistan (Pvt.) Limited (the "licensee") is engaged in the business of cellular mobile services in Pakistan pursuant to non-exclusive licenses No. MCT-01/RBS/PTA/2004 dated 26th May, 2004, 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 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 (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:

- a. *"The Licensee appreciates the 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.*
- b. *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.*
- c. *The SCN is void-ab-initio to the extent any of the survey results are based on an insufficient sample size of calls as acknowledged in the Authority's settled SOPs vide letters dated 13 February 2017 and 4 April 2019 (copies attached) that the sample sizes should be sufficiently large so that "...a small number of failure events cannot cause non-conformance of QoS KPIs...*
- d. *The Licensee is in full compliance with its licensed and regulatory obligations. Rather, the SCN results from a misreading and misapplication and therefore contravention of the provisions of the Act, the Rules, the Regulations, the licenses and the Authority's own settled procedures and practices since long, deviation wherefrom is not warranted without prior consultation with the licensee.*
- e. *The SCN is illegal and ultra vires in that the SCN, inter alia, deprives the Licensee of its Constitutional, legal and contractual rights, in particular that the licenses, the Act, the Rules and the Regulations must be administered in accordance with their terms and that the surveys and deliberations preceding the SCN be open, equitable, consistent, and transparent with due care and attention (good-faith test).*

f. The licensee assured the Authority that it will continue to cooperate with the Authority in its pursuant for QoS maintenance within parameters of its license and regulatory frame work. In reply to Notice the licensee listed down the following discrepancy of applicable procedure laid down in applicable regulations;

| Legal Provision | Violation |
|---|---|
| Cellular Mobile Network Quality of Service (QoS) Regulations, 2011 (the QoS Regulations) | |
| 8(7) | <ol style="list-style-type: none"> 1. 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) 2. 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 3. logs shared with inordinate delay of over 6-9 months after the QoS survey 4. frustrating the 15 day time limit in the SCN to remedy the shortfalls by sharing logs shared 8 days after issuing the SCN, leaving only 7 days for remedy |
| 8(6) and 8(8) Annexes A&B | <ol style="list-style-type: none"> 5. survey methodology in Annex-A not followed, in particular, the coverage area ignored by making test calls beyond the claimed coverage area 6. results not tabulated in accordance with Annex-B 7. urban/rural disaggregation of survey results adopted, which is not warranted by the Annexes 8. distinction not drawn between Tier-1, Tier-2 and Tier-3 cities for survey methodology |
| 9(2)(e) | <ol style="list-style-type: none"> 9. failure to call for the Licensee's comments before publication of the survey results, causing reputational loss to the Licensee |
| PTA (Function & Power) Regulations, 2006 (the F&P Regulations) | |
| 10(3) | <ol style="list-style-type: none"> 10. 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 regulations 10(3) |
| The Pakistan Telecommunication Rules, 2000 (the Rules) | |
| 8.2(c) Appendix B | <ol style="list-style-type: none"> 11. 11 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 |

| | |
|---|--|
| | <i>such as shadowing effect, hilly terrain, or attributing interconnecting operator network failures to the Licensee, etc.</i> |
| <i>23.7, Part 6 Appendix B</i> | <i>12. misinterpreted to mean a “secret” survey</i> |
| <i>The Licenses</i> | |
| <i>6.5</i> | <i>13. 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> |
| <i>Appendix III</i> | <i>14. the city/urban/rural basis for enforcement of QoS is not stipulated in Appendix III and is therefore invalid 15. per Appendix III, the QoS are to be measured on a system-wide/coverage area basis only, whereas several of the tests in the survey report were conducted in no /low coverage areas (per the maps already available with the Authority) that must be excluded to compute the final survey results</i> |
| <i>The Pakistan Telecommunication (Re-organization) Act, 1996 (the Act)</i> | |
| <i>Section 6, 21, 22</i> | <i>16. 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-compliant with the licenses and the regulatory framework.</i> |

- g. The obligations do not extend to regulations or orders that are ultra vires or otherwise illegal; a licensee cannot be taken to have consented, nor as a matter of law can it be compelled, to abide by regulations or orders that are ultra vires or otherwise illegal. Further, the Authority is equally bound by the provisions of the Act, the Rules, the Regulations.*
- h. The SCN is based on a QoS Survey that measures the QoS KPIs in a survey of a few days and a few hundred calls only, while the QoS measurements, for the purposes of enforcement of the QoS as licensed obligations, are to be taken on a full-month-basis per Appendix III of each Authority itself in paragraph 9 of the SCN;*
- i. The SCN is premised on an error of law in concluding that the “reporting, audit and survey” obligations of the Licensee, and the power of the Authority to conduct surveys and audits translate, ipso facto, into concomitant QoS enforcement. This view is deeply*

flawed. While the surveys, audits and reporting are general obligations, and the Licensee has cooperated and will continue to cooperate with the Authority in carrying out granular surveys, when it comes to enforcement of QoS against threats of penalties, only such surveys can form the basis of enforcement which are fully compliant with Appendix III, inter alia, with regard to a full month survey, full network performance, coverage area testing only, and subject to the prudence and reasonable test, with such exceptions as may flow from acts of Nature or circumstances beyond the control of the Licensee;

- j. The SCN applies a “city-urban-rural” divide for the KPI 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 obligations than those set out in the licenses. The city-urban-rural divide distinction reduces the sample size for KPI measurements, whereby even a few unsuccessful calls can cause the results to fall below the licensed QoS depicting a wholly unrealistic and distorted result based on a miniscule part of the network, and is therefore highly prejudicial to the Licensee and contrary to the express stipulations in the licenses;*
- k. The SCN applies the QoS-KPIs on a very narrow area basis (drive test route), whereas each license contemplates the measurements, for the purposes of QoS enforcement, on a system-wise basis. When viewed on a system wise-basis, the Licensee is fully compliant with its licensed QoS. To hold otherwise would expose the Licensee to impossible and unachievable targets, not observed anywhere in the world, and against all international norms and standards, than are stipulated in Appendix III to the licenses. To hold otherwise would mean that a drive test in a single remote village would be determinant of the QoS compliance, ignoring the cumulative effect of the millions of calls and data packets in the entire region. Such an interpretation is entirely against the provisions of the licenses and is not warranted by the Act or any intra vires delegated legislation thereunder;*
- l. 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, despite acknowledging this test in para 9 of the SCN. The prudence and reasonableness test links to the expression “cost-effective” in section 4(d) of the Act. The prudence and reasonableness test negates 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;*
- m. The reference to section 21(4)(g) of the Act is misplaced. The said section enables*

inclusion of QoS standards for “...particular persons or areas...” in the license, and entails a narrower application of such QoS than the entire service area of the licensee. No particular persons or areas are identified in the licenses for meeting minimum standards for quality and grade of service.

- n. Licensee reserves its right to challenge before a Constitutional Court the vires of the Rules and the Regulations to the extent they purport to impose different or more onerous QoS obligations than those set out in the licenses.*
- o. Para 23.7 of Part 6 of the Rules and regulation 10 of the Regulations empower 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 are ultra vires the Act to the extent they fasten obligations on the Licensee over and above those set out in the licenses. The Licensee reserves its right to challenge before a Constitutional Court the vires of the cited Rules and the Regulations to the extent they purport to impose different or more onerous QoS obligations than those set out in the licenses.*
- p. The call sample sizes were 35 in Taxila, 50 in Swabi and 192 in Murree, which is contrary to the hitherto agreed and established methodology vide QoS plan/methodology issued by PTA vide letter dated 13th February 2017, where PTA confirmed a minimum of 300 calls in all cities except Tier-2 cities where 200 calls would constitute the sample size. Confirming the minimum sample size at 200 calls, PTA vide its letter dated 4 April 2019 acknowledged the reason that “ So that a small number of failure events cannot cause non-conformance of QoS KPIs.”.*
- q. despite delivery of the coverage maps by the Licensee to the Authority on 30th August 2019, the surveying officer chose to make certain calls in the low /no coverage area in Nathiagali, Murree and Charsada, knowing full well that the QoS will not be met, and knowing full well that Appendix III stipulates the QoS KPIs for the coverage area and not beyond, expressly so for the data QoS KPIs.*
- r. The provisions in the licenses 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 the Act, are not binding on the Licensee, and the Licensee reserves its right to challenge the same before a Constitutional Court.*
- s. The survey results accompanying 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.*

- t. *The survey results are invalid for the reasons set out in this reply, including, without limitation, for being based on the urban/rural distinction, confined to less than a month's readings, based on calls in many instances in out-of-coverage areas, applying criteria not envisaged in the licenses, based on a smaller sample of calls than the number warranted under the settled SOPs, in disregard of the other conditions of the licenses including the prudence and reasonableness test and for patent violations of the Rules and the Regulations administered by the Authority.*
- u. *Without prejudice to the foregoing, the Licensee's own tests did not return many alleged shortfalls on re-test by the Licensee. Further, some re-tests revealed negligence by the inspection officer and/or failure of the test equipment. When the results are recomputed by excluding the faulty logs from the survey results, the results reveal QoS compliance by the Licensee.*
- v. *The survey results demonstrate (despite bias apparent on the face of the record to highlight as many shortfalls as possible by resorting to unwarranted urban/rural disaggregation of data, reduced sample sizes, non-coverage area calls, and others) that the Licensee is compliant with the QoS on an overwhelming number of counts. The shortfalls identified are miniscule in comparison with the overall results of the entire KPIs taken as a whole.*
- w. *The reference to violations of the "directions of the Authority" is an error patent on the face of the record, as neither the SCN identifies any direction, nor any earlier directions exist, issued to the Licensee in relation to the QoS for the areas the subject of the SCN which allegedly stand violated by the Licensee. To the contrary, the directions of the Authority relating to minimum call sample size vide its settled SOPs stand violated by the survey forming the basis of the SCN*
- x. *The SCN was received on 29 June 2020, without the test loss. The Authority is well aware that is not possible to identify any alleged shortfalls, let alone remedy the same, until the logs are provided. The Authority provided the logs on 8 July, that is, with only 7 days remaining for the remedy period given in the SCN.*
- y. *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. 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 share the log files immediately after the survey."*

3. HEARING BEFORE THE AUTHORITY:

In order to proceed further, the matter was fixed for hearing on 24th September, 2020 before the Authority. Mr. Haider Latif Sandhu, Head of Legal Department, Mr. Jawad Khattak, AM (Regulatory),

Mr. M. Ali Bandari, Manager Planning, Rizwan Ahmed, AM (RF) Jahanzaib Ali, Manager Legal, Ijaz Isahaq Khan, Counsel 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 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.

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 objected on sample size and stated that the survey has been conducted on insufficient sample size. In this regard, the QoS of Regulations does not define any sample size as the main aspects are Voice calls, SMS, Percentage of ON-Net, OFF-Net Calls/SMS, B-party (Terminating number) moving, Call Size/Window, Conduct of Survey and City coverage and the same has been followed while conducting survey.

4.1.6 The licensee also further claimed that the three licenses 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.

4.1.7 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.

4.1.8 Licensee has justified the survey results with mere statement that samples collected in the main area of a particular city/town exceed the threshold level of 3G and 4G signal strength and fall short in the periphery of these cities/towns. It clearly shows that the licensee admitted that there are weak coverage patches, however, no network expansion has been planned.

4.1.9 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.

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 Pakistan (Pvt) Ltd 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 maintaining the quality of licensed services in the manner as provided in the license.

Dated: 29th June, 2021

5.2 Considering the nature of contravention and violation on the part of licensee, a fine to ~~the tune of~~ the tune of Rs. 3,300,000/- (Rupees three 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 (10) pages only.